

## **General Allegation**

**128<sup>th</sup> Session (19 to 28 September 2022)**

### **United Arab Emirates**

The Working Group received information from the sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, ‘the Declaration’) in the United Arab Emirates.

1. According to the sources, in the last decade, there has been a conspicuous rise in the number of enforced disappearances registered in the United Arab Emirates. Notably, these cases seem to respond to a pattern, whereby human rights defenders, journalists, lawyers and members of religious minorities are especially targeted. These enforced disappearances tend to be short-term and victims re-surface alive after periods ranging from few weeks to several months, usually to be charged and subjected to trial. Pursuant to the information received by the Working Group, persons subjected to enforced disappearance in the described context are often tortured and ill-treated, in order to make them sign confessions. Many of these enforced disappearances have been reportedly facilitated by the application of the Law on Combating Terrorism, which contains an overly vague definition of terrorist offences and considerably lowers the safeguards granted to persons deprived of their liberty pursuant to this legislation.
2. The sources informed the Working Group that the perpetration of human rights violations, including enforced disappearances, is enabled by the exceptional powers entrusted to the State Security Apparatus (“SSA”) under the Federal Decree-Law No. 2 of 2003. Article 14 of the latter tasks the SSA with combating, among others, terrorist activities and features of organised crime. Allegedly, the SSA may arrest and detain individuals for prolonged periods of time, with little to no judicial oversight or due process guarantees. In particular, the applicable legislation allows the president of the SSA to order detention of suspects of activities that fall under the mandate of the SSA for up to 60 days, which can be renewed for another 30 days, prior to being brought before the public prosecution. Allegedly, the SSA systematically uses administrative detention for prolonged periods of time, thus facilitating the placement outside the protection of the law of persons deprived of their liberty.
3. According to the information submitted to the Working Group, arrests carried out by the SSA – which often result in the enforced disappearance of the person apprehended – would follow a pattern. Namely, victims are arrested in their homes, without a warrant, frequently by SSA forces dressed in civilian clothes. Victims are then brought to secret detention facilities, where they are kept incommunicado for periods ranging from few weeks to some months and subjected to torture and ill-treatment. Authorities fail to provide information on these detainees and usually deny that they were deprived of their liberty in the first place. Persons deprived of their liberty in this context are reportedly not entitled to access legal counsel and, where they are foreigners, they are not granted consular protection.
4. Moreover, the Working Group received information on more than 300 cases of enforced disappearance attributable to security forces of the United Arab Emirates in the context of the armed conflict in Yemen. In particular, persons suspected of pertaining or supporting the Houthi armed group have reportedly been deprived of their liberty and subjected to enforced

disappearance in detention facilities in Yemen either controlled by forces of the United Arab Emirates or local groups backed by the United Arab Emirates. In this realm, Al-Rayyan International Airport, Rabwet Khalaf, 7<sup>th</sup> of October prison, Al Jalaa Camp, Waddah Hall, and former Emirati military headquarters in Yemen have allegedly been used as secret detention sites.

5. The sources also informed the Working Group that the principle of non-*refoulement* has frequently been violated. In particular, Emirati authorities would fail to adopt adequate measures to ensure that persons are not expelled, returned or extradited to other States where there are substantial grounds to believe that they would be in danger of enforced disappearance. Reportedly, in a number of cases, Pakistani Shia Muslims have been apprehended and deported to Pakistan, exposed to the imminent risk of enforced disappearance.
6. Furthermore, the Working Group learned from the sources that, under the current criminal legislation, enforced disappearance is not codified as a separate crime and this entails a number of consequences that make it extremely difficult, if not virtually impossible, to hold perpetrators accountable, hindering investigations and fostering impunity. According to the information received, under the applicable legislation, the offences of kidnapping, arresting, detaining or illegally depriving a person of his or her freedom in any way, are codified. However, there is no autonomous offence of enforced disappearance that encompasses all the constitutive elements of the crime as defined under international law.
7. Reportedly, no investigation is undertaken on cases of enforced disappearance, unless there has been a formal complaint. However, persons willing to lodge such a complaint encounter a number of legal and practical obstacles, thus being left without any effective remedy in the face of their acute suffering.
8. Additionally, sources reported that relatives of disappeared persons have been facing unjustified interferences in their right to lodge complaints and seek remedies and have been subjected to reprisals, threats and episodes of harassment. In particular, the Working Group was informed that, where victims of enforced disappearance are foreign nationals, their relatives are exposed to the risk of being returned to their country of origin should they decide to take steps with the Emirati authorities with regard to the disappearance of their loved ones. In this climate of generalised fear, instances of reprisals have allegedly not been subjected to any prompt, thorough and impartial investigations.

