

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL ARE 3/2021

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 42/22, 41/12, 40/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning cases **of arbitrary detention and sentencing of human rights defenders that carry prison sentences of 10 years or more in connection to the promotion and defense of human rights and related allegations of torture, ill treatment and poor conditions of detention.**

This letter is a follow up to previous communications sent on human rights defenders Mr. Mohamed al-Mansoori, Mr. Hassan Mohammed Al-Hammad,

Mr. Hadif Rashed Abdullah al-Owais, Mr. Ali Saeed Al-Kindi and Mr. Salim Hamdoon Al-Shahhi. These human rights defenders are part of the "UAE94", a group of 94 lawyers, human rights defenders and academics arrested between 2012 and 2013 for plotting to overthrow the government of the United Arab Emirates.

In its opinion No. 60/2013 (September 2013) the UN Working Group on Arbitrary Detention concluded that the deprivation of liberty of 61 individuals, including Mr. Mohamed al-Mansoori, Mr. Hassan Mohammed Al-Hammad, Mr. Hadif Rashed Abdullah al-Owais, Mr. Ali Saeed Al-Kindi and Mr. Salim Hamdoon Al-Shahhi is arbitrary and in contravention of articles 8 to 11, 19 and 20 of the Universal Declaration of Human Rights. It also concluded that their detentions fall within categories I, II and III of the arbitrary detention categories. The Working Group requested the Government to take the necessary steps to remedy the situation of the 61 individuals and bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights.

We have raised our concerns about sentencing of other human rights defenders that carry prison sentences of 10 years or more in connection to the promotion and defense of human rights on a letter sent to your Excellency's Government on 25 January 2021 (ARE 1/2021). In this letter we expressed concern about the situation of Mr. Mohammed Al-Roken, Mr. Ahmed Mansoor and Mr. Nasser Bin Gaith. We acknowledge your Government's reply to this letter and note that the human rights defenders had their last medical checkups on 12 February 2021.

We have also raised our concerns on the Act on Combating Criminal Terrorist Offences and its application including serious effects on the enjoyment of human rights and fundamental liberties in the United Arab Emirates on a letter sent to your Excellency's Government on 13 November 2020 (ARE 6/2020). We also reiterate our recommendation to review the legislation to bring it in line with international human rights standards. We regret that no reply has been received to date.

According to the information received:

Five human rights defenders serving prison sentences of 10 years or more

The case of Mr. Mohamed al-Mansoori

Mr. Mohamed al-Mansoori is a lawyer, a human rights activist and President of the Independent Jurist's Association in the Emirate of Fujairah. Mr. al-Mansoori was subject of six communications sent to your Excellency's Government on 7 November 2013 (ARE 5/2013), 16 April 2013 (ARE 1/2013), 7 November 2012 (ARE 7/2012), 15 January 2010 (ARE 1/2010) and 8 September 2016 (ARE 7/2006). We thank your Excellency's Government for its replies to ARE 1/2013, ARE 7/2012 and ARE 7/2006.

Mr. al-Mansoori was arrested on 16 July 2012 after signing a petition calling for democratic reforms. After almost a year in pretrial detention, he was sentenced on 2 July 2013 for trial on charges of "establishing and managing an organization with the aim of committing crimes that harm State security, opposing the Constitution and the basic principles of the UAE ruling system and having links and affiliations to organizations with foreign agendas" under Federal Criminal Code, and the Act on Combating Criminal Terrorist Offences.

Mr. al-Mansoori was sentenced to 11 years and three months in prison and is currently being held at Al-Sadr prison.

On 31 July 2013, Mr. al-Mansoori and other inmates began a hunger strike to protest against the beatings and severe restrictions of family visits. Other complaints include authorities turning off the air conditioning as temperatures rose to above 40°C, and windows being covered, preventing prisoners from seeing sunlight.

Restrictions on family visits are allegedly imposed even when families have obtained written permission from the Prosecutor to visit the detainees and have driven for many hours to see them. It is further reported that Mr. al-Mansoori's shoulder was dislocated during a beating by prison guards and that this precipitated the protest.

According to the latest information received, he was placed in solitary confinement for months in 2020, and was prohibited from contacting his family for almost a year.

The case of Mr. Hassan Mohammed Al-Hammadi

Mr. Hassan Mohammed Al-Hammadi is a human rights defender and member of the “UAE94”. He was subject of a letter sent to your Excellency’s Government on 16 April 2013 (ARE 1/2013). We acknowledge your Excellency’s Government reply to such letter.

Mr. Al-Hammadi was arrested on 30 July 2012 and sentenced after spending more than a year in pre-trial detention. On 2 July 2013 he was sentenced on charges of “establishing and managing an organization with the aim of committing crimes that harm State security, opposing the Constitution and the basic principles of the UAE ruling system and having links and affiliations to organizations with foreign agendas” under the Federal Criminal Code, and the Act on Combating Criminal Terrorist Offences.

