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HUMAN RIGHTS UNDER THE CONSTITUTION OF THE UNITED ARAB EMIRATES: GUARANTEES AND RESTRICTIONS

*Dr Mohamed A. Al Roken**

INTRODUCTION

On 10 December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights, at a meeting held at Palais de l'Assemblée in Paris. In 1950, the Assembly called upon countries of the world to observe 10 December of each year as a human Rights Day, in order to further the basic rights and freedoms contained in the Declaration.

The Universal Declaration of Human Rights consists of 30 articles covering the civil, political, economic, social, and cultural rights of human beings. The text of the Declaration includes the most important rights and freedoms of individuals such as the right to life, the right to ownership, liberty and equality, the right to think and express oneself, the right to work, the right to education and many other essential rights. Many jurists consider the Declaration as a binding instrument on all member states of the United Nations (UN) as it actually interprets the UN Charter. American scholars supported this view, and so did the Western representatives. However, it was opposed by the (former) Soviet Union.

The Universal Declaration of Human Rights was the first legal framework which set the stage for an international law of human rights. It was followed by a series of regional and international covenants spelling out the human rights and freedoms that states are required to provide to their citizens, and to ensure the protection of such rights.

The main international instruments governing the fundamental human rights are the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the European Convention for the Protection of Human Rights. Special agencies were created to implement and monitor the implementation of the principles provided for in these covenants. These agencies include the Human Rights

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Commission, the European Court of Human Rights, and non-governmental organisations such as Amnesty International (AI).

Since human rights constitute a common universal concern, Arab countries joined the international human rights movement. Some signed the Universal Declaration and the two international covenants on human rights, while others have not yet done so. In the meantime, the Arab League is currently drafting a charter on the Arab individual's rights. This reflects the interest shown by Arab states in this important issue. Moreover, several national agencies were established to defend human rights in the Arab world. The more prestigious are those that emerged in Tunisia, Algeria, Morocco, Egypt and the Sudan, as well as the Cairo-based Arab Organisation for Human Rights.

In an era when the most fundamental of human values are being violated, with thousands of people being exposed to torture, homelessness and persecution, a study of the principles of human rights and public liberties is essential for the advancement of humanity. There are Arab régimes that seem to have never heard of the prudent Caliph Omar Ibn Al-Khattab's famous statement addressed to one of his local governors: "How dare you enslave people whose mothers had borne them free". Even those who have heard it seldom seem to heed it. Instead, most of the current régimes have ardently followed the tyrannical philosophy of Al Hajjaj Ibn Youssef, which ultimately resulted in silencing the masses and the emergence of what we know today as "the Silent Majority".¹

Fortunately, conditions and violations that are occurring in other parts of the Arab world are unknown in the United Arab Emirates (UAE), thanks to its Constitution. The political and legal realities prevailing in the UAE prompt a study of the rights and liberties as stipulated in this Constitution and as observed in day-to-day activities.

This article falls into several parts. The first deals with basic definitions and the sanctioning of rights and public freedoms in accordance with the general theory of the law, and the restrictions permitted in international covenants and their extent. The second deals with the legal status of these rights and liberties in the Constitution of the UAE, as well as guarantees and restrictions pertaining to them.

HUMAN RIGHTS AND THEIR REGULATION: A GENERAL PERSPECTIVE

A number of jurists distinguish between the term "human rights", and the term "public freedoms". The first refers to a set of natural rights enjoyed by a person, and are part and parcel of his nature. These rights exist, even though they may not be recognised by an authority, or violated by it. The second refers to a specific

¹ Hussain Jamil, *Human Rights in the Arab World* (in Arabic), Centre of Arab Unity Studies, Beirut, 1986, p. 166.

group of liberties recognised, regulated and eventually guaranteed by the law.² The scope of human rights is, therefore, much broader than the legal framework that encompasses public freedoms.

Since the emergence of the concept of human rights, a controversy has raged over the extent of its mandatory nature, and whether the Declaration of Human Rights imposes a legal obligation on the state or whether it is merely a political statement. Different nations diverged in their understanding of the legality of the mandatory character of the principles of human rights. The French, Vedel argues, love declarations of principles, and yet scorn the measures such declarations normally involve.³ They, therefore, issued these rights in the form of human rights declarations; or stated them in the preambles of their constitutions, thus unleashing a controversy over the legal value of such rights.⁴ This controversy was settled as late as 1971 by the Constitutional Council, which conferred upon the rights declared in the 1958 Constitution full constitutional capacity.⁵ However, the British believe that recognition of liberties is useless and meaningless if they are not practised, and society is not interested in their protection.⁶ They, therefore, formulated such rights in the form of ordinary laws that could be easily amended by Parliament. But the Americans chose to recognise human rights and public freedoms in the context of their Constitution, thus giving them a rigid constitutional character.

However, such differences over the method of legal recognition of human rights do not affect the heart of the issue. The regulation of such rights has always conformed to binding legal rules, and not to philosophical, ethical or moral principles. These rights may be expressed in the form of constitutional articles or legal provisions promulgated by the legislature or executive authorities. But, these rights, as well as the scope of their authority, are strengthened as they ascend the scale of legal rules.

