

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 40/16, 42/22, 43/4, 41/12 and 43/16.

In this regard, we offer the following comments and suggestions on the 2014 Law No. 7 On Combatting Terrorism Offences (Law 7) which abrogated Federal Decree-Law no. 1/2004. In the context of our review of this law, and the legislation it draws and builds upon, we are concerned that its application will have serious effects on the enjoyment of human rights and fundamental liberties in the United Arab Emirates (UAE). In particular, we are concerned about the impact it may have on freedom of opinion and expression and the freedom to receive and communicate information and ideas, the freedoms of peaceful assembly and of association, and the prohibition of arbitrary detention.

We are troubled by the fact that various articles of this law appear to be contrary to the obligations of your Excellency's Government under international human rights norms, in particular in relation to the Universal Declaration of Human Rights (UDHR) and the Arab Charter on Human Rights (ACHR). As a result, we are concerned that these articles, and their potentially severe punishments for ambiguously defined crimes (which include the death penalty and extended deprivation of liberty), rather than advance human rights compliant counter-terrorism efforts, are susceptible to be used in a manner that may severely restrict the legitimate and internationally protected activities of certain political or religious groups, human rights defenders, journalists, and other actors. In this regard, we are deeply concerned with the practices of extended administrative detention enabled by Law 7, particularly in the articles related to the enablement and functioning of the Munasaha Centres. These "reform" facilities appear to pose a serious risk of practices of extended deprivation of liberty, potentially arbitrary detention, and possible violations of the absolute right to freedom of opinion.

We respectfully underline the importance of maintaining and upholding the fundamental guarantees of international human rights law, particularly in relation to counter-terrorism efforts. We stress that respect for international human rights law is a complementary and mutually reinforcing objective in any effective counter-terrorism

measure or effort at the national level.<sup>1</sup> Consequently we encourage review and reconsideration of Law 7 to ensure that this legislation is in compliance with the UAE's international human rights obligations. We note that the best international practice concerning the oversight of counter-terrorism encourages States to independently and regularly review counter-terrorism laws to ensure that they remain necessary and compliant with international law.

We recall that concerns related to alleged practices of arbitrary detention under your Excellency's Government's counter-terrorism laws were the subject of a prior communication sent on 4 May 2018 (ARE 1/2018).

### **Overview of international human rights law standards applicable**

We would like to reiterate the obligation of your Excellency's Government to respect and protect individual rights guaranteed under the Universal Declaration of Human Rights (UDHR). In particular we would like to draw your Excellency's Government's attention to articles 3, 5, 9, 10, 11, 19 and 20 of the UDHR, which state that everyone has the right to life, liberty and security of person, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, that no one shall be subjected to arbitrary arrest or detention, that all those with criminal charges against them are entitled to a fair and public hearing by an independent and impartial tribunal, including the presumption of innocence and guarantees necessary for one's defence, that everyone has the right to hold opinions without interference, and the right to freedom of expression, including the right to impart information and ideas through any media and regardless of frontiers and that everyone has the right to freedom of association. We further emphasize that the rights contained in article 19 and 20 in relation to freedom of expression apply online as well as offline. We note that a number of the norms identified here (e.g. the prohibition of torture and other cruel, inhuman or degrading treatment and the prohibition of arbitrary deprivation of liberty) constitute customary international law and are not subject to derogation or limitation.

We would specifically like to underline that the "principle of legal certainty" under international law, enshrined in article 11 of the UDHR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense.<sup>2</sup> This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse.<sup>3</sup> Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.

We also respectfully remind your Excellency's Government of the applicable international human rights standards outlined by the Arab Charter on Human Rights (ACHR), which the UAE ratified in 2008, specifically in articles 5, 8, 13, 15, 16 and 32 which safeguard the rights to life, liberty and security of person, to be brought promptly before a judge, to not be subjected to torture and cruel, inhuman or degrading treatment, to be treated with humanity while in detention and to be

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<sup>1</sup> See Resolution 1535 (2004), 1456 (2003), and 1624 (2005) of the Security Council. Also see A/HRC/16/51, paragraph 8

<sup>2</sup> UA G/SO 218/2 Terrorism.

<sup>3</sup> [A/73/361](#), para. 34.

compensated in circumstances of unlawful arrest or detention, and the right to information and to freedom of opinion and expression.

We also respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All of these resolutions require that States ensure that any measures taken to combat terrorism or violent extremism conducive to terrorism, including incitement of and support for terrorist acts, must comply with all of their obligations under international law. As the General Assembly has consistently affirmed in the United Nations Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.<sup>4</sup>

In this regard, we would also like to recall the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1 and 2 which state that everyone has the right to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, as well as to articles 5(a) and (b), 6(b) and (c) and 12, paras 2 and 3. In this regard, we also wish to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.<sup>5</sup>

We further recognize the urgent need to address, and to take concrete steps to prevent and stop, the use of legislation to hinder or limit unduly the ability of human rights defenders in the exercise of their work, and urge states to do so, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law. (A/HRC/RES/34/5 pp12). In this regard, we would like to bring to your Excellency's Government's attention that in his report to the General Assembly on impact of counter-terrorism measures on civil society, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)). We particularly bring to the attention of your Excellency's Government articles 6(b), 9(4) and 12 (2) of the UN Declaration on Human Rights Defenders.

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<sup>4</sup> General Assembly [Res. 60/288](#).

<sup>5</sup> A/HRC/RES/22/6, para. 10; See also E/CN.4/2006/98, para. 47.

## **Concerns relating to the compatibility of Law No. 7 with international human rights law**

### ***Definition of Terrorism***

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has repeatedly underscored that "terrorism", "terrorists" and "terrorist crimes" must be limited to the purpose of countering terrorism and be precisely defined. In this respect, we note that article 1 of Law No. 7 does not appear to define "terrorism" itself. Instead it defines the terms "terrorism offence" ( as "every criminal action or inaction criminalized under the present Law and every action or inaction constituting a felony or misdemeanour referred to in any other law, if committed for terrorist purpose") and "terrorist purpose" ("the offender's intention to commit a criminal action or inaction in order to cause the occurrence of a direct or indirect terrorist result or whenever the offender is aware that the action or inaction is intended to cause the occurrence of a terrorist result"). We are concerned by the imprecise, ambiguous, and uncertain scope of these terms, which essentially remain undefined, as one definition refers or defers to another without clearly providing a concrete and constrained definition of the activities they encompass. The broad and unclear formulation of these terms, which are nevertheless subsequently employed throughout the law (around 60 times in total), appear to contravene the principle of legal certainty and dangerously lend them to subjective interpretation. We note that the term "terrorist result", which the previous definitions lead to, is defined in a more constrained manner, specifically as "inciting fear among a group of people, killing them, or causing them serious physical injury, or inflicting substantial damage to property or the environment, or disrupting security of the international community, or opposing the country, or influencing the public authorities of the country or another country or international organization while discharging its duties, or receiving a privilege from the country or another country or an international organization."<sup>6</sup>

We respectfully remind your Excellency's Government, that although there is no agreement on a multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions,<sup>7</sup> the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly.<sup>8</sup> We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of

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<sup>6</sup> article 1 of Law No. 7

<sup>7</sup> See e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); the International Convention on the Taking of Hostages (Hostages Convention) of 1979; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973; [E/CN.4/2006/98](#) paras. 25-50.

