

## United Arab Emirates

### Universal Period Review – 3<sup>rd</sup> Cycle

#### Submission to the Universal Periodic Review by the Global Detention Project (Geneva, Switzerland)

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The Global Detention Project (GDP) is an independent research centre based in Geneva, Switzerland, that investigates the use of detention as a response to international immigration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship of immigration control regimes.

#### Issues concerning immigration detention<sup>1</sup>

No recommendation addressing issues of immigration detention in the United Arab Emirates (UAE) was made during the 2nd cycle of the Universal Periodic Review (23rd session, 21 March 2013).

#### Immigration detention context

The seven small semiautonomous principalities of the United Arab Emirates have one of the highest ratios of foreigners in the world with expatriates representing roughly 90 percent of the total population and 95 percent of the workforce. This unique demographic imbalance is also starkly reflected in the country's prison population. According to the World Prison Brief, as of 2014 (the most recent year for which statistics are available), 87.8 percent of the country's prisoners were foreigners. However, aside from penal imprisonment there is nearly no information about where and in what conditions migrants are held for immigration related detention after they are arrested or as they await deportation. The reason for this gap is the government's effort to limit access by rights actors to detention centres<sup>2</sup> and the virtual non-existence of independent civil society.<sup>3</sup>

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<sup>1</sup> This Submission is based in part on data published on the GDP website, "United Arab Emirates Immigration Detention Profile," available at: <https://www.globaldetentionproject.org/countries/middle-east/united-arab-emirates>

<sup>2</sup> Rothna Begum (Human Rights Watch), Email Correspondence with Michael Flynn (Global Detention Project), 5-10 February 2015.

<sup>3</sup> Article 16 of the UAE's 2008 Law on Associations prohibits civil society organizations from interfering "in politics or matters that impair state security and its ruling regime," in Human Rights Watch, "UAE:

Similar to other countries of the Gulf Cooperation Council (GCC), foreign workers enter the UAE through the *kafala* sponsorship scheme, which ties domestic workers' visas to their employers. Though both highly-skilled/high-wage workers and low-wage workers have migrated to the UAE, it is particularly the low-wage workers employed in certain industries—such as construction, services, and domestic work—who are most susceptible to exploitation under the *kafala* scheme. According to Human Rights Watch domestic workers who leave their employer “can be prosecuted for “absconding” and punished with fines, imprisonment, and deportation.”<sup>4</sup>

## Laws, Policies, and Practices

According to Article 26 of the UAE Constitution, “Personal liberty is guaranteed to all citizens. No person may be arrested, searched, detained or imprisoned except in accordance with the provisions of law. No person shall be subjected to torture or to degrading treatment.”<sup>5</sup> Article 40 reads: “Foreigners shall enjoy, within the Union, the rights and freedom stipulated in international charters which are in force or in treaties and agreements to which the Union is party. They shall be subject to the corresponding obligations.” Article 344 of the Penal Code reads: “Whoever illegally kidnaps, arrests, detains or deprives a person of his freedom, whether by himself or through another by any means without lawful justification, shall be punished by term imprisonment.” Punishment can be up to life imprisonment.<sup>6</sup>

These strong safeguards notwithstanding, there appears to be a wide gap between law and policy in the country. Arbitrary arrests, incommunicado detentions, and lengthy pretrial detentions of dissenting citizens and non-citizens alike are commonplace in the UAE. There are also frequent reports of prison guard brutality, discrimination against non-citizens, and mistreatment and sexual abuse of foreign domestic servants and other migrant workers.<sup>7</sup>

**Grounds for detention and criminalisation.** Federal Law No (13) of 1996 Concerning "Aliens Entry and Residence," which amends provisions of Federal Law No (6) of 1973 relating to immigration and residence (hereafter Federal Law No. 6 on Entry and Residence of Aliens), prescribes detention in certain circumstances, including to execute a deportation or as punishment for violating immigration provisions.<sup>8</sup>

Aliens can be detained for up to three months for failing to maintain a valid residence permit; failing to leave the country after cancellation or expiry of an entry or residence permit; or failing to pay overstay fines (Article 21 of Federal Law No. 6 on Entry and Residence of Aliens). The Department of Nationality and Immigration is authorized to

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Civil Society Crackdown Widens,” 3 May 2011, <http://www.hrw.org/news/2011/05/03/uae-civil-society-crackdown-widens>

<sup>4</sup> Human Rights Watch, “UAE: Extend Labor Law to Domestic Workers,” 22 December 2016, <https://www.hrw.org/news/2016/12/22/uae-extend-labor-law-domestic-workers>

<sup>5</sup> Constitution of the United Arab Emirates – Constitutional Amendment No. (1) of 1996, <http://www.refworld.org/pdfid/48eca8132.pdf>.