Contemporary legal systems are not satisfied with the mere statement of human rights in the preamble or the text of the constitution or in separate laws, so have taken a step further by affording several guarantees ensuring their effectiveness and their binding legal effect for all members of society. These general guarantees for human rights may be listed as follows:

- (1) Stressing the principle of three separate powers, thus ensuring that none of them encroach upon the sphere of competence of the other or violates the individual's basic rights.

² Dr Mohamed Saeed Al-Magthoub, *Public Freedoms and Human Rights* (in Arabic), Gross Press, Tripoli, p. 9.

³ Dr Al-Magthoub, *ibid.*, p. 127.

⁴ Othman Abdul-Malek Al-Saleh, "Human Rights and their Guarantees: A Comparative Study of Gulf Constitutions and Universal Declarations and Origins of such Rights in Islam" (in Arabic), *Journal of the Gulf and Arabian Peninsula Studies*, 18, April 1979, p. 63.

⁵ Dr Nafis Saleh Al-Madannat, "Value of Constitutional Recognition of Human Rights" in *Human Rights*, Vol. 3 (in Arabic), edited by Mohamed Sherif Basiouni *et al*, Dar Al-Elam, Beirut, 1989, pp. 189-190.

⁶ Dr Al-Magthoub, *op. cit.*, p. 128. See also A.V. Dicey *Introduction to the Law of the Constitution*, Liberty Classics, Indianapolis, 1982, pp. 116-117.

- (2) Emphasising the principle of legality and the rule of law, so that no action is taken unless it is in accordance with the supreme law of the land.
- (3) Stressing the independence of the judicial authority, and ensuring the individual's right to a fair trial.⁷
- (4) Judicial control over the actions of the other two powers has become a well established legal instrument for protecting and safeguarding the individual's rights. This is due to the impartial nature of members of the judiciary. Such review later turned into what is known today as the control over the constitutionality of laws.

In addition to constitutional guarantees, many countries provide for political guarantees for human rights. Particularly outstanding among these are the control exercised by the legislature over actions by the government, and the individual's right to vote and to submit complaints against any violations of such rights.

It should be noted, however, that due to the nature of general constitutional rules, constitutions usually state the general principles of human rights and public freedoms, and leave the details and the manner in which they are applied to legislators and judges. The authorities who regulate such rights should observe two basic considerations:

- (1) That the regulation and restrictions pertaining to a right or a liberty should be within the framework of the constitution.
- (2) That the regulation of a right or a liberty should not go to the extent of undermining it under the pretext of controlling its enjoyment.⁸

Meanwhile, contemporary international covenants provide for the restriction of human rights for six reasons. These are: national security; public safety; public order; public health; public morals; and protection of the rights and freedoms of others.⁹ Moreover, international experts who took part in drafting the International Covenant on Civil and Political Rights in 1966, have set forth a set of criteria that have to be observed in codifying any individual's basic rights. These are:

- (1) Non-restriction of human rights unless otherwise stipulated in the national law.
- (2) Laws imposing restrictions on exercising the rights protected by the constitution should not be arbitrary or unreasonable.

⁷ Dr Awad Mahmoud Awad, "The Supreme Constitutional Court and the Protection of Human Rights Guaranteed by the Egyptian Constitution" (in Arabic), *Human Rights, op. cit.*, p. 245. Dr Awad states that under the 1960s régime in Egypt, the powers of the *Concile de Etat* to consider administrative decrees were diminished either through a stipulation that a particular decree is an act of sovereignty, or a stipulation that the law or bylaws in question are not subject to judicial review. This deprived citizens of their right to go before courts. Such texts turned into basic legislation. However, this state of affairs was remedied in the present Constitution.

⁸ Dr Al-Sayed Mohamed Ibrahim, *Principles of Political Organisation in the United Arab Emirates* (in Arabic), Centre of Documentation and Studies, Abu Dhabi, 1975, p. 122.

⁹ Dr Badriya Al-Awadi, "Provisions Restricting Basic Human Rights in the International Covenant, and in Constitutions of Member States of the Gulf Co-operation Council" (in Arabic), *Journal of the Gulf and Arabian Peninsula Studies*, 40, October 1984, reference No. 1, p. 102.

- (3) Legal rules restricting the enjoyment of human rights should be sufficiently clear and shall be made known to the public.
- (4) Guarantees should be set forth by the law, accompanied by an appropriate and effective remedy against the illegal imposition of the restrictions referred to above on human rights.¹⁰

In view of the diversity of human rights in contemporary international covenants, jurists have attempted to classify them into groups. However, such classification has diverged. Some classified them into traditional individual rights, and economic and social rights.¹¹ Others classified them into civil rights and individual liberties. A third school of thought set forth a five-fold classification of human rights.¹² However, we shall content ourselves here with the classification adopted by the majority of contemporary constitutions, dividing them into conventional individual liberties, and social rights.

HUMAN RIGHTS AND PUBLIC FREEDOMS UNDER THE CONSTITUTION OF THE UNITED ARAB EMIRATES

The UAE is one of the countries that emerged only recently. It is a federal state that consists of seven Emirates. Its Constitution (hereinafter referred to as the Constitution) was promulgated on 2 December 1971 at a time when international covenants and the Universal Declaration of Human Rights were receiving international recognition and support in both their traditional and modern forms. The following observations need to be made with regard to the attitude of the UAE legal system towards the human rights issue.