<sup>8</sup> [S/RES/1566](#); [A/RES/51/210](#).

human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice.<sup>9</sup> Those elements include:

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act,
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.<sup>10</sup>

We positively note that the definition of "terrorist result" contained in article 1 of Law No. 7 describes the objective of "inciting fear among a group of people" and the use of lethal means or the infliction of "serious physical injury", although the ideological aspect of a terrorist actor or organization could be more clearly outlined. Nevertheless, the use of ambiguous terms such as "opposing the country", "influencing the public authorities of the country or another country or international organization", "disrupting security of the international community", or "receiving a privilege from the country or another country or an international organization", raise serious concerns in regard to their arbitrary application due to their lack of legal specificity. We warn that the criminalization of these vague concepts, some of which have no clear connection with terrorism or violent extremism whatsoever, significantly distances Law No, 7 from the basic principles contained in international treaties on terrorism, the UN Security Council Resolution 1566, and the model definition mentioned previously.

In addition, we note that some of the violent crimes mentioned in the legislation, such as "inflicting substantial damage to property or the environment" (article 1) or "deliberately destroying, damaging, or endangering" any means of transport (article 6), should only be punished as terrorist acts if they are truly of a terrorist nature as per the constraints outlined above. In this respect, we recall that crimes that do not have the status of terrorism, however serious, should not be addressed through counter-terrorism legislation. We note that the cumulative approach used in the model definition referred to previously acts as a security parameter to help ensure that only behaviour of a genuinely terrorist nature be designated and prosecuted as terrorist conduct under the law and practice of States.

We are particularly concerned by article 17 of Law 7, which refers to and increases the punishment for various crimes outlined in the Penal Code of the UAE if they are committed "for a terrorist purpose" without specifically and clearly describing these crimes in Law 7 itself. Such punishment includes life imprisonment and the imposition of the death penalty. For example, some of the crimes outlined in

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<sup>9</sup> [A/59/565 \(2004\)](#), para. 164 (d).

<sup>10</sup> [E/CN.4/2006/98](#), para 37

the Penal Code that are added to the potential list of terrorist offences in Law 7 include the “(purposeful) damaging of public buildings or property reserved for the use of the government or other public authorities” (such as legislative, consultative and municipal councils or public utility association and institutions),<sup>11</sup> damage against public infrastructure,<sup>12</sup> or even an “assault by any means (against) the body safety of others (which results) in illness or disability to attend to personal business for a period exceeding twenty days”.<sup>13</sup> While we do not question that such acts can be criminal offences, we do not believe that they should necessarily be prosecuted as terrorism, particularly in light of the vague definition of “terrorist offence” which this article is based upon. As the definition of “terrorist offence” includes numerous ambiguous and opaque concepts, and as Law 7 ultimately classifies every act that it criminalizes as a terrorist offense,<sup>14</sup> we are deeply concerned by the range and extent of perceived offences than could potentially be prosecuted as terrorist crimes, seemingly at the subjective discretion of the presiding judge. Furthermore, the fact that the law does not clearly state what activities it is criminalizing appears contrary to the principle of legal certainty under article 11 of the UDHR.

### **Terrorist Organisations**

We would also like to express our profound concerns about the definition of “terrorist organization” as well as the related definition of a “terrorist.” Article 1 of Law 7 defines the former as a “group (...) that commits a terrorist act, directly participates in, threatens of, aims at, plans, seeks, promotes or aids the commission of such act regardless of the name, form, place of establishment, location, nationality or place of existence of its members,” while the latter is described as “whoever belongs to a terrorist organization, commits a terrorist offence, participates directly or indirectly in causing its commission, or threatens of, aims at, plans, seeks, promotes or aids the commission of such commission”.

Given that Law 7 does not provide a definition for a “terrorist act”, we recall that a “terrorist offence” is defined as “every criminal action or inaction criminalized under the present Law and every action or inaction constituting a felony or misdemeanour referred to in any other law, if committed for terrorist purpose”. We also recall that terrorist purpose is defined as directly or indirectly causing a “terrorist result”, while the definition of a “terrorist result” includes a broad range of undefined activities that are not in line with international standards on counter-terrorism (such as “opposing the country”, “influencing public authorities”, or “receiving a privilege from the country or another country or an international organization”, among others).

As a result, what constitutes a “terrorist” or a “terrorist organization,” or even the understanding of the concept of “membership”, despite the fact that these terms could potentially be punished by life imprisonment or capital punishment (according to articles 21 and 22 of Law 7), remain open to subjective interpretation due to the lack of clarity of these interrelated terms. Furthermore, the subsequent punishments

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<sup>11</sup> Articles 6 and 190 of the Penal Code of the United Arab Emirates.

<sup>12</sup> Article 290 of the Penal Code of the United Arab Emirates.

<sup>13</sup> Article 339 of the Penal Code of the United Arab Emirates.

<sup>14</sup> Article 1 of Law 7 defines terrorist offence simply as “Every criminal action or inaction criminalized under the present Law and every action or inaction constituting a felony or misdemeanor referred to in any other law, if committed for terrorist purpose.”

for those accused of crimes such as membership of, affiliation with, or support a terrorist entity (including life imprisonment and the death penalty), risk being unlawfully disproportionate due to the broad categorization of organizations that could constitute “terrorist organizations” under these ambiguous definitions. We are of the view that this subjectivity, as well as the confusing and unclear nature of all of these key definitions, seem to repeatedly undermine the principle of legal certainty. We conclude that it would be difficult for an individual or organisation to regulate their conduct or operations according to the law when the law itself does not properly limit or even enunciate the activities it is criminalizing.

Nevertheless, article 63(1) of Law 7 states that the “Cabinet may, based on the proposal of the Minister of Presidential Affairs, issue a decision on the creation of a list(s) of terrorist organisations or persons that pose threat to the State” following the ratification of Law 7. The second clause of article 63 indicates that this “Cabinet Decision on the creation of the lists” will “specify the rules of inclusion, write-off and re-inclusion as well as the legal effects resulting from all the aforementioned”, as well as “specify the authorities in charge of such procedures in addition to the methods and rules of grievance against their decisions.”

The combination of the imprecise definition of “terrorist organisation” and terrorist-related offences stipulated in Law 7 with yet another undefined term (“posing a threat to the State”) only increases the risk that this clause might be abused or misused. Any subsequent list of “terrorist organisations” created in light of it may potentially include organisations or groups who had simply expressed criticism of the ruling authorities or whose religious views or political positions are perceived as contrary to the interests or the “basic principles” of the State, rather than groups that pose a concrete terrorist threat. Furthermore, the fact that Law 7 does not indicate what the exact effects of being included on such a list are, nor does it outline the procedure that should be followed by the authorities in making a determination about whether an organisation may be added to such a list, but instead solely indicates that this information will be outlined in a subsequent Cabinet Decision, is deeply concerning. This provision is regrettably again not formulated with sufficient precision so that organizations, groups, or individuals can regulate their conduct accordingly.<sup>15</sup> We would like to take this opportunity to stress that persons who belong to or support associations should not be unduly penalized by the application of proscription laws that are unduly permissive and imprecise, in line with the “principle of legal certainty”, as we are concerned that these articles in their current form may lead to the criminalization of a range of otherwise legitimate groups and activities.<sup>16</sup>