Mr. Al-Hammadi was sentenced to a 10-year prison sentence and 3-year probation, starting from the date of his release. He is currently at Al-Wathba Prison.

The case of Mr. Hadif Rashed Abdullah al-Owais

Mr. Hadif Rashed Abdullah al-Owais is a human rights defender and member of the “UAE94”. He was subject of a letter sent to your Excellency’s Government on 16 April 2013 (ARE 1/2013). We acknowledge your Excellency’s Government reply to such letter.

He was arrested on 11 September 2012 and sentenced to 10 years in prison on 2 July 2013 for “establishing and managing an organization with the aim of committing crimes that harm State security, opposing the Constitution and the basic principles of the UAE ruling system and having links and affiliations to organizations with foreign agendas” under the Federal criminal Code, and the Act on Combating Criminal Terrorist Offences.

The case of Mr. Ali Saeed Al-Kindi

Mr. Ali Saeed Al-Kindi was a human rights defender, former judge of the State Council, and a member of the Jurists Association. He was subject of a letter sent to your Excellency’s Government on 16 April 2013 (ARE 1/2013). We acknowledge your Excellency’s Government reply to such letter.

He was arrested on 9 September 2012 and sentenced on 2 July 2013 to 10 years in prison for “establishing and managing an organization with the aim of committing crimes that harm State security, opposing the Constitution and the basic principles of the UAE ruling system and having links and affiliations to organizations with foreign agendas”

On 31 July 2013, Mr. Al-Kindi along with al-Mansoori and Al-Shahhi began a hunger strike to protest against the beatings and severe restrictions of family visits. Other complaints include authorities turning off the air conditioning as temperatures rose to above 40°C, and windows being covered, preventing prisoners from seeing sunlight.

The case of Salim Hamdoon Al-Shahhi

Mr. Salim Hamdoon Al-Shahhi is a human rights defender and Mr. al-Mansoori's lawyer. He was subject of two communications sent to your Excellency's Government on 16 April 2013 (ARE 1/2013) and 7 November 2012 (ARE 7/2012). We acknowledge your Governments response to both communications.

Mr. Al-Shahhi was detained on 16 July 2012 and was subsequently transferred to an unknown location. On 6 September 2012, the pre-trial detention of Mr. Al-Shahhi and of six other detainees was extended by a judge of the Supreme Court. During the court session, the detainees reportedly appeared to be in poor physical condition and were reluctant to speak to the judge. According to reports, Mr. Al-Shahhi had lost weight, showed difficulties in walking, and demonstrated disorientation and distress. The judge was reportedly informed that the detainees were being held in solitary confinement, in cells measuring one metre square and with the lights permanently turned on.

On 2 July 2013, he was sentenced to 10 years in prison on charges of "establishing and managing an organization with the aim of committing crimes that harm State security, opposing the Constitution and the basic principles of the UAE ruling system and having links and affiliations to organizations with foreign agendas" under the Federal Criminal Code, and the Act on Combating Criminal Terrorist Offences.

Allegedly, the abovementioned human rights defenders were subjected to torture or other ill treatment by the authorities, including severe beatings, pulling out detainees' hair, sleep deprivation, exposure to extreme light during the day and night, death threats and other threats and verbal abuse, as well as prolonged incommunicado detention and solitary confinement.

Furthermore, there are allegations that their right to defense was substantially undermined, including by denying or severely limiting detainees' access to legal counsel, including during interrogations and remand renewal hearings as well as restrictions placed on the duration of meetings between the accused and their counsel and the right of the accused to communicate confidentially with their lawyer. Finally, as the trial was held before the State Security Chamber of the Supreme Court, the decisions cannot be subject to appeal or review under UAE law.

Without prejudging the accuracy of the allegations, we would like to express grave concern regarding the continued and arbitrary detention of the human rights defenders in the United Arab Emirates. We are concerned about the charges brought against these defenders, the apparent lack of evidence to support the charges and their conviction on these charges, which appear to have been brought against them in response to exercising their fundamental rights to freedom of expression and association. We are concerned that the criminalization against them is intended to discourage others from exercising their fundamental freedoms and defending the right of others to do so.

