

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

Ref.: AL ARE 1/2022  
(Please use this reference in your reply)

25 January 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/16, 45/3, 43/4 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information received about the inclusion on a terrorist list of two human rights defenders, Mr. **Hamad Mohammed Al-Shamsi** and Mr. **Mohammed Saqr Al-Zaabi**; and academics and activists Mr. **Ahmed Mohammed Al-Shaiba Al-Nuaimi**, and Mr. **Saeed Nasser Al-Tenaiji**. The four individuals currently live in self-imposed exile. They are part of the 'UAE 94', a group of 94 lawyers, human rights defenders and academics who were convicted and sentenced to prison in July 2013 on charges of allegedly plotting to overthrow the Government.

Mr. Hamad Mohammed Al-Shamsi is the executive director of the Emirates Detainees Advocacy Center (EDAC), a non-profit organization that advocates on behalf of Emirati political prisoners and documents and reports cases of human rights abuses, including enforced disappearances. He is based in Turkey. Mr. Mohammed Saqr Al-Zaabi is a former public prosecutor, former president of the Emirates Jurists Association and member of the Advisory Board of human rights organisation [ALQST](#), a FIDH member organisation. Mr. Al-Zaabi is based in the United Kingdom. Mr Ahmed Mohammed Al-Shaiba Al-Nuaimi is a writer, education consultant, online activist and president of the International Center for Studies and Development in London, United Kingdom, where he is currently based. Mr. Saeed Nasser Al-Tenaiji is a researcher and current president of the Gulf Center for Studies and Dialogue.

We have raised our concerns about the case and trial of the UAE 94 in two letters sent to your Excellency's Government respectively on 7 November 2012 (ARE 7/2012) and 16 April 2013 (ARE 1/2013). The arrest and detention of 60 defendants in the 'UAE 94' trial was deemed arbitrary in Opinion No. 60/2013 by the Working Group on Arbitrary Detention during its 68th session, and the Working Group requested their immediate release and the adoption of adequate measures of reparation.

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 in 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:

On 13 September 2021, the UAE Cabinet of Ministers issued the Ministerial Resolution No. 83 of 2021, adding 38 individuals and 13 entities to the Government's terrorist list, including Messrs. Hamad Mohammed Al-Shamsi, Ahmed Mohammed Al-Shaiba Al-Nuaimi, Mohammed Saqr Al-Zaabi and Saeed Nasser Al-Tenaiji. The decision was ostensibly part of the UAE's efforts to target and disrupt networks associated with the financing of terrorism and associated activities. The four human rights defenders learned about their terrorist designation only after the Cabinet of Ministers issued its decision, they did not have access to the evidence produced and examined to reach such decision, could not defend themselves and the decision is not subject to appeal.

The four individuals had been previously charged and sentenced in absentia to 15 years in prison on 2 July 2013, for allegedly violating article 180 of the Penal Code, which prohibits "founding, organising or operating a group that aims to overthrow the country's political system", after a mass trial reportedly lacking minimum international standards of fair trial and due process.

The two human rights defenders and two academics and members of their families have reported various forms of harassment and intimidation, including travel bans, surveillance, restrictions on education and employment and passport revocations.

On 5 November 2021, Mr. Al-Nuaimi's son with quadriplegia, who was subject to a travel ban since 2014, reportedly as a form of apparent reprisal against his father, died in a UAE hospital. He had been separated from his father for nine years and the rest of his family for at least seven years.

Without prejudging the accuracy of the allegations, we would like to express grave concerns about the inclusion on the Government's terrorist list of Mr. Al-Shamsi, Mr. Al-Shaiba Al Nuaimi, Mr. Al-Zaabi and Mr. Al- Tenaiji, which seem to be in relation to their legitimate human rights activities and appear to be aimed at undermining their credibility. We express further concerns about the apparent lack of evidence provided to substantiate their designations as terrorists, the absence of adequate safeguards to prevent misuse of listing procedures and the lack of clear means to guarantee the rights of those subject to national-level listing processes and sanctions and about the fact that the decision taken by the Cabinet of Ministers in absentia cannot be appealed.