We would also like to express our concern about how article 63 of Law 7 appears to give the Minister of Presidential Affairs significant discretion to label any organization a terrorist entity, as any subsequent “terrorist organisation lists” created by the Cabinet or related rulings by judges are seemingly to be based upon the initial “proposal of the Minister of Presidential Affairs”. In the apparent absence of any clear procedure for exercising this power, or oversight over it, it would appear that the Minister of Presidential Affairs, and the Executive branch more broadly, could

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<sup>15</sup> E/CN.4/2006/98, para.46

<sup>16</sup> Note the Report of the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/67/396), para. 26 in respect of the dangers of proscription which is not in conformity with human rights and the rule of law.

approve the proscription of any entity as a terrorist entity without being required to legally demonstrate that there is objective reason to believe that such a designation is justified, despite the far-reaching implications that such a designation could have. Given the broad and imprecise definition of terrorism and other related offences included in Law 7, we warn that the attribution of undefined and seemingly unconstrained powers to the Executive could contribute to an arbitrary and unreasonable use of these powers. This could potentially lead to the criminalisation or persecution of organisations or individuals that are not ‘genuinely’ terrorist in nature, which would be contrary to Security Council resolution 1566 (2004) and the model definition referred to previously, as well as in contravention of international standards on freedom of expression.

### **Freedom of Expression**

We respectfully take this opportunity to elaborate on our concerns about the inclusion of “opposing the country,” “posing a threat to the country” and the related concepts outlined in Law 7, which potentially could be prosecuted as terrorism-related offences, and the effects these inclusions could have on freedom of expression in the UAE. For instance article 14 of Law 7 stipulates a punishment of “capital punishment or life imprisonment” on whoever “commits an action or inaction intended for threatening the State’s stability, safety, unity, sovereignty or security, which contradicts the basic principles underlying the governance system of the State, (...) or preventing one of the State’s institutions or the public authorities from practicing their activities, or prejudicing the national unity or the social security.”

While recognizing that the right to express and access information and ideas is subject to certain limitations, these restrictions must meet the standards of legality,<sup>17</sup> restrictions must be publicly provided by laws which meet standards of clarity and precision and are interpreted by independent judicial authorities. Restrictions must also meet standards of necessity and proportionality, meaning that they ought to be the least intrusive measure necessary amongst those which might achieve their protective function in order to protect a specified legitimate objective, and do not imperil the essence of the right itself.<sup>18</sup> Finally, restrictions must comply with and pursue an enumerated legitimate interest recognized by international conventions, namely the protection of rights or reputations of others, national security or public order, or public health or morals. While national security is recognized as a legitimate aim, it must be limited in its application to those situations in which the interest of the whole nation is at stake.<sup>19</sup> States should “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight.”<sup>20</sup>

Nevertheless, Law 7 does not clearly define what "opposing" the country, “prejudicing national unity”, or “contradicting the basic principles underlying state governance” (or any other of the above phrases included in article 14) entail, or the specific interests that are at stake, despite the potential of extremely harsh

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<sup>17</sup> UDHR, article 11(2).

<sup>18</sup> A/71/373, para. 3.

<sup>19</sup> A/71/373.

<sup>20</sup> A/71/373.

punishments for these actions. Law 7 does not specify the forms of speech that may be prohibited in a manner consistent with the limitation clauses established by international human rights law conventions or with Security Council resolution 1624 (2005). We bring again to your Excellency's Government's attention the "principle of legal certainty" enshrined in article 11 of the UDHR and note our concerns about the inclusion of broad and imprecise phrases such as "opposing" the country or "prejudicing national unity" which do not indicate precisely what kind of individual conduct would fall within their ambit. Accordingly, it is possible that these concepts could be interpreted in a manner that would constitute interference with the right to freedom of expression. More specifically, these and other related provisions could ostensibly be used in a way that could restrict or prevent journalists, human rights defenders, civil society, political or religious groups and other actors from carrying out their legitimate activities. Furthermore, the indefinite scope of these identified terms as crimes creates an opportunity for their abuse or misuse, which again suggests that they could be used to punish those who express legitimate criticism of the Government's policies or actions.

Our concerns in this regard are heightened by article 15 of Law 7, which vaguely states, without indicating what authority will make such a determination, that a "temporary imprisonment" shall be imposed on whoever declares, by any means of communication, his opposition to the State, or to the ruling system therein or his non-allegiance to its leadership. We have indicated elsewhere that counter-terrorism laws across the globe that criminalize freedom of expression implicate serious concerns of legality.<sup>21</sup> The application of such provisions has been targeted at, *inter alia*, the legitimate activities of political opposition, critics, dissidents, civil society, human rights defenders, lawyers, religious clerics, bloggers, artists, musicians and others.<sup>22</sup> We respectfully underline that the fact that an individual or organization may promulgate opinions that are different or contradictory to that of the views of the Government should not be the basis for the prosecution of an individual or proscription of an entity under counter-terrorism legislation. We recall that freedom of expression may not be restricted lawfully unless a Government can demonstrate the legality of the action and its necessity and proportionality in order to protect a specified legitimate objective.<sup>23</sup> Expressions of political dissent for instance are not a legitimate objective for a criminal-law-based restriction on the freedom of expression. The UN High Commissioner for Human Rights has cautioned against the use of counter-terrorism measures against non-violent conduct, asserting that "States should ensure the focus of their measures is on actual conduct rather than mere opinions or beliefs."<sup>24</sup>

We underscore that broad definitions of "terrorist organisations", general assertions of conduct that threaten "national security", and the apparent criminalisation of "opposition to the State" and "non-allegiance to its leadership," without proper definitions and limitations, may severely curtail civic space, the right to participate in public affairs, the work of human rights defenders and other civil society actors and their right to associate. In her 2019 thematic report, the Special Rapporteur on the promotion and protection of human rights and fundamental

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<sup>21</sup> OL AUS 5/2019; OL OTH 46/2018.

<sup>22</sup> A/HRC/37/52, para. 47.

<sup>23</sup> A/71/373, para. 3.

<sup>24</sup> A/HRC/33/29, para. 61.

freedoms while countering terrorism cautions that overly broad definitions of what constitutes threats to national security results in a chilling effect on civic space, the stigmatization of civil society actors, and excludes civil society from engaging in national and international fora.<sup>25</sup> Specifically, she noted that legislation criminalizing acts “affecting national security, political and social stability [are] dangerous to the political, economic or social system” may lead to the criminalisation of legitimate thoughts and expressions of civil society actors, including “civil society organizations, human rights defenders, journalists, bloggers and political opponents . . . .”<sup>26</sup> Human rights defenders may find that their right to defend human rights becomes increasingly precarious, as many legitimate avenues through which they carry out their activities are designated as terrorist activity, subversion, secession or of collusion with a foreign country or with external elements as per this legislation.

We are also deeply concerned about article 34 of Law 7 and the potentially harmful effects it may also have on freedom of expression in the UAE due to its broad and ambiguous wording and the imposition of severe penalties for the transmission or publication of information. While the articles guaranteeing “freedom of opinion and expressing it verbally, in writing or by other means of expression” and the “freedom of communication” which have been incorporated into the UAE Constitution are commendable,<sup>27</sup> we are concerned by this legislative amendment which appears to impinge on the relevant constitutional articles and the UAE's international obligations under international human rights law. Specifically, article 34 of Law 7 states that a punishment of “temporary imprisonment for no more than 10 years shall be imposed on whoever knowingly promotes or supports a terrorist organization, person or offence, whether verbally, in writing or by any other method” or on whoever “possesses, in person or through someone else, any documents, print or recordings of any kind, that encompass promotion or supporting of any terrorist organisation, person or offence,” whether these items are intended for “distribution” or for “printing, recording, circulating or publishing.”