The reported detention conditions that the above-mentioned human rights defenders are subjected to is also cause for concern, including but not limited to maintaining contact by making telephone calls to their families. Reports indicating that their efforts to protest these conditions are met with retaliation by prison

authorities would likewise constitute a violation of their human rights. Furthermore, we wish to express our concern regarding allegations that the above mentioned human rights defenders have been deprived of regular contact with their families and lawyers, either through in-person visits or by phone call.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the factual basis for the arrest, detention and conviction of Mr. al-Mansoori, Mr. Al-Hammadi, Mr. al-Owais, Mr. Al-Shehhi and Mr. Al-Kindi, and explain how these are compatible with international human rights norms and standards, including Articles 3, 9 and 10 of the Universal Declaration of Human Rights.
3. Please provide detailed information on measures taken to ensure the physical and psychological integrity Mr. al-Mansoori, Mr. Al-Hammadi, Mr. al-Owais, Mr. Al-Shehhi and Mr. Al-Kindi, and what efforts have been made to ensure that the proper conditions in detention are met, including control of the temperature in their places of confinement.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to reported allegations of torture and/or cruel, inhuman or degrading treatment as well as reports of breaches of fair trial standards. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please indicate what measures have been taken to ensure that human rights defenders and lawyers in the United Arab Emirates are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
6. Please indicate how the use of counter-terrorism measures against human rights defenders is consistent with the obligations of your Excellency's government to only take counter-terrorism measures that fully comply with international law, including international human rights law.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government

will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

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

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to take this opportunity to draw your attention to relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer to articles 3, 5, 9, 10 of the Universal Declaration of Human Rights (UDHR), which establish the right to liberty and security of the person, absolute prohibition of torture and of arbitrary detention, as well as the rights to fair trial. These rights are similarly established under articles 5, 8, 12, 14, 20 and 32 of the Arab Charter on Human Rights, which your Excellency's Government ratified on 15 January 2008.

Furthermore, we would like to remind your Excellency's Government of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the UAE acceded on 19 July 2012.

UDHR article 19 states that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The rights to opinion and expression are reflected also in global and regional human rights treaties, and are considered reflective of customary international law. While the freedom of expression may be subject to certain limitations, the freedom of opinion is absolute. Even where the opinions expressed by people are critical of the State, it has a positive obligation to foster and ensure an enabling environment in terms of enjoyment of the right to freedom of expression, so that citizens are able to exchange, communicate, information and opinions, and contribute to the building of a just society freely and without fear.

The conditions for permissible restrictions are reflected in the UDHR and in numerous regional and global human rights treaties:

Firstly, as expressed in UDHR art. 29, as well as in global and regional human rights treaties, any restriction must be “determined by law”. Practice by international monitoring bodies have not only a requirement on the form, but also the quality of the law. Thus, for example, the Human Rights Committee has expressed that laws must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”. With respect of criminal laws, the requirement of clarity is higher, see UDHR article 11.

Secondly, any restriction must pursue a legitimate objective. The UDHR in article 29 limits those objectives strictly (“solely for the purpose of”) to the “respect for the rights and freedoms of others and to meet just requirements of morality, public order and general welfare in a democratic society”.

Thirdly, restrictions must be necessary and proportionate. The UDHR art. 30 prohibits the use of overbroad restrictions which would destroy the essence of the

right itself. This has been interpreted as an expression of the principle of proportionality. The requirement further entails that the measure must be the least intrusive measure necessary amongst those which might achieve their protective function in order to protect a specified legitimate objective.

Fourthly, with regards to the solitary confinement, we would like to refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement in itself runs afoul of the absolute prohibition of torture and other ill-treatment. Moreover, due to the prisoner's lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment. We would also like to recall paragraph 6 of General Comment No. 20 of the Human Rights Committee (adopted at the 44th session of the Human Rights Committee, 1992), which states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by article 7 of the ICCPR.

Lastly, States have the burden of proof to demonstrate that any restriction is compatible with the requirements under customary international law.

As the Working Group on Arbitrary Detention has adopted an opinion on behalf of all five human rights defenders who are subjects of the present communication (No. 60/2013), we appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR. We also wish to refer to principle 9 of the 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), whereby "all persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons shall be promptly informed of this right."

We would further like to recall that international human rights law and standards require States to treat all persons under any form of detention or imprisonment with humanity and with respect for the inherent dignity of the human person (article 20, Arab Charter on Human Rights; Principle 1, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and General Assembly resolution 43/173 of 9 December 1988). More specifically, Rule 43 of the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) prohibits the use of prolonged solitary confinement under any circumstances.

We would also like to refer to 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 individually or in association with others, to promote and to 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the

legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice". Article 6 (b) and c) of the Declaration provides that everyone has the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, and to study, discuss, form and hold opinions on the observance of these rights. Article 12, paragraphs 2 and 3, provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would further like 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. We would also like to bring to remind your Excellency's Government that 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(b)).

We would also like to emphasize that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members

Unlike the right to form and hold opinions, the rights to express and access information and ideas may be subject to restrictions under limited circumstances as prescribed by the UDHR and in article 19(3) of the ICCPR. Restrictions must meet the standards of *legality*, meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; *necessity and proportionality*, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and *legitimacy*, meaning that they must be in pursuit of an enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals (CCPR/C/GC/34). Although article 19(3) recognizes "national security" as a legitimate aim, national security considerations should be "limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group" (A/71/373). 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" (A/71/373).