We reiterate the concerns expressed in our letter dated 13 November 2020 (ARE 6/2020) about the counter-terrorism law, and that the executive branch could 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 may have. In that letter we also warned that the law could contribute to an arbitrary and unreasonable use of these powers, potentially leading to the criminalisation or persecution of organisations or individuals that are not actually involved in any terrorist activity.

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 comments you may have on the above-mentioned allegations.
2. Please provide the legal basis, and evidence used, for the designation of the four human rights defenders by ministerial resolution as terrorists.
3. Please provide any information on whether there is any procedure in place to ensure that the ministerial resolution can be appealed or revised and, if so, what are the applicable criteria.
4. 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.
5. 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. Past 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

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

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

## **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 2, 7, 8, 10, 11 and 19 of the Universal Declaration of Human Rights (UDHR), which establish the right to enjoy the rights and freedoms set forth in the Declaration without discrimination; equality before the law; effective remedy; as well as the rights to fair trial. These rights are similarly established under articles 2, 3, 4, 9, and 26 of the Arab Charter on Human Rights, which your Excellency's Government ratified on 15 January 2008.

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.

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 like to remind your Excellency's Government that listing processes, insofar as they result in a serious deprivation of liberty and infringe upon several fundamental human rights, are also subject to international human rights law standards on principles of legality; necessity, proportionality, and non-discrimination; and fair trial guarantees and due process of law.

We respectfully remind your Excellency's Government of the requirements under international human rights law for guarantees of procedural fairness and due process of law that comprise the rights of the accused to the presumption of innocence and to defend oneself, the right to equality before the courts and tribunals and the right to a fair trial in line with article 14 of the ICCPR and remain applicable to the listing process. The accused must also have meaningful ability to challenge the listing. In this regard, it remains a lack of clarity as to when and how an individual or entity can have the label of "terrorist" removed, and whether a meaningful and rule of law complaint "delisting" procedure exists.

The designation or listing of an individual remains an opaque, highly secretive process, as highlighted by the particular facts in these cases. The Law No. 7 On Combatting Terrorism form the legal basis for the administration of the terrorism watchlist. This legal basis for the list remains a primary concern to us. We reiterate that vaguely and broadly worded provisions undermine the principle of legality, cannot qualify as *lex certa*, and violate due process of law. We recall that the principle of legal certainty expressed in article 11 of the UDHR and in the ICCPR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence.

The human rights risks associated with the administration of a terrorism watch-list rooted in an overly broad definition of terrorism, as in existing legislation, necessarily hinders your Excellency's Government's ability to implement the law in compliance with international human rights law due to its infringement upon the principle of legal certainty, as explained above. Currently, activists, human rights defenders, civil society, journalists, and other legitimate activities are at risk of being brought under this overly broad criminalization and subsequent listing that may restrict and infringe upon the enjoyment of rights and freedoms in absolute ways, including exercising freedom of expression, opinion and assembly, as well as the full scope of economic, social and cultural rights, including the right to work, the right to adequate housing (ICESCR, art. 11 and UDHR art. 25), and the right to education (ICESCR, art. 13 and 14, UDHR, art. 26 and General Comment No. 13 - E/C.12/1999/1). In addition, such ill-defined or overly broad laws leave space for arbitrary application and abuse.

We 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 these resolutions require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, must comply fully with all their obligations under international law.

We would also like to emphasize that 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 International Covenant on Civil and Political Rights (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).

We are further drawing your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances. No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (Article 7). The Declaration also proclaims that each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken

to curtail or impede the investigation; the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits. Also, steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified (Article 13).

We would further like to refer to the study on standards and policies for an effective investigation of enforced disappearances, in particular to its paragraphs 61-68 on access of victims to investigation and protection from reprisals and to [the study on ECOSOC rights and enforced disappearances](#), paragraphs 34 and 37, which emphasize that those documenting and reporting on cases of enforced disappearance or supporting relatives in their quest for justice should be able to do so without being subjected to any reprisal.