In addition to our previously detailed concerns about how this and other vaguely defined provisions appear to criminalize freedom of expression, and in particular any form of criticism of your Excellency's Government, we are concerned that this article seemingly may allow the authorities to limit or control media coverage and political debate in relation to terrorism. This is already deeply worrying in and of itself, but given the broad and ambiguous definition of terrorism-related offences this article is based upon, this type of control over the transmission of information could become dangerously flexible. Ostensibly, this could allow independent investigations or reporting by journalists, civil society, or other organisations on events of a “terrorist nature”, or even violations potentially committed by security forces, to be considered criminally reprehensible. Legitimate activities of political or religious groups could also be punished due to the unclear definition of what constitutes a terrorist group, membership of one, or even the terms “acquire”, "support" or "promotion". Articles 15 (which imposes temporary imprisonment on “whoever declares, by any means of communication, his opposition to the State”) and 22 (which imposes “life imprisonment or temporary imprisonment” on “whoever seeks to join a terrorist organisation or participate in its activities in any way whatsoever) raise

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<sup>25</sup> A/HRC/40/52, paras. 60, 61, 65.

<sup>26</sup> A/HRC/40/52, para. 46.

<sup>27</sup> Article 30 and Article 31 of the Constitution of the United Arab Emirates

similar concerns about the potential effects they could have on freedom of expression and other fundamental freedoms in the UAE.

In this regard, we recall that Article 19 of the UDHR guarantees a broad right to "seek, receive and impart information and ideas of all kinds", which must be protected and respected regardless of frontiers or types of media. The enjoyment of the right to freedom of expression implies the promotion of a diverse and independent media, and the protection of access to information. We also recall that under the UN Declaration on Human Rights Defenders article 6(b) and (c), everyone has the individual and collective right to freely publish, impart or disseminate views, information and knowledge on all human rights and fundamental freedoms. We warn that overly broad national security legislation, and the use of these terms and other related concepts in an ill-defined manner, where the precise perimeters of individual actions that are to be criminalised are vague and not clearly limited, can profoundly affect the enjoyment of this right in particular.<sup>28</sup> This would be contrary to the obligations of your Excellency's Government with regard to the UDHR and the international conventions to which it is a party, including the Arab Charter, as well as the Emirati Constitution, which enshrines the right to information in its articles 30 and 31. Consequently, we respectfully recommend that these and other related articles be redrafted, as in their current form they raise profound concerns about their possible effects on freedom of expression and civic space in the UAE.

### **Freedom of Peaceful Assembly**

We also note with concern that article 26(1) of Law 7 states that "no meeting or gathering may be held, in any place in the State, by any terrorist organisation or terrorist person for a terrorist purpose", and that the "public authority may dissolve the meeting or the gathering by the use of force when necessary." The subsequent provision of the same article indicates that "life or temporary imprisonment shall be imposed on whoever contribute to the preparation for such meeting or gathering or participates therein although aware of its truth and purpose."

Given the overly broad nature of the acts already defined as "terrorism" throughout this law, we correspondingly have concerns about the manner that this article may be interpreted and applied. The language of article 16 is itself broad, and is directly based on the particularly ambiguous terms "terrorist organization", "terrorist purpose", and "terrorist person" which lends it to subjective interpretation and dangerous flexibility, despite its imposition of potentially severe punishments. Furthermore, its inclusion of the phrase the "public authority may dissolve the meeting or the gathering by the use of force" appears to provide the authorities with broad and advance permission to use force against any form of meeting or gathering, potentially including peaceful assemblies or other public demonstrations. This provision seemingly allows for the use of proactive force, potentially including lethal force, as it does not indicate any limitations or guidelines as to how force may be employed in such situations, against any groups of individuals or organizations that are deemed to be "terrorist". We recall that the use of force in the context of assemblies should be strictly limited, and compliant with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. We also note with concern

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<sup>28</sup> General Comment 34 (CCPR/C/GC/34)

that these provisions potentially allowing for a disproportionate or pre-approved use of force also seem to run contrary to the principle of presumption of innocence.

### **Munasaha Centres**

We are particularly troubled by article 40 of Law 7, which stipulates that “if a person appears to pose (a) terrorist threat, he/she shall be sent to Munasaha centres, by virtue of a judgment issued by a (court having jurisdiction over state security offences”).<sup>29</sup> Article 1 of Law 7 defines the Munasaha Centres as “administrative units aiming at the enlightenment and reform of persons deemed to pose terrorist threat or those convicted of terrorist offences.”

The definition of “posing a terrorist threat” is set out in article 40 (1) of Law 7, which establishes that “a person shall be deemed as posing a terrorist threat if said person adopts extremist or terrorist ideology to the extent that he/she seems likely to commit a terrorist offense.” Nevertheless, the law appears to remain silent with regard to the threshold at which a person will be deemed “likely” to commit a terrorism offense, nor is it clear how “likelihood” of offending is to be assessed. This is in addition to the overly broad definitions of terrorism-related offences on which this article and law are predicated upon and the apparent lack of a definition of “extremism”, either in these articles or the law as a whole. Despite this notable lack of clarity about the reasons why an individual might be sent to a Munasaha Centre, these Centres, due to their coercive character, seemingly amount to detention facilities. As a result, the Law seems to grant broad discretionary powers to judicial authorities to detain individuals on vague grounds, without officially imposing a prison sentence on them, thereby seemingly undermining the principle of legal certainty and other fundamental legal safeguards, and may constitute pre-emptive arbitrary deprivation of liberty.

We respectfully recall that the prohibition of arbitrary deprivation of liberty is recognized in all major international and regional instruments for the promotion and protection of human rights, including articles 9 of the UDHR and article 14 of the Arab Charter, and it is a peremptory norm of international law, or *jus cogens*. We also note that the widespread translation of this prohibition into national laws, constitute a near universal State practice evidencing the customary nature of the prohibition of arbitrary deprivation of liberty.<sup>30</sup> Notwithstanding, we are of the view that the Munasaha Centres appear to raise a number of concerns with regard to potential practices of arbitrary detention.

Firstly, we recall that a detention, even if it is authorized by law, may still be considered arbitrary if it is premised upon an arbitrary or vague or overly broad piece of legislation,<sup>31</sup> or if its legal provisions are otherwise incompatible with fundamental rights and freedoms guaranteed under international human rights law.<sup>32</sup> In this regard

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<sup>29</sup> Article 40(2).

<sup>30</sup> Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law. Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law

<sup>31</sup> Ibid. Also, see, for example, Working Group on Arbitrary Detention opinions No. 36/2020, para 54; No. 45/2019, para. 54; No. 9/2019, para. 39; No. 62/2018, paras 57-59; No. 46/2018, para. 62; and No. 22/2018, paras 52-54.

<sup>32</sup> Ibid.

we recall once again the broad definitions of terrorism and related crimes that admission to these Centres is premised upon, which due to their ambiguity raise the concerns we have repeatedly mentioned in regard to their lack of precision and the subsequent potential for their misuse.