- (1) The Constitution followed the style of the Constitution of the United States of America with regard to the legal form in which human rights were spelled out. The UAE Constitution has incorporated international human rights norms in its provisions giving them legal binding effects as the supreme law of the land. The incorporation of human rights norms in the Constitution has prevented any possible controversy over their legal value and closed the door for being regarded as mere ethical rules.
- (2) The UAE Constitution does not mention certain rights and public freedoms stipulated by international covenants. However, this does not amount to a non-recognition of these rules; for recognition thereof may be explicit or implicit, i.e. by simply refraining from stating them. Every right or liberty that is not restricted by the law is, in principle, protected and lawful.¹³
- (3) The Constitution, as we shall later see, includes several provisions restricting the very human rights that it endorsed, for reasons related to

¹⁰ Dr Al-Awadi, *ibid.*, p. 48.

¹¹ Dr Al-Saleh, *op.cit.*, p. 45.

¹² Dr Al-Saleh, *ibid.*, pp. 76–77.

¹³ Dr Al-Magthoub cited such a justification for the Lebanese Constitution, *op. cit.*, p. 164.

public order, public morals, and national security. Such restrictions are allowed under the Universal Declaration of Human Rights and other international instruments.

- (4) The Constitution, unlike the Kuwaiti and Bahraini Constitutions, does not prevent the possibility of amending the provisions relating to human rights and public freedoms unless an amendment aims at enhancing and widening guarantees thereof.¹⁴
- (5) The Constitution regulates rights and public freedoms in its Second and Third Chapters, and in about 23 articles.
- (6) Like all other member states of the Gulf Co-operation Council, the UAE has neither signed nor ratified the International Covenant on Civil and Political Rights, nor the International Covenant on Economic, Social and Cultural Rights.¹⁵

The rights and public freedoms stipulated by the Constitution

The Constitution included the two basic groups of human rights and freedoms: the conventional individual liberties and social rights. The following is a review of the liberties and rights ensured by the Constitution.

Personal liberties

The personal liberties that are part of being human, include a person's physical liberty. His right to life should not be encroached upon; he should not be exposed to torture, cruel, inhumane or degrading treatment. The last paragraph of Article 26 of the Constitution stipulates that: "No person should be subject to torture or degrading treatment". As this right is absolute, it may not be taken away or restricted. Any measure aimed at regulating it is, therefore, unconstitutional. This is because a human being's body is the symbol of his human existence and his dignity, and as such should be given due protection. Article 28 of the Constitution stipulates that "physical and mental abuse of an accused person is prohibited".

Meanwhile, a human being's right to safety, security, peace and enjoyment of his liberties is guaranteed by the text of Article 26 of the Constitution which emphasises that "personal liberty is guaranteed to all citizens". However, this liberty may be restricted in accordance with the provisions of the law; a citizen may be arrested, searched, held or detained. The Constitution, however, has established certain mechanisms for regulating this liberty, and has not left it to legislators. It stressed

¹⁴ In contradiction to the Kuwaiti Constitution (Article 17) and the Bahraini Constitution (Article 104, para. 3). See Dr Al-Saleh, *op. cit.*, p. 164.

¹⁵ Until 31 March 1988, the UAE had ratified two international conventions: The International Convention on the Elimination of all Forms of Racial Discrimination; and the International Convention on the Suppression and Punishment of the Crime of Apartheid. 12 Arab states signed the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on Economic, Social and Cultural Rights (ICESCR). The National Assembly in Kuwait approved the ICCPR and ICESCR in January 1996.

that punishment is personal and criminal laws have no retroactive effect, and that there is no punishment or incrimination without a legal text.

The right to free movement and residence is also a basic human right. Article 29 stipulates that "freedom of movement and residence shall be guaranteed to all citizens". But it should be noted that the provision relates to UAE nationals only, and that it is also restricted with certain legal limits. The Federal Penal Law promulgated in 1986 stipulates in Article 112 that persons convicted in certain cases may be denied residence in a particular place. In addition, the law referred to above incriminates assault on public transport in order to maintain a human being's freedom of safe movement in any part of the country. However, the regulation of freedom of movement internally and externally does not go as far as to exile or deport a citizen, as this would be tantamount to the elimination of his personal liberty. Thus, the Constitution stipulates in Article 37 that citizens may not be exiled or deported from the Federal State. As to foreigners, the law indicates that they may be deported in the case of the crime of rape and certain other specific crimes.

Likewise, a person's correspondence and his dwelling are closely related to his being and, therefore, their secrecy and privacy should be maintained. Thus Article 31 stipulates that "freedom of communication by post, cable or other means of communication and the secrecy thereof shall be guaranteed in accordance with law"; while Article 36 emphasises that "dwellings shall be inviolable; they may not be entered without the permission of their occupants except in accordance with the provisions of the law and in the circumstances laid down therein". This freedom applies to both UAE nationals and foreigners; it is entirely forbidden to enter private dwellings without permission from their occupants, except in accordance with certain legal procedures specified by the Federal Law of Criminal Procedures. Such stipulations ensure man's liberty from arbitrary interference with his privacy, family and home.