<sup>6</sup> Federal Law No (3) of 1987 on Issuance of The Penal Code, [https://www.icrc.org/ihi-national/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/\\$FILE/Penal%20Code.pdf](https://www.icrc.org/ihi-national/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/$FILE/Penal%20Code.pdf).

<sup>7</sup> U.S. State Department, 2014 Country Reports on Human Rights Practices – United Arab Emirates, 2014.

<sup>8</sup> Federal Law No (13) for 1996 Concerning "Aliens Entry and Residence" amending some provisions of the Federal Law No (6) for 1973 relating to immigration and residence, [http://www.sohbetna.com/business/uaelaw/federalalla\\_w6entryandresidenceaffairs/](http://www.sohbetna.com/business/uaelaw/federalalla_w6entryandresidenceaffairs/).

order the deportation of any alien who does not have a residence permit or who has not renewed his permit in accordance with legal requirements (Article 29).

In addition, the Minister of Interior is authorized to detain any foreigner against whom a deportation order has been issued for a period not exceeding two weeks, but only if the detention is essential for executing the deportation order (Article 25). The Minister may order the deportation of a non-national—even if holding a residence permit—if convicted and the court has issued an order for his deportation; if he has no apparent means of living; or if the security authorities see that public interest or public security or public morals require his deportation (Article 23).

Under Article 26 as amended by Federal Decree - Law no. 7 of 13 November 2007, the Ministry of Interior is to bear the costs if the foreigner cannot cover the expense of deportation. Article 28 provides that anyone ordered deported may not return to the UAE, except with special permission from the Minister of Interior.

Article 31 provides that anyone who enters the UAE illegally shall be imprisoned for a period of “not less than one month” and/or pay a fine of “not less than 1,000 Dirham” (approximately \$270), followed by deportation ordered by the court. Article 35, a catch-all general provision, states that any person who violates the provisions of this law or related regulations shall be punished with imprisonment for a period not less than one month and a fine of no less than one thousand Dirham (approximately \$270).

**Length of detention.** Migrants and refugees can remain in detention anywhere from a month to more than a year. Some of the factors that can prolong detention include: difficulties getting passport/travel documents (especially for those whose passports are held by sponsors who will not return them); procuring the funds to pay overstay fees; waiting for a clearance or “no objection letter” from local police before leaving (which can be delayed if there are claims against a worker for theft, or if the migrant has any debts from loans); and in case of refugees, waiting until a resettlement country accepts them.<sup>9</sup>

**Adherence to international norms.** The UAE has only ratified half of the core international human rights treaties. It has not ratified the main instruments relevant to protection against arbitrary detention, including the International Covenant on Civil and Political Rights and the Migrant Workers Convention. Upon ratification of the Convention against Torture, the UAE made a reservation limiting the definition of torture provided for in Article 1. In response, over a dozen states parties to the Convention registered official objections to this reservation with the UN Secretariat for being “incompatible with the object and purpose of the Convention.”<sup>10</sup>

**Trafficked persons.** All forms of human trafficking are forbidden under federal law Number 51 of 2006, which provides penalties ranging from one year to life in prison

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<sup>9</sup> International Organization for Migration (UAE), Email exchange with Parastou Hassouri (Global Detention Project), 28 January 2014.

<sup>10</sup> United Nations Treaty Collection, Chapter IV Human Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, Status as at 13 October 2015, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#EndDec).

as well as fines and deportation.<sup>11</sup> The law does not include protection from detention for victims of trafficking.

The UN Special Rapporteur on Trafficking visited the UAE in 2012 and received allegations of arbitrary arrests and deportation of women and girls who were not provided interpreters, detained in overcrowded rooms, and deported within 24 to 36 hours. The Rapporteur expressed concern that “trafficked persons may often be misidentified as irregular migrants and consequently, arrested, detained and summarily deported” and she recommended that victims should not be criminalised or penalised, or detained for status-related offences.<sup>12</sup>

**Minors.** The privately owned Gulf News produced a video report in 2013 from inside the Dubai Women’s Central Jail in Al Aweer, which showed detained women with their children. This is one of a handful of prisons in the UAE that reportedly has a deportation function, thus we conclude that it is highly likely that accompanied children slated for deportation with their mothers are detained at the facility.<sup>13</sup>

**Access to detainees.** The UAE has neglected to provide international human rights organisations access to facilities that are used to detain people for immigration-related reasons. In its 2014 report on abuses suffered by female domestic labourers in the country, HRW reported: “Due to the failure of the UAE authorities to respond, Human Rights Watch was unable to visit the Ewa’a Shelters, the deportation center, and prisons. The Dubai Foundation for Women and Children said they were unable to arrange a visit to their shelter. Human Rights Watch cannot, therefore, verify the circumstances in which shelters admit foreign domestic workers or assess their conditions and treatment in shelters or when detained pending deportation or in prisons.”<sup>14</sup>

Consular representatives have also expressed problems in the past attempting to visit facilities. In its 2006 report on human rights in the UAE, the U.S. State Department reported that diplomatic representatives were “refused entry to the Dubai Immigration Detention Center by the deputy director of the center to talk to with potential sex trafficking victims awaiting deportation.”