As part of its efforts to counter terrorism, a State may lawfully detain persons suspected of terrorist activity, as with any other crime. However, if a measure involves the deprivation of an individual's liberty, strict compliance with international and regional human rights law related to the liberty and security of persons, the right to recognition before the law and the right to due process is essential. Any such measures must, at the very least, provide for judicial scrutiny and the ability of detained persons to have the lawfulness of their detention determined by a judicial authority.<sup>33</sup> We wish to remind your Excellency's Government that the right to challenge the lawfulness of detention, including in relation to detention under counter-terrorism measures, is a peremptory norm.<sup>34</sup> We also wish to highlight the right to legal assistance in order to enable the effective exercise of the right to challenge the lawfulness of detention.<sup>35</sup>

We recall that adherence to due process and the right to a fair hearing is essential for the proper safeguarding of a person's liberty and security. Furthermore, we recall that a person may only be deprived of liberty in accordance with procedural safeguards governing detention.<sup>36</sup> Essential procedural rules entail limits established under national law on the duration of detention and rules governing the process for authorizing detention and continued detention.<sup>37</sup> States are obliged to demonstrate that detention does not last longer than absolutely necessary, that the length of possible detention is limited and that the State in question respects the guarantees provided for by article 9.<sup>38</sup> We also recall that the Working Group on Arbitrary Detention has previously stated that an overly broad law which authorizes indefinite detention with limited or no clear standards or means to review it is by implication arbitrary.<sup>39</sup>

We are consequently concerned by the fact that Law No. 7 also does not explicitly require the Court to determine the duration of any potential Munasaha detention nor does it appear to include any temporal limits to the amount of time an individual may spend at one of these Centres. Article 40 (3) only requires the Prosecution to provide a periodic report on the person sent to the Centre every three months. The detainee's release is conditional on the courts' finding in regard to whether "his or her condition so allows."<sup>40</sup> This seemingly unlimited basis for the extension of a detention, without clearly requiring the finding of criminal culpability,

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<sup>33</sup> Office of the United Nations High Commissioner for Human Rights - Human Rights, Terrorism and Counter-terrorism - Fact Sheet No. 32

<sup>34</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), paras. 3, 11 and 47(a).

<sup>35</sup> A/HRC/30/37.

<sup>36</sup> E/CN.4/2005/6, para. 58(a).

<sup>37</sup> See for instance European Court of Human Rights, *Wynne v United Kingdom* (No.2), Judgment of the European Court of Human Rights, 16 October 2003.

<sup>38</sup> Communication No. 770, *Gridin v Russian Federation*, Views adopted by the Human Rights Committee on 20 July 2000, para. 8.1.

<sup>39</sup> Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law.

<sup>40</sup> Law No. 7, art. 40 (3).

creates a serious risk of a violation of UDHR article 9. In this regard we recall that the Human Rights Committee has stated that “in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification”.<sup>41</sup> Furthermore, the legal basis justifying the detention must be accessible, understandable, non-retroactive and applied in a consistent and predictable way to everyone equally. We are concerned that the lack of clarity in relation to these articles suggests that the procedure behind admissions to these Centres may not comply with these requirements. In addition, Law 7 appears to be silent about the means or standards available to those individuals who may be sent to these centres to contest the decision or the exact legal process through which the Court makes the determination about whether or not to send an individual to one.

Secondly, and in addition to our concern about the unclear parameters upon which admission to and release from these Centres appears to be based, we are concerned about the notion of imposing preventive deprivation of liberty against potentially dangerous persons or "persons who appear to constitute a terrorist threat". We would like to emphasize that "potentiality" cannot, in accordance with international human rights law, justify intrusive preventive measures, such as administrative detention. We note that such measures should be based on a "current, direct and imperative" threat and the burden of proof to demonstrate that such a threat exists falls upon the relevant authorities.<sup>42</sup> While we are aware of the duty of the State to ensure the safety and security of its people, including through preventive approaches, we are nevertheless gravely concerned that the abovementioned measures may be used in a manner that is neither necessary nor proportionate to address their stated objective due to the ambiguity of the relevant provisions. We consequently urge your Excellency's Government to ensure that preventive detention in the context of the fight against terrorism is limited to cases where deprivation of liberty is reasonably considered necessary to prevent the commission of concrete offences, in accordance with the UAE's international human rights obligations.

We further note that, in accordance with other relevant Law 7 provisions or other Emirati laws,<sup>43</sup> in addition to an interpretation of whether or not they may constitute a “terrorist threat”, a person can also be detained at a Munasaha centre on the grounds that they (i) were convicted of terrorist offences<sup>44</sup> or (ii) were registered to undertake a counselling programme (...) but failed or refused, without justification, to complete the programme.<sup>45</sup> Consequently, for those individuals who were previously convicted of terrorism-related offenses or who refused to comply, or are deemed to have refused to have complied, with their counselling programmes, Law 7 appears to create a situation where those individuals can be detained indefinitely in Munasaha Centres if they are considered to continue to pose a “terrorist threat”. In this regard, we note that a detention is unlawful if a person remains imprisoned after having served his/her sentence.<sup>46</sup> Furthermore, we note that in instances where a court orders or renews the detention of an individual because it is feared that they might be a

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<sup>41</sup> Human Rights Committee, *Madani v. Algeria*, communication No. 1172/2003, Views adopted on 28 March 2007, para. 8.4

<sup>42</sup> General Comment No. 35, Article 9 (Liberty and security of the person), CCPR/C/GC/35, para. 15.

<sup>43</sup> In particular the Munasaha Centre Law.

<sup>44</sup> Article 1 Law 7

<sup>45</sup> Article 10 of the Munasaha Centre Law.

<sup>46</sup> Communication No. 138/1983, *Mpandanjila v. Zaire*, Views adopted by the Human Rights Committee on 26 March 1986, para. 9.

danger to the community in the future and for purposes of rehabilitation, the State is required to demonstrate that the individual's rehabilitation could not have been achieved by means less intrusive than continued imprisonment or even detention.<sup>47</sup>

While arbitrary deprivation of liberty does not necessarily amount to torture or other cruel, inhuman or degrading treatment or punishment, there is a recognised link between both prohibitions. In conjunction, the arbitrary character of detention, its protracted and/or indefinite duration, the refusal to provide information, the denial of basic procedural rights and the severity of the conditions of detention can cumulatively inflict serious psychological harm which may well amount to torture or other ill-treatment.<sup>48</sup> The longer a situation of arbitrary deprivation of liberty and inadequate conditions of detention lasts, and the less the affected person can do to influence their own situation, the more intense their mental and emotional suffering will become - and the higher the likelihood that the prohibition of torture and ill-treatment has been breached.<sup>49</sup> The lack of clarity provided by Law 7 about the reasons why an individual can be sent to one of these Centres, how long he or she may spend there, the means of appeal available, as well as the lack of information about the detention conditions and programmes in these Munasaha Centres raise concerns about the potential of serious psychological harm, which may amount to torture and ill-treatment against individuals who are sent to them.