The Working Group would like to bring to the Government's attention the following provisions of the Declaration, which are directly related to the present allegation:

#### *Article 2*

1. *No State shall practice, permit or tolerate enforced disappearances.*
2. *States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.*

#### *Article 3*

*Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.*

#### *Article 4*

*1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties, which shall take into account their extreme seriousness.*

*2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information, which would contribute to clarifying cases of enforced disappearance.*

#### *Article 7*

*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 8*

*1. No State shall expel, return ( refouler ) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.*

*2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.*

#### *Article 9*

*1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.*

*2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.*

*3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.*

#### *Article 10*

*1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.*

*2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.*

3. *An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.*

#### *Article 11*

*All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.*

#### *Article 12*

1. *Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.*

2. *Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.*

#### *Article 13*

1. *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.*

2. *Each State shall ensure that 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.*

3. *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.*

4. *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.*

5. *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.*

6. *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.*

The Working Group would be grateful for your Excellency's Government cooperation and observations on the following questions:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the preventative measures adopted to guarantee that human rights defenders, journalists, lawyers and members of religious minorities peacefully exercise their rights to freedom of expression, freedom of assembly, freedom of association and freedom of religion, without being subjected to enforced disappearance.
3. Please clarify how the definition of terrorist offences contained in the Law on Combating Terrorism complies with international standards on the matter and how are individuals arrested or detained pursuant to this legislation afforded the safeguards due to any persons deprived of their liberty.
4. Please provide information on the measures undertaken to ensure that the State Security Apparatus ("SSA") is subjected to strict supervision, including a clear chain of command. In particular, kindly detail how do the prerogatives entrusted to the SSA with regard to prolonged administrative detention without judicial supervision align with international law. How is the right to a prompt and effective judicial remedy as a means of determining the whereabouts of persons deprived of their liberty and identifying the authority ordering or carrying out the deprivation of liberty guaranteed?
5. Please provide information on the applicable legislation concerning arrest warrants and how does it allow any person deprived of his or her liberty to take proceedings before a court so that the latter may decide without delay on the lawfulness of the deprivation of liberty.
6. Please provide information on whether official up-to-date registers of all persons deprived of their liberty are maintained in every place of detention and the measures taken to ensure that relatives of persons deprived of their liberty, their counsel or any other person having legitimate interest have access to the information contained in such registers. Furthermore, please inform on the measures adopted to ensure that no one is held in secret detention.
7. Kindly provide information on the measures undertaken to guarantee that persons deprived of liberty can communicate with their legal counsel and, if they are foreigners, with their consular authorities in accordance with international law.
8. Kindly provide information on whether the United Arab Emirates are involved in the detention of individuals in the context of the Yemeni armed conflict and which are the guarantees offered to ensure that no one is held in secret detention in sites controlled by Emirati forces of Emirati-backed local groups.
9. Please provide information on the measures undertaken to ensure the respect of the principle of non-refoulement.
10. Please provide information on the applicable criminal legal framework to deal with allegations of enforced disappearance and clarify whether the latter is codified as a separate criminal offence. In case of the absence of a separate crime of enforced disappearance under the Emirati

legislation, please inform on which are the offences used in criminal investigations concerning reports of disappeared persons. Kindly clarify whether there is any legislative reform envisaged in order to assure that enforced disappearance is codified as a separate offence under domestic criminal legislation.

9. How does your Government ensure that any person, having knowledge or legitimate interest, who alleges that a person has been subjected to enforced disappearance is able to lodge a complaint to a competent and independent State authority? How does your Government ensure that enforced disappearances are promptly, thoroughly and impartially investigated by the authority even if there has been no formal complaint?
10. What are the measures taken to ensure that all those involved in the investigation of an enforced disappearance, and, in particular, witnesses, complainants and their relatives, are protected against reprisals and intimidations? In particular, has any investigation into alleged reprisals against relatives of disappeared persons and their representative organisations been carried out? If not, what are the reasons? Otherwise, what are the results or progress of such investigations?

The Working Group requests your Excellency's Government to provide a response to the above questions within 60 days.