On the other hand, in its more recent 2014 report on the UAE, the U.S. State Department reported that the government had begun permitting civil society groups to visit prisons, though it did not explicitly mention immigration detainees. The GDP has been unable to get first-hand accounts from any other sources who may have visited detention facilities or prisons in the UAE.

**Foreign workers.** The status of foreign workers in the UAE is governed by Federal Law No. 6 on Entry and Residence of Aliens as well as the labour law, Federal Law No. 8 of 1980.

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<sup>11</sup> Federal Law on Combating Trafficking in Human Beings No. 51 of 2006, [https://www.unodc.org/cld/document/are/2006/the\\_federal\\_law\\_on\\_combating\\_trafficking\\_in\\_human\\_beings\\_no\\_51\\_of\\_2006.html](https://www.unodc.org/cld/document/are/2006/the_federal_law_on_combating_trafficking_in_human_beings_no_51_of_2006.html).

<sup>12</sup> Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo Addendum Mission to the United Arab Emirates, United Nations, A/HRC/23/48/Add.1, 22 February 2013, <http://www.ohchr.org/EN/Issues/Trafficking/Pages/visits.aspx>.

<sup>13</sup> Gulf News, “Inside the Dubai Women’s Central Jail in Al Aweer,” 8 April 2013, <https://www.youtube.com/watch?v=rbhj9TMQJ3I>.

<sup>14</sup> Human Rights Watch, “‘I Already Bought You’: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates,” October 2014, <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united>.

Like other countries of the GCC, many households in the UAE employ female migrant workers as domestic servants. An International Labour Organisation (ILO) study on domestic workers in the UAE estimates that each household employs an average of three domestic workers, with most coming from the Philippines, Indonesia, Sri Lanka, India, and Ethiopia.<sup>15</sup> As domestic workers are not covered in labour laws (Article 3 of Law No. 8 of 1980 specifically exempts “domestic workers working in private residences”), and as they work in the isolation of the private household, they are particularly vulnerable to abusive work conditions and exploitation. Domestic workers interviewed for the ILO study expressed feeling that they were completely controlled, isolated, and subject to demeaning treatment. The report fails to provide any details regarding potential detention of runaway domestic workers.

### **Detention Infrastructure**

GDP has information indicating that there are at least seven facilities in the UAE that are currently used for immigration-related detention and that only one of these facilities—the Amjan Immigration Office—is immigration-only. All of the other facilities appear to combine criminal incarceration with immigration functions. And of these, only two, the Sharjah Jail for Men and the Al Sadr Prison, appear to have some system for segregating migrant detainees from the rest of the prison population. In addition at least one of these facilities, the Dubai Central Jail for Women in Al Aweer, detains accompanied children alongside their mothers.

There are few current reports detailing conditions of detention facilities. According to the U.S. State Department’s 2014 Country Reports on Human Rights Practices prison conditions in the UAE vary widely. There were “unconfirmed reports that police and prison guards mistreated individuals” and in Dubai prisoners “reported poor sanitary conditions, inadequate lighting, and poor temperature control. Some prisons were reportedly overcrowded, especially in Abu Dhabi and Dubai.” The U.S. State Department also reports that “Ombudsmen cannot serve on behalf of prisoners and detainees. Prisoners had a right to submit complaints to judicial authorities; however, details about investigations into complaints were not publicly available.”

### **Key priorities for the United Arab Emirates with regards to immigration detention:**

- **To provide public statistics on the practice, scope and conditions of immigration detention;**
- **To ensure that trafficked persons are identified and not criminalised and placed in immigration detention;**
- **To ensure that women and their children slated for deportation are not detained and establish non-custodial, effective and accessible alternatives to detention;**
- **To ensure that domestic workers are covered by labour laws so that they are not treated as "runaways" when fleeing from abusive working**

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<sup>15</sup> Rime Sabban, “Women Migrant Domestic Workers in the United Arab Emirates,” *Gender and Migration in Arab States: the Case of Domestic Workers*, International Labour Organization, June 2004, [http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms\\_204013.pdf](http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_204013.pdf).

**conditions; prosecuted for “absconding”; and punished with fines, imprisonment, and deportation;**

- **To ensure that detention is imposed only where it is necessary and proportionate in the person’s individual circumstances;**
- **To ensure that detention is maintained for the shortest time possible;**
- **To ensure that detention is reviewed by judicial organ automatically and in regular periods;**
- **To ensure that immigration detainees are segregated from common law prisoners;**
- **To ensure access to immigration detainees by consular authorities;**
- **To ensure that ombudsmen can monitor the situation of immigration detainees and receive and investigate complaints;**
- **To ensure access to immigration detainees by civil society groups;**