Finally, we would like to express our deep concern about the stated aim of the Munasaha Centres. We recall that article 1 of the law defines the Munasaha Centres as "administrative units aiming at the enlightenment and reform of persons (deemed to pose terrorist threat or those convicted of terrorist offences)." From our understanding of this definition, it seems that these Munasaha Centres, and their "purpose" of "enlightenment and reform of persons,"<sup>50</sup> indicates that they constitute re-education facilities which are designed to carry out undefined practices that may potentially amount to indoctrination. In this regard, we recall that the freedom to hold opinions without interference, enshrined in article 19 of the UDHR, is an absolute right that "permits no exception or restriction," whether "by law or other power".<sup>51</sup> The Human Rights Committee has concluded that this right requires freedom from undue coercion in the development of an individual's beliefs, ideologies, reactions and positions.<sup>52</sup> This implies that an individual cannot be subjected to treatment intended to change that individual's process of thinking, be forced to express thoughts, to change opinion, or to divulge a religious conviction. Similarly, no sanction may be imposed for holding any political view or religious belief. Accordingly, indoctrination programmes (such as re-education or "reform and enlightenment facilities") or other threats or actions designed to compel individuals to form particular opinions or change their opinion would be a violation of article 19 of the UDHR. Furthermore, such facilities or policies are also in contradiction with the right to education, which

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<sup>47</sup> Human Rights Committee, Communication No. 1629/2007, 18 March 2010, page. 9. Available at: [http://www.worldcourts.com/hrc/eng/decisions/2010.03.18\\_Fardon\\_v\\_Australia.pdf](http://www.worldcourts.com/hrc/eng/decisions/2010.03.18_Fardon_v_Australia.pdf)

<sup>48</sup> (CCPR/C/116/D/2233/2013).

<sup>49</sup> (A/HRC/37/50, paras. 25-27).

<sup>50</sup> Article 66 of Law 7.

<sup>51</sup> Human Rights Committee, general comment No. 34 (2011), para. 9

<sup>52</sup> Yong Joo-Kang v. Republic of Korea, Human Rights Committee communication No. 878/1999, 16 July 2003 (CCPR/C/78/D/878/1999).

must always be free of propaganda and imply access to information and a focus on the free development and exercise of critical thinking.<sup>53</sup>

Once again, due to the broad definition of terrorist offences, threats, ideology, purpose, results, organisation and related terms it is possible that these Munasaha Centres may be used not only to punish critics of the government or those who hold views that are deemed contrary to the interests of the State or ruling elite, but to “reform” their views, opinions, and thoughts. Members of certain political organisations or religious groups could potentially be deemed to constitute “terrorist” offenders or threats in line with Article 1 of Law 7, and be subjected to undefined coercive practices aimed to change their way of thinking in line with Article 40 of the Law. If confirmed in practice, this would be in direct contravention of your Excellency’s Government’s obligations in relation to the absolute right to freedom of opinion under international human rights law.

### **Deprivation of Nationality**

We respectfully take this opportunity to express our related concerns about Federal Law No. 17 of 1972 “regarding nationality, passports, executive regulations and complementary decisions” (as amended by Federal Law No. 10 of 1975), and in particular article 16 of this law. We note that article 16 (1) sets out that a naturalized person may have his or her nationality withdrawn if that person “commits or attempts to commit an action that is deemed dangerous to the safety and security of the country”. Furthermore, the official webpage of the UAE Government states that if a naturalized person “is convicted for any of the terrorist offences provided for in the Law on Combating Terrorism” this may equally “result in the deprivation or withdrawal of the nationality as an accessory penalty.”<sup>54</sup> We also note that naturalized citizens in the UAE may not hold any other nationality other than Emirati citizenship.<sup>55</sup>

We recall that article 15 of the UDHR stipulates that “(1) Everyone has the right to a nationality” and “(2) No one shall be arbitrarily deprived of his nationality”. In this field, express limits are placed on States’ powers, both through customary international law and treaty obligations.<sup>56</sup> The International Law Commission has expressly affirmed that “the competence of States in this field may be exercised only within the limits set by international law”.<sup>57</sup> Given that the status of nationality confers an intersecting and overlapping set of rights, the right to nationality and the prohibition of its arbitrary deprivation have also been reflected in all principal global and regional human rights treaties, including the Arab Charter on Human Rights (article 24). Beyond this treaty framework, international governmental organisations

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<sup>53</sup> A/74/243, paras. 35-36

<sup>54</sup> Loss of nationality - <https://u.ae/en/information-and-services/passports-and-traveling/uae-nationality>

<sup>55</sup> Requirements for acquiring nationality, point 1 - <https://u.ae/en/information-and-services/passports-and-traveling/uae-nationality>

<sup>56</sup> *Nationality Decrees Issued in Tunis and Morocco* (Permanent Court of International Justice), Ser. B, No. 4, Advisory Opinion, 7 February 1923, pp. 23-24; *Georges Pinson v United Mexican States* (1928) 5 UNRIAA 327, p. 364 (France- Mexico Claims Commission). See also, Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930) 179 LNTS 89, Article 1

<sup>57</sup> ILC, ‘Draft Articles on Nationality of Natural Persons in relation to the Succession of States (with commentaries)’ (1999) II(2) YBILC, p. 24, para. 3. See also ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, para. 19.

have also repeatedly confirmed the prohibition against the arbitrary deprivation of nationality, including by way of resolutions of the General Assembly, the Human Rights Council and its predecessor the UN Commission on Human Rights,<sup>58</sup> which indicates the customary nature of this prohibition. While States may deprive individuals of nationality when they have conducted themselves in a manner seriously prejudicial to the vital interests of the State,<sup>59</sup> in order to avoid a characterization of arbitrariness, any deprivation must serve a legitimate purpose that is consistent with international law and must be proportionate to the interest that the State seeks to protect. Critically, sufficient procedural guarantees and safeguards must be in place in order to protect against the risk of arbitrariness in the decision-making process, particularly the opportunity to effectively challenge decisions before an independent (and ideally judicial) body.<sup>60</sup> In addition, any nationality revocation must respect the absolute prohibition of non-refoulement.<sup>61</sup> The Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism has confirmed that the prohibition of the arbitrary deprivation of nationality constitutes customary international law, and this status applies in all contexts including in the context of countering terrorism.<sup>62</sup>

We are deeply concerned by the fact that article 16 does not elaborate on the legitimate purposes or interests that must be threatened in order to meet the threshold where deprivation of nationality may be considered or applied. Instead, there appears to be no definition of or limitation to the actions that may be “deemed dangerous”. Given the apparent links of this article with Law 7, and our previously outlined concerns about how “terrorist threats” are measured and other terrorist-related offences are defined according to the UAE’s counter-terrorism law, as well as the very concept of criminalising “potentiality”, we are deeply concerned that this article, despite its potentially far-reaching human rights implications, could once again be employed in a punitive and possibly arbitrary manner against individuals who express legitimate criticism of the Government or its policies, rather than solely against persons who pose a current, direct and concrete security or terrorism-related threat. Furthermore, the article appears to provide no indication of how an affected person could effectively challenge any decision, or what bodies are in place to evaluate or review cases in an independent manner. We are also troubled by the fact that article 16 of the nationality law does not make clear that any decision made in light of it

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<sup>58</sup> See, e.g., UNGA, Resolution 50/152, UN Doc. A/RES/50/152, 9 February 1996, para. 16; UN Commission on Human Rights, ‘Resolution on Human Rights and Arbitrary Deprivation of Nationality’, 1997/36, 11 April 1997, preamble; see also para. 2; UN Commission on Human Rights, ‘Resolution on Human Rights and Arbitrary Deprivation of Nationality, 2005/45, 19 April 2005, preamble; see also para. 2; UN HRC, ‘Human Rights and Arbitrary Deprivation of Nationality’, UN Doc. A/HRC/RES/13/2, 24 March 2010, see generally; UN HRC, ‘Human rights and arbitrary deprivation of nationality’, UN Doc. A/HRC/RES/20/5, 16 July 2012, see generally.