Intellectual liberties

Freedom of belief is perhaps the most important of all intellectual liberties. Thus, Article 32 of the Constitution states that "freedom to exercise religious worship shall be guaranteed in accordance with established customs". In this connection it should be noted that international covenants distinguish between freedom of belief, and freedom of demonstrating religion or belief. While the latter may be subjected to legal restrictions, the former may not. The Constitution thus linked religious demonstrations to public order and public morals in order to protect society against ideas incompatible with Islam. Article 312 of the Federal Penal Code sets forth certain penalties (imprisonment or fine) for those who desecrate any of the Islamic sanctuaries or rites, or defame any of the revealed religions. Meanwhile, Article 317 of the same Code prohibits non-Islamic missionary activities, and incriminates those who establish, organise or run an anti-Islam society, agency or organisation (or a branch thereof).

Another basic intellectual freedom is the freedom of opinion. The Constitution of the UAE did not distinguish between freedom of opinion, and freedom of expression. It stated both of them in Article 30 as follows: "freedom of opinion and expressing it thereof verbally, in a written form, or by other means of expression shall be guaranteed". Freedom of opinion is absolute; a person may adopt the opinions and ideas he personally believes in. However, the freedom of expressing such ideas and opinions is subject to legal restrictions to prevent abuse of this freedom causing harm to others.

Freedom of the press is one aspect of the freedom of expression. It is, therefore, regulated by the Federal Law of Publishing and Printing of 1981, which both ensures this freedom and prevents its abuse. The law thus sets forth simple administrative penalties such as notice, warning, seizure or attachment. Harsher penalties include administrative suspension and stoppage or licence withdrawal. The law imposed certain restrictions on a Minister's exercise of his administrative powers so that he may not exploit them for the confiscation of the constitutionally guaranteed freedom.¹⁶ Moreover, the law recognises the right of the press to publish whatever it deems appropriate. However, the law provides the others with the right to send a reply or a correction *vis-à-vis* the right enjoyed by the press.¹⁷ Holding private gathering and forming associations are also another aspect of the freedom of thought and the collective expression of opinion.¹⁸ This, too, was guaranteed by the Constitution of the UAE in Article 33. However, it is restricted within limits of law.

Economic freedoms

To remedy the extreme injustice the working class had suffered under individual capitalism in European countries, a set of economic rights and freedoms were recognised. These rights and freedoms were included in the Constitution of the UAE. Article 34 stipulates that every citizen is free to choose his occupation or profession or craft. This freedom, however, may be restricted within the limits of the law regulating it. But it should be noted that freedom from enforced labour and slavery are not subject to any restrictions. Only in very special circumstances may forced labour be allowed by law, provided that the workers involved shall get fair

¹⁶ Dr Ihsan Hindi, "Administrative Penalties that may be passed against newspapers by virtue of the Publishing and Printing Laws in Member States of the Gulf Co-operation Council" (in Arabic), *King Saud University Journal*, Vol. 3, 1991, pp. 130-131. Among the restrictions imposed by the law on the minister's exercise of his power to suspend a newspaper or periodical is that suspension may not exceed two weeks, and that suspension may be resorted to only in cases of absolute necessity and that the minister shall submit a report to the Cabinet. The Publishing and Printing Law also gave the publication's proprietor the right to go before a court to annul the suspension decree.

¹⁷ Dr Ihsan Hindi, "The Right Reply and Correct as Stipulated in Publishing and Printing Laws in the Member States of the Gulf Co-operation Council" (in Arabic), *Al-Taawon Journal*, Year 1, Issue 1, January 1986, pp. 82-83.

¹⁸ Dr Mostafa Mahmoud Affifi, *Summary of the Principles of Constitutional Law and Comparative Political Systems* (in Arabic), Vol. 2, Dubai Police Academy, 1988, p. 400.

compensation. Slavery, meanwhile, is utterly forbidden through a constitutional provision.

The right and duty to work is a cornerstone of the progress achieved by the UAE society. Thus, Article 20 of the Constitution made it incumbent upon the state to ensure this freedom through the provision for job opportunities as well as appropriate and adequate training for citizens. Moreover, the Constitution regulates relationships between employers and employees, rendering this a responsibility of the state. Article 120 makes the Federation solely responsible for legislation pertaining to work relationships. The Constitution has even gone a step further by stipulating that the regulation of such relationships should be effected in line with advanced world labour legislation. It has been truly noted that the "labour legislation in the Union is to be developed in the light of advanced international legislation in the field, and foreigners' rights and freedoms are governed by the various international covenants, treaties, etc., subscribed to by the UAE".¹⁹ Article 35 further specified this commitment by emphasising the right to equal access to public service in accordance with the provision of the law.

The right to ownership is also ensured by the Constitution in such a way that would maintain the interests of both individuals and society. Article 21 provides for the protection of private property, while Article 22 emphasises the inviolability of public property. In Article 39 the Constitution also safeguards this economic right against confiscation and cancellation. The Constitution, however, does not make the right to ownership an absolute one in order to prevent encroachment upon society's interests, and the widening of social differences. For example, it prohibits ownership of natural resources by individuals, rendering these public property in the interests of national economy. Moreover, the Constitution places certain restrictions to minimise economic dominance, it thus states that private ownership may be restricted, while private property may be expropriated in the public interest provided fair compensation is paid.

The Constitution was content with such principles, and so did not go further with regard to safeguarding the economic rights of society as a whole. Unlike the constitutions of Kuwait and Bahrain, the UAE Constitution does not stipulate that concessions and monopolies are to be granted through a law.²⁰

Meanwhile, the Constitution of the UAE does not explicitly refer to freedom of trade and industry as an economic freedom. However, there are implicit hints in a set of provisions safeguarding this freedom. Thus Articles 21, 22 and 24 stipulate that social justice and sincere co-operation between public and private activities are the basis of the national economy.

¹⁹ W.M. Ballantyne, *Commercial Law in the Arab Middle East: The Gulf States*, Lloyd's of London Press Ltd., 1986, p. 34.

²⁰ Dr Al-Saleh, *op. cit.*, p. 57.

Political rights

Political rights fall into two main sections: the right to participate in government; and the right to submit petitions and complaints, also known as the right to address authorities.²¹ The first section includes the right to vote, stand for elections, and express opinion in public referendums. Article 21 of the Universal Declaration of Human Rights spells out these rights. The second section includes the means by which individuals may express their viewpoints regarding certain political demands.

The UAE Constitution, according to one writer, does not include in its fabric the freedom to participate in public affairs represented in the right to vote and to stand for elections.²² The preamble of the Constitution, however, states that a parliamentary democratic régime is a step cherished by the Rulers of the Emirates, and that they are preparing the people of the Federation for such a step. The right to address public authorities is contained in Article 41 of the Constitution. It gives individuals the right to submit their complaints against any violation of their rights and freedoms to the competent authorities, including the judicial authorities.

Social freedoms

These are the freedoms which the society normally ensures for all its members in order to maintain a standard of living adequate for health, education and well-being. Foremost among those rights are the right to adequate social security. Article 16 of the Constitution provides for child and mother care, juvenile protection, health care, and care for old and jobless people. It went as far as to call upon the state to promulgate laws for general assistance and social security.

Applying this article, the state promulgated federal laws and decrees relating to the family, mother and child care, and care for old people. Perhaps the most important of such laws and decrees are Federal Law No. 13 of 1972 concerning social subsidy, Law No. 3 of 1982 relating to social security, and Law No. 9 of 1982 concerning emergency assistance in the event of private or public disaster.²³ Article 16 also requires the state to look after juvenile health, and to render medical and health services free of charge; as well as to combat epidemics, spread health culture and create favourable conditions for working mothers.

Another social right is education. Civilised countries constantly seek to uphold and enhance the educational standards of their people by making available means of learning and scientific research free of charge and in all possible forms. The UAE Constitution emphasises this right. Article 17 stipulates that "education is a fundamental factor for the progress of the society; it shall be compulsory in its

²¹ Dr Affifi, *op. cit.*, pp. 381–383.

²² Dr Abdul Khaleq Abdullah, "Human Rights in the Constitution of the United Arab Emirates" (in Arabic), *Social Affairs*, Year 4, Issue 16, 1988, p. 15.

²³ Abdul Wahhab Abdoul, "Principles of the Universal Declaration of Human Rights in the Legislation of the United Arab Emirates" (in Arabic), *Al Adaleh Journal*, Year 11, Issue 40, July 1984, p. 42.

primary stage, and free of charge in all the other stages within the Union". The Constitution thus made the Federal State shoulder the responsibility of education. The right to free education requires the opening up of all channels and types of education: general, vocational, technical, etc. supported by the adoption of curricula compatible with the Constitution, as well as providing appropriate study buildings to make possible the realisation of this noble mission.

Meanwhile, the Constitution makes it possible for society members to participate in shouldering educational responsibilities. According to Article 18, citizens may establish private schools, provided these should be in accordance with the provisions of the law, and supervised by the competent public authorities. Such restrictions on the right to set up private schools were spurred by the paramount implications of education for future generations and the need to ascertain that education is compatible with the foundations of the general system of the state, namely Islamic *Shari'ah* and genuine Arab values.

Human rights restrictions and guarantees under the UAE Constitution²⁴

As stated earlier, international covenants gave states the right to restrict through domestic laws certain human rights, provided that such restrictions do not amount to the undermining of such rights, or eliminate their object and purpose, or contradict the essence of constitutional provisions. The Constitution of the UAE contained several "limitation clauses" and gave the legislators the right to regulate or restrict certain rights and public freedoms included therein. Such restrictions may be in pursuance of the provisions of the law (as in the case of the right to ownership, personal freedom, freedom of correspondence, equal access to public service), or within the limits of the law (as in the case of freedom of expression and opinion, freedom of assembly and association, freedom of movement and residence for citizens). Restrictions may also be prescribed by law (as in the case of imposing forced labour, and denouncing or withdrawal of nationality); or for the reasons relating to public order and public morals (as in the case of observation of religious rites). Moreover, certain rights may be restricted in the circumstances specified by law (as in the case of banning the general confiscation of property).

We have indicated some regulations and restrictions imposed by federal laws pursuant to constitutional authority by way of regulating certain public freedoms or rights. The essence of this mechanism is keenness on maintaining the said freedoms or rights by safeguarding them against arbitrary action by public authorities in the form of executive, legislative or judicial actions.

It is worth noting, as W.M. Ballantyne truly observed, that the UAE Constitution as in the case of Kuwait and France "insert such phrases as 'in accordance with law and/or public policy and/or morals' . . . thus preserving to the

²⁴ Dr Al-Awadi, *op. cit.*, p. 85. See also for further discussion Dr Mohamed A. Al Roken, "Constitutional Regulation of Liberties and Fundamental Rights" (in Arabic), *Journal of Shariah and Law*, Vol. 8, November 1994, pp. 373-423.

Government from time to time discretion to legislate on acceptable levels of freedom. This contrasts sharply with the absolute terms of the US First Amendment".²⁵

It should be noted that not all the restrictions under the UAE Constitution have been imposed with explicit legal controls compatible with the International Covenant on Civil and Political Rights, which does not permit derogation from certain rights and freedoms even in cases of emergency.

In her remarkable article on "Provisions Restricting Basic Human Rights...", Dr Badriya Al-Awadi states that:

... according to the International Covenant, the powers of national legislators are not absolute, but are restricted by the presence of a necessity that justifies the promulgation of laws restricting freedoms. This important restriction (a proven necessity) does not occur in the constitutions of the member states of the Gulf Co-operation Council in their handling of rights and public freedoms.²⁶

The absence of restraints over the powers of legislators to make laws restricting fundamental and basic rights and freedoms has become an instrument for demolishing them.

It should be noted that as common matter the scope of legal restrictions widens whenever martial law is declared, and subsequently the scope of human rights becomes narrower. International covenants, therefore, have not set forth fixed foundations for the protection of an individual's basic rights and to prevent encroachment by the state upon them in cases of emergency.

The Constitution of the UAE dealt with this issue in Articles 145 and 146, and makes possible the declaration of martial law in accordance with the following conditions:

- (1) Three public authorities take part in the declaration of martial law: a suggestion is first made by the President, and this has to be approved by the Council of Ministers and ratified by the Supreme Council.
- (2) Martial law is to be declared only in cases specifically specified by the law.
- (3) Martial law is to be declared through a decree, and eventually lifted by a decree.
- (4) Some constitutional provisions may be suspended within the limits of the law, but the Federal National Council shall not be suspended while martial law is in effect.

However, this constitutional arrangement does not exclude the basic rights and freedoms of individuals, which remain inviolable even under martial law, such as the right to life, freedom from slavery and forced labour, and freedom from torture or degrading treatment. However, constitutional texts did not adopt the rule prohibiting discrimination between citizens during emergencies.²⁷ Moreover, the

²⁵ Ballantyne, *op. cit.*, p. 44.

²⁶ Dr Al-Awadi, *op. cit.*

²⁷ Dr Al-Awadi, *ibid.*, pp. 91-92. Also Al Roken, *ibid.*, pp. 408-410.

Constitution does not set in its provisions any limit for the duration of martial law. This might jeopardise individuals' basic rights and freedoms in the future. It should also be noted that no law has been promulgated to regulate "state of emergency".

Generally, the UAE Constitution has set forth guarantees safeguarding human rights under normal conditions, side by side with the genuine constitutional guarantees. Foremost among these are the right to fair trial and public hearing before an independent and impartial tribunal, and the right to equal treatment before the law. The Constitution thus ensured the right to submit petitions or complaints against any encroachment upon public freedoms, whether by a public authority, or by ordinary persons. The right to go before courts of justice ensured by Article 41 of the Constitution has thus ensured the following:

- (1) A trial by a court of law;
- (2) That judges are fair, independent and impartial;
- (3) That the accused shall be presumed innocent until proved guilty; and
- (4) That sentence shall not be passed until the accused has given his defence freely and fully.²⁸

The Constitution emphasises initially in Article 25 the right to equal treatment, and that there is no discrimination (on the basis of origin, domicile, religion or social status) between citizens of the Union. Equality is not confined to UAE citizens, as may be casually understood from the text; Article 40 indicates that foreigners, too, enjoy the freedoms and rights contained in international covenants, as well as in the treaties and agreements to which the UAE is a signatory.

In Article 28, the Constitution stipulates that an accused has the right to hire a lawyer to defend him, while Article 94 stresses the independence of the judiciary: "justice is the basis of the régime; and judges are independent and are governed in performing their duties only by the law and their own conscience". Independence of the judiciary is reiterated in Article 1 of Federal Law No. 3 of 1983 on the organisation of the Federal Judicial Authority. It states that:

Justice is the basis of the régime, and judges are independent and are governed in the discharge of their duties only by the provisions of Islamic Shariah, the observed laws and their own conscience; no person or authority may encroach upon the independence of the judiciary or interfere in the administration of justice.

A third guarantee is provided by the Constitution, namely the judicial control over actions by the Executive Authority; also known as the control over the constitutionality of laws. Such control is provided for in seven articles relating to the Federal Supreme Court, which is the body exercising this control. Article 99 stipulates in its second and third paragraphs that the Federal Supreme Court examines the constitutionality of laws, legislation and bylaws in general. Such subsequent control is exercised only after the promulgation of a federal or local

²⁸ Ahmed Mahdi Al-Diwani, "Judicial Authority in the United Arab Emirates" (in Arabic), *Al Adaleh Journal*, Year 4, Issue 16, October 1977, pp. 32-33.

legislation, and as such is much more effective than prior control. However, the Constitution does not enable individuals to directly go before the Federal Supreme Court. When any other court in the country deems a petition on the unconstitutionality of a certain legislation, it may refer it to the Federal Supreme Court.

In this connection, it should be noted that the UAE Constitution does not embrace the principle of Separation of Powers. The body making laws and legislation is usually the one that executes them. This might jeopardise certain basic rights. Moreover, the control exercised by the Federal National Council over the government does not go as far as to be considered a satisfactory political guarantee. According to the text of the Constitution, the Council has the right to question and to debate general issues, and to set forth recommendations regarding them. Indeed members of the Council have repeatedly tried to go beyond this limited constitutional framework and play a more active role in guaranteeing human rights in the state. Particularly noteworthy is the debate on, and subsequent amendment of, the draft Federal Penal Law. Their close examination of the issue, and their rejection of the restrictions included therein resulted in the elimination of certain penalties and the softening of others set for certain crimes.

Views on the Code of Federal Criminal Procedures in relation to public freedoms²⁹

As indicated earlier, the Constitution of the UAE gives the legislators the right to regulate and restrict certain rights and public freedoms embodied in its provisions. The promulgation of the Federal Law on Criminal Procedures No. 35 of 1992³⁰ was a model that should be analysed in order to discern the principal ideas behind it, namely the extent of the effectiveness of giving the legislators the power to regulate the basic rights, and ensuring that there shall be no encroachment thereupon.

First of all, we have to emphasise that the Federal Law referred to above is a positive development in the legal drive of the state. It unified the legal systems pertaining to criminal procedures, and removed contradictions and encroachments that had marred current state laws in certain emirates. Provisions of this law played a positive role in guaranteeing the basic human rights. For instance, state laws allowed the arrest of a person, thus depriving him of his liberty upon the mere suspicion that he had committed, or was preparing to commit a crime. Arrest constitutes a restriction of a person's freedom, even if it is for a short time. Local legislation had gone too far in specifying the cases where individuals may be arrested. Individuals could be arrested even in cases where an activity has not

²⁹ Information and analysis contained in this section were mainly derived from information provided by Dr Medhat Abdul Halim Ramadan, Lecturer at the Faculty of Shariah and Law, United Arab Emirates University, and his printed notes entitled: "Notes on Criminal Procedures in the Light of Current Laws in the United Arab Emirates".

³⁰ The Official Gazette, Issue 239 (a special issue), Year 22, 1992.

reached the stage of preparing for committing a crime; and it is taken for granted that the pre-preparation stage is not punishable. The Federal Law thus restricted the power of the police to arrest individuals, thus ensuring freedoms and non-encroachment thereupon. It expressly states that for an arrest to be effected, there must be a crime with adequate prima facie evidence against the person to be arrested.

Likewise, state laws had given police officers who are vested with arrest powers the right to arrest a person if they have the least suspicion that he has committed a crime during the preceding 48 hours. This is a relatively long period, and is thus in conflict with the rationale of widening the powers given to police officers in cases of persons caught *flagrante delicto*. The Federal Law, however, deems a crime *flagrante delicto* if discovered while committed, or a short while after. The estimation of a short while is thus left to the discretion of the judge hearing the case.

With regard to search, the Federal Law stipulates that it is possible only through a warrant to be issued by the public prosecution, and in cases where the crime is *flagrante delicto*, or when adequate evidence is available to the effect that the accused is concealing things or papers that may help reveal the truth. Once the officer with arrest powers concludes his task, he should not go on searching. Meanwhile, house inspection is to be effected only in the presence of the accused, or whoever may represent him.

Likewise, the law guarantees the protection of a person's privacy in the process of investigation. It ensures secrecy of correspondence: neither the papers of the accused nor the correspondence he may have communicated with his lawyer, may be seized. Moreover, a public prosecutor may not seize or censor somebody's correspondence unless warranted to do so by the Public Prosecutor General.

With regard to interrogation, the Law ensures impartiality and non-encroachment by the executive authority on human rights and freedoms. Thus, officers vested with investigation powers may not interrogate a suspect or accused unless in very exceptional cases such as to avoid lapses of time. Meanwhile, the Law stipulates that it is the public prosecution who is the body that carries out the interrogation; the police may be asked to undertake certain preliminary interrogation, but not the entire process.

With all these advantages in the Federal Law, however, the fact that legislators are given the upper hand without explicit legal restraints stated in the Constitution has led to drawbacks that may jeopardise basic human rights and freedoms.

The first drawback is that the prosecution combines the indictment and investigation powers. In this connection, an important question arises: how could the prosecution be an adversary and an arbitrator at the same time? Moreover, it cannot be claimed that a public prosecutor is functionally independent *vis-à-vis* his superiors. In fact, the power to decide whether to accuse a person, or to drop the case, lies with the upper echelons of the prosecution. Additionally, it is the chief of public prosecution who normally assigns a prosecutor for each case; and so he may exploit this role to assign cases in such a way as would influence the proceedings

and decisions. Moreover, the chief public prosecutor may simply shift assignments, taking a case already being handled by one prosecutor and giving it to another.

While the prosecution is normally presumed a fair opponent in a criminal case, we must not overlook the flaws of human nature. Here one may ask: is it likely that a prosecutor may admit that an accused is not guilty after so much work to bring the case against the defendant and collect the evidence against him? Legislators should have examined modern procedural laws, instead of borrowing the law of a particular Arab state whose special circumstances had led it to vest the indictment and examination functions in the hands of the prosecution. It should be noted that this borrowing was incomplete, as it dropped the guarantees provided in the very law that it borrowed from, such as the presence of an investigating judge to endorse certain aspects of the examination. What is required, then, is to assign the investigation powers to a judicial authority independent of the public prosecution in order to ensure human rights.

Article 100 of the Federal Law of Criminal Procedures emphasises the need for a lawyer to be present with an accused during his examination. Such lawyer is intended to act as a control force. He may object to certain questions or to the way they are addressed. However, the prosecutor may drop this guarantee if he deems this to be in the interest of the investigation. In doing so, he violates the accused's right to defend himself, a right guaranteed by the Constitution.

An individual's personal freedom as well as his freedom of travel are among the set of basic rights and freedoms. However, the Federal Law regulates them in such a way that renders it possible to hold a person in custody for a period of 21 days, upon an order from the public prosecution. This period may be extended to not more than 30 days upon an order from the judge concerned, should the investigation so require. Holding a person in custody is another form of depriving him of his liberty. Article 110 of the Law renders it possible to renew the holding of a person and for indefinite periods of time. As a result of this provision, an innocent person may be held in prison and for a long or indefinite period of time.

Among the legislative contradictions in this connection is that the Law does not stipulate the holding of a person in custody if the crime in question is punishable by death or by a life sentence. According to Article 106, the person in question may be held in custody, and the matter is thus left to the discretion of the prosecutor in felony and misdemeanour cases. In another article, however, the law forbids the temporary release of an accused held in custody for a crime punishable by death or a life sentence. This conflicts with no-guilt evidence, and the constitutional provision that an accused has the right to be presumed innocent unless proved guilty following a fair and lawful trial. The contradiction lies in the fact that whereas a prosecutor may order an accused to be held in custody, he may not order him to be temporarily released. Moreover, if the law regulates the right of petition, entitling an accused whose custody was decided in his absence, it does not regulate the ways and means of submitting petitions by an accused against being held in custody.

Likewise, Article 54 authorises police officers with arrest powers to search the houses of people who, by virtue of a legal text or a court sentence, are placed under observation, should there be a reasonably strong suspicion that they have committed a crime or a misdemeanour, but not if caught *flagrante delicto*. Such an article constitutes a departure from the general rules, as it undermines the principle of equality, permitting as it does, inspection even though the offence is punishable only by fine, and even though the accused was not caught in the act.

CONCLUSION

This review of the human rights provisions of the Constitution of the UAE which guaranteed the rights and freedoms of individuals, leads one to believe that this Constitution has taken a bold step in the direction of making human rights a reality to be enjoyed by citizens and foreigners alike and duly respected by the authorities. These rights and freedoms are, more or less, those stated in the Universal Declaration of Human Rights. It must be acknowledged, therefore, that the UAE has actually afforded an appropriate climate for the realisation of most of the rights and freedoms stipulated in the Declaration.

The remarks made in this article concerning certain shortcomings with regard to the protection of certain human rights and freedoms, or the restriction of others, and on the absence of controls or the omission of certain basic rights and freedoms, should be considered within the general framework of the legal drive of the state, and the need to safeguard its security and the prosperity of its citizens.

The safeguarding of basic human rights is essential; it is the means whereby a healthy political climate is achieved. Moreover, it is the cornerstone of economic progress. It has been observed that the most advanced and most prosperous countries of the world are those giving full respect to human rights and freedoms. On the other hand, the greater the violation of human rights and freedoms, the slower and weaker the growth and development.³¹ It was, therefore, incumbent upon the UAE to join the international human rights drive, and to broaden their political and judicial safeguards, and to make sure that they are a day-to-day reality reflecting respect for the provisions of the Constitution, and enhancing the prestige of the country throughout the world.

Studying the provisions of the Constitution with a preconceived belief that it is doubtful to practice them, would turn a citizen into an entity alien to this society. As Dr Othman Abdul-Malek states:

Yesterday's man must be very unhappy as it never occurred to him that he holds sacred rights and, therefore, did nothing to protect them. Today's man, however, would be much more unfortunate when he realises that he has such rights, but is unable to protect them.³²

³¹ Dr Abdullah, *op. cit.*, p. 6.

³² Dr Al-Saleh, *op. cit.*