<sup>59</sup> Convention on the Reduction of Statelessness, Article 8(3).

<sup>60</sup> (A/HRC/25/28, paras. 31–34, and A/69/10, p. 32).

<sup>61</sup> (A/62/263, paras. 50–51)

<sup>62</sup> Shamima Begum Third Party Intervention at the UK Court of Appeals (found here: [https://www.ohchr.org/Documents/Issues/Terrorism/SR/2020\\_05\\_29\\_FINAL\\_Begum\\_Intervention.pdf](https://www.ohchr.org/Documents/Issues/Terrorism/SR/2020_05_29_FINAL_Begum_Intervention.pdf)); UN Counter-Terrorism Implementation Task Force, ‘Guidance to States on human rights-compliant responses to the threat posed by foreign fighters’, 2018, para. 40 (“*The prohibition of arbitrary deprivation of nationality has been widely recognized as a norm of customary international law*”); UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para. 85 (referring to the “*strong international consensus that the right to nationality, and relatedly, the prohibition of arbitrary deprivation of nationality are fundamental principles of international law*”)

should respect the absolute prohibition of non-refoulement. This is particularly concerning given that the UAE naturalization process is seemingly facilitated for “members of Arab tribes (from neighbouring countries) who have been displaced”.<sup>63</sup> All these considerations raise serious concerns in regard to the possibility of both an arbitrary application of this article and instances of arbitrary deprivations of citizenship, which would be contrary to your Excellency’s Government’s obligations under the UDHR.

Furthermore, article 16 of the Nationality Law also states that if nationality is withdrawn from a person, it may accordingly be withdrawn from his wife and under-aged children. This suggests that individuals may have their nationality revoked even if they have not conducted themselves in a manner deemed to be prejudicial to the vital interests of the state. In addition to our concerns about the breadth of activities that may be deemed “prejudicial to the vital interests of the state”, the concept of punishing those who have not even been deemed to have committed a crime is deeply troubling, and by effect would be inherently arbitrary. We stress that the impacts of citizenship revocation can be especially harmful to children, as they may be deprived of access to fundamental rights, such as the right to safety and security, basic medical care and education, among others, during vital stages of their development as individuals. Any such impacts could contribute to the social marginalization of children, which ultimately could have a negative effect on the prevention of violence and polarization within societies.<sup>64</sup> Finally, seeing as the Convention on the Rights of the Child (CRC) enshrines the right of a child to “acquire” and “preserve” a nationality (articles 7 and 8) and the obligation of States to protect these rights, “in particular where the child would otherwise become stateless” (article 7), we are of the view that this article would be contrary to the UAE’s obligations under said Convention, which was ratified by your Excellency’s Government in 1997.

### **Other administrative measures outlined by Law 7**

We would also like to take this opportunity to express our concerns about article 41 of Law 7, which stipulates that “persons deemed as posing (a) terrorist threat” may be subjected to one or more of the following measures for a period specified (by the Court):

- a- Prohibition of travel.
- b- Control.
- c- Prohibition of residence in a specified place or region.
- d- Determination of residence in a specified place.
- e- Prohibition of visiting of certain places or premises.
- f- Prohibition of communication with specified person(s).

We further note that provisions 2 and 3 of article 41 state that “the Prosecution shall submit reports to said court on the conduct subjected to the measure within regular periods of no more than three months each” (2) and the “court may order termination, modification or reduction of period of a measure upon a request from the Prosecution or the person subjected to such measure. Should said person’s request be

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<sup>63</sup> <https://u.ae/en/information-and-services/passports-and-traveling/uae-nationality>

<sup>64</sup> A/70/674.

rejected, he/she may not submit a new request unless after the lapse of three months from the date of rejection.” (3).

Although we welcome that Law 7 indicates that these measures may be reviewed and subsequently terminated, changed, or reduced, we are concerned by the fact that there appears to be no increased specific standards to maintain the enforcement of these measures or to impose additional penalties. We are concerned that the current formulation of this article may lead to these measures being used, in some cases, as penal sanctions against non-convicted individuals, against whom there is no clear requirement that they have engaged in new or continuing terrorism-related activity for the measures imposed against them to be maintained or extended. This raises very serious concerns in relation to the protection of the right to a fair trial, particularly the right to be presumed innocent. This principle implies that it is the prosecution who bears the burden of proof to show guilt beyond a reasonable doubt; that the accused person is entitled to the benefit of the doubt; and that an accused person must be treated in accordance with the presumption of innocence. However, these provisions, and in particular the fact that if a request by an affected person is rejected that person is not allowed to submit another request for around 90 days, seem to run contrary to these principles.

Despite the lack of clarity about how these measures are to be determined and about the limitations to them, we note that such measures may impinge on a range of human rights, the most evident of which are freedom of movement, association and assembly, and the right to private and family life. In certain circumstances, these measures may also interfere with the right to work, the right to education or the right to participate in the religious and cultural life. These rights and freedoms represent an indispensable condition for the free development of individuals, as recognized by international and regional human rights mechanisms,<sup>65</sup> and are "essential to the realization of other human rights and are an integral and indivisible part of human dignity."<sup>66</sup> We would also like to recall the role that these rights play in preventing marginalization and polarization and in ensuring that individuals have the opportunity to fully integrate into society.

Bearing in mind these potentially far-reaching implications, we reiterate that any such measures must be based on clear, precise and human rights-consistent definitions, that restrictions on rights must be necessary and appropriate to protect a permissible public interest objective, and that their implementation is proportionate and non-discriminatory. We also wish to stress in this regard that the punitive effect of certain administrative sanctions, particularly when applied cumulatively, may have an effect equivalent to that of criminal sanctions despite the formal distinction in the legal regime.<sup>67</sup> However, seeing as these clauses are once again based on the broadly defined and dangerously flexible term “terrorist threat,” and seeing as article 41 does not clearly establish that the restrictions it imposes should be necessary, appropriate, and directed to a permissible and specified public interest objective, we are concerned that they could be used in a subjective and potentially punitive manner against non-

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<sup>65</sup> See, for example, CRC, General Comment No. 1, CRC/GC/1001/1 (17 April 2001), para. 2; CCPR, General Comment No. 27, CCPR/C/21/Rev.1/Add.9 (1 November 1999), para. 1; CESCR, Observation General No. 13, E/C.12/1999/10 (8 Dec. 1999), para. 1.

<sup>66</sup> See, for example, CESCR, General Comment No. 18, E/C.12/GC/186 (24 November 2005), para. 1.

<sup>67</sup> See, for example, A/HRC/43/46/Add.2 and A/HRC/40/52/Add.4.

violent individuals rather than those who clearly pose a concrete terrorist threat. Furthermore, we are concerned that the prohibition of “communication” with certain individuals, the prohibition of residence “in a specified place or region” or limitations on travel and movement, or the imposition of currently undefined measures such as “control”, may increase the marginalization and risk of polarization of the persons who may be affected by them, and ultimately prove contrary to their presumptive goal of countering terrorism and violent extremism. In regard to determination of residence in a specified place in particular, we are concerned by the impact that this clause could have on the right to liberty and security, protected under article 3 of the UDHR and articles 5 and 8 of the Arab Charter. We recall that restrictions on liberty can become deprivations of liberty, particularly where the periods under which an individual must remain at home are of a long duration.<sup>68</sup>

We further note that obliging individuals to live in a certain place, or restricting who they can communicate with, could further seriously interfere with the privacy, reputation and liberty of individuals contravening article 12 of the UDHR, which protects against arbitrary or unlawful interference with a person’s privacy and home. In this regard we are particularly troubled by how article 41 indicates that the authorities may subject “persons deemed as posing (a) terrorist threat” to “control”, a term that remains undefined in the legislation as it stands, and which consequently raises deep concerns in relation to the potential effects it could have on the right to privacy. We remind your Excellency’s Government that the Human Rights Council has found that the right to privacy is a human right that supports other human rights.<sup>69</sup> Countering terrorism does not give States a *carte blanche*, which automatically legitimates any interference with the right to privacy.<sup>70</sup> We are concerned that Article 41 in its entirety may lead to practices that directly impinge upon this right, as the measures it stipulates, as well as the limitations to these measures, are not outlined in a clear, precise and human rights-consistent manner. Instead, this article’s ambiguity and lack of precision, much like all of the previously identified articles and sections of Law 7, appears to give the relevant authorities *carte blanche* to interpret and employ it in a potentially subjective, inconsistent, and/or punitive manner.

### **Concluding remarks**

We caution that Law 7 in its current form does not appear to conform with either the UAE’s international human rights law obligations or best practices in relation to counter-terrorism law and practice. While we are aware of the security challenges that the UAE and other countries face in relation to terrorism, and of the duty of the State to ensure the safety and security of its people, including through preventive approaches, we are concerned that the law currently lacks sufficient clarity and precision so as to ensure that any measures taken pursuant to it are necessary, proportionate, and strictly limited to their stated aim of combating terrorism. We therefore recommend that your Excellency’s Government review the provisions described above and bring them into line with international human rights standards,

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<sup>68</sup> See Human Rights Committee 1134/2002, *Gorji-Dinka v. Cameroon*, para. 5.4.

<sup>69</sup> A/HRC/13/37, para. 11.

<sup>70</sup> A/HRC/13/37, para. 13.

particularly in relation to the rights to freedoms of expression and opinion, peaceful assembly and association, and the prohibition of arbitrary detention.

We stress that the failure to use precise and unambiguous language in relation to terrorist offences may fundamentally affect the protection of a number of fundamental rights and freedoms. The law is particularly worrying in this regard because of the impact it could have on civic space in the UAE, as it provides for potentially severe penalties for ambiguously defined crimes such as "opposing the country" (articles 1 and 15), "non-allegiance to its leadership" (article 15), or "prejudicing national unity" (article 14), among many others, and even criminalises a range of activities that appear to have no clear relation with terrorism or national security, such as "influencing the public authorities of the country or another country or international organisation while discharging its duties, or receiving a privilege from the country or another country or an international organisation" (article 1). The lack of a concrete and constrained definition of a broad range of key terms (terrorism, terrorist purpose, terrorist organisation, etc.) and the ambiguity of the few key terms that are defined in a somewhat limited manner (terrorist result) are particularly troubling, and seem to repeatedly and seriously contravene the principle of legal certainty under international human rights law. We reiterate that this lack of clarity makes it difficult for any person or organisation to regulate their conduct accordingly as the Law itself is not always clear about the exact conduct it is criminalising.

As a result, we are profoundly concerned that Law 7 may be establishing a legislative framework where certain forms of criticism or dissent can be interpreted and prosecuted as domestic terrorism, seemingly at the subjective discretion of the relevant authorities. We are of the view that the persistent ambiguity of this Law may lead to a systematic failure to distinguish between threats that are genuinely terrorist in nature and those which are not, and seriously affect the enjoyment of human rights and fundamental freedoms in the UAE. We are further concerned that this may ultimately worsen rather than minimise any existing security risk in the country.

We therefore strongly encourage a process of independent review of the relevant provisions, and other laws on which they are based or interact with, so that they are more clearly in line with international human rights standards. We also call upon your Excellency's Government to urgently recognise, in law and in practice, freedom of expression, both physical and digital, as an individual right, subject only to the restrictions permitted by international human rights law, the absolute nature of the right to freedom of opinion, and to take steps to reduce the risks of practices of extended and potentially arbitrary detention under this legislation, particularly against non-violent individuals.

We note that international best practice encourages States to regularly and independently review counter-terrorism legislation to ensure that it remains necessary and consistent with international law. In this context, we would be pleased to offer technical assistance on any of the issues raised in this Communication. In adopting such an approach, by amending, reviewing and tightening the legal definitions contained in this law, the UAE would present a model of good practice for other States and demonstrate the responsiveness of its legal system.

As it is our responsibility, under the mandates given to us by the Human Rights Council, to seek your cooperation in clarifying the cases that have been brought to our attention, we would be grateful for your Excellency's Government's comments on the following points:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned concerns.
2. Please provide further information of how the definitions of “terrorist offence,” “terrorist purpose” and “terrorist organisations” in Law 7 are interpreted in a sufficiently precise and limited manner so as to ensure that measures taken pursuant to this law do not unduly infringe with the lawful exercise of the freedoms of opinion, expression, and association, while also complying with the principle of legality.
3. Please provide further information on the definition “terrorist result” and how it is in line with the Model Definition of the Special Rapporteur on the promotion and protection of human rights while countering terrorism. In particular, please clarify the inclusion of the terms “opposing the country, or influencing the public authorities of the country or another country or international organization while discharging its duties”, or “receiving a privilege from the country or another country or an international organization” and how the criminalisation of these activities is strictly relevant to the fight against terrorism.
4. Please explain how the apparent restrictions of certain forms of speech included in Law 7, such as in particular the criminalisation of "opposing the State" or “non-allegiance to its leadership” among other similar terms, as well other restrictions to the transmission and publication of information detailed above, will not restrict the enjoyment of Article 19 of the UDHR in the UAE.
5. Please provide further information about how the term “terrorist threat” is to be understood, and in particular how “likelihood” of committing a terrorist offence and “extremism” are to be measured in the context of this legislation, and how this is consistent with the obligations of your Excellency’s Government under international human rights law.
6. Please explain how the measures related to the Munasaha Centres in particular are compatible with the prohibition of arbitrary deprivation of liberty. Please also provide further information on the nature and scope of “reform” and “enlightenment” programmes in these Munasaha facilities and how they are in compliance with the right to education and the absolute right to freedom of opinion. Please also indicate what procedures are in place to ensure that persons placed in these facilities are treated in compliance with your Excellency Government’s obligations under the CAT.

7. Please provide further information on the range and extent of activities that may be “deemed dangerous to the State” and lead to deprivation of nationality of naturalised UAE citizens. Please explain how the existing legal framework in regard to withdrawal of citizenship is in line with the obligations of the UAE under international human rights law, in particular the customary law prohibition against arbitrary deprivation of citizenship, as well as your Excellency's Government's obligations under the CRC.
8. Please explain how the administrative measures provided for in article 41 of the Law are consistent with your Excellency's Government's obligations under international human rights law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders