

UNITED ARAB EMIRATES
MINISTRY OF FOREIGN AFFAIRS
ASSISTANT FOREIGN MINISTER
FOR LEGAL AFFAIRS



الإمارات العربية المتحدة
وزارة الخارجية
مساعد وزير الخارجية
للشؤون القانونية

HUMAN RIGHTS REGISTRY H.C. OFF
11 JUN 2013
ACTION.....
INFO.....
<input type="checkbox"/> ACKNOWLEDGED
<input type="checkbox"/> ACTION COMPLETED
<input type="checkbox"/> NO ACTION NEEDED
INITIALS.....

Ref: 66/2013
Date: 10/6/2013

The Ministry of Foreign Affairs of the United Arab Emirates in Abu Dhabi presents its compliments to the Secretariat of the Office of the High Commissioner for Human Rights / the Special Procedures of the Human Rights Council, and with reference to its note verbale UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24) ARE 1/2013 has the honor to forward the response concerning the trial of 94 individuals on charges of State Security offences in the Federal Supreme Court in Abu Dhabi (Case No. 17/2013).

The Ministry of Foreign Affairs of the United Arab Emirates avails itself of this opportunity to renew to the Secretariat of the Office of the High Commissioner for Human Rights in Geneva, the assurances of its highest consideration.

10/6/2013



OHCHR REGISTRY

12 JUN 2013

Recipients: *SPD*
S. Subramanian (Encls)

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RESPONSE OF THE GOVERNMENT OF THE UNITED ARAB EMIRATES
TO THE COMMUNICATION FROM SPECIAL PROCEDURES ISSUED JOINTLY BY THE CHAIR
RAPPORTEUR OF THE WORKING GROUP ON ARBITRARY DETENTION, THE SPECIAL
RAPPORTEUR ON THE PROMOTION OF THE RIGHT TO FREEDOM OF OPINION AND
EXPRESSION, THE SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL
ASSEMBLY AND OF ASSOCIATION, THE SPECIAL RAPPORTEUR ON THE SITUATION OF
HUMAN RIGHTS DEFENDERS, THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF
JUDGES AND LAWYERS AND THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

7 JUNE 2013

I. Introduction

On 16 April 2013 the Office of the High Commissioner for Human Rights transmitted a communication from special procedures to the Government of the United Arab Emirates issued jointly by the Chair-Rapporteur of the working group on arbitrary detention, the Special Rapporteur on the promotion of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The joint communication requested information and clarification on a number of matters which are described as relating to *“the trial of 94 individuals on charges of state security offences in the Federal Supreme Court in Abu Dhabi, case number 17/2013, as well as the alleged sentencing of Mr Abdullah Al-Hadidi for his reports on the trial.”*

This document sets out the response of the Government of the United Arab Emirates to this joint communication.

II. Background to the UAE’s Commitment to Human Rights

The joint communication raises serious issues related to the UAE’s basic commitment and observance of its international obligations to protect and promote human rights and fundamental freedoms. It is therefore important to preface our response with a brief summary of some of the many steps the UAE has taken to engage with the international community in the field of human rights. This engagement has been multifaceted, involving, among other matters, accession to international covenants, cooperation with monitoring bodies and special procedures, undertaking the Universal Periodic Review and cooperation in the activities of the Human Rights Council. The UAE views its election to the Human Rights Council last year as representing both a recognition by the international community of the advances the UAE has made in the field of

human rights, as well as an acknowledgement by the UAE itself that it must sustain its commitment to promote and protect human rights with even greater vigor than in the past.

In each of the areas in which the UAE has engaged with the international community to promote human rights, its actions have gone far in complying with the internationally-accepted standards. These have been alluded to in the Annex to the letter dated 13 March 2012 presenting the candidacy of the UAE to the Council and in the report of the UAE to the Working Group on the 2008 Universal Periodic Review of the UAE. Both of these documents are of public record.

With respect to relevant international human rights conventions, the UAE has demonstrated its commitment to implementing a rigorous legal regime for the promotion and protection of human rights by acceding to or signing the following international instruments (and we continue to review and actively consider our ratification of other international human rights instruments as well):

- The Convention on the Elimination of All Forms of Discrimination against Women;
- The International Convention on the Elimination of All forms of Racial Discrimination;
- The Convention on the Rights of the Child;
- The Convention on the Rights of Persons with Disabilities;
- The Convention on the Prevention and Punishment of the Crime of Genocide;
- The Convention on Transnational Organized Crime;
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol); and
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

As for the relevant special procedures and the submission of reports to treaty monitoring bodies, the UAE has consistently cooperated and complied in a serious and sincere manner and shall continue to carry out its obligations in this regard in an open and transparent way.

While the achievement of human rights objectives and fundamental freedoms is undeniably a continuing process at both the international and national levels, and the UAE recognizes that there are areas at both levels in which it must take further steps, we would hope that the UAE's record on human rights would be evaluated by responsible persons based on fact rather than innuendo or unreliable information. As outlined above, the facts demonstrate that the UAE has taken, and continues to take and implement, very significant and proactive steps to ensure the promotion and protection of human rights and fundamental freedoms at all levels of society.

The results of this proactive approach can be seen throughout UAE life and society today, for example, in the manner in which the UAE has promoted and largely achieved gender equality, the right to education for all citizens, access to healthcare, freedom of religion and a truly tolerant and inclusive society in which persons of all nationalities live, work and thrive together. In view of the unique historical, developmental and social conditions of the country, as well as its cultural traditions, we believe the numerous steps the UAE has taken and the numerous achievements it has made in a very brief period of time in fact set it apart and should be commended.

III. General Statement on the Matter of Case Number 17/2013 and the Sentencing of Mr Abdullah Al-Hadidi

(a) Case Number 17/2013

Federal Supreme Court Case number 17/2013 involved a serious threat to the UAE's national security by a large group of individuals tied to foreign groups which advocate the overthrow through violence of the UAE Government. These persons have, to a certain extent, purported to be human rights activists. Of the 94 accused, 73 remained under arrest awaiting trial, 13 were released on bail and 8 others became (and remain) fugitives.

The case was investigated, prosecuted and tried as an alleged violation of Article 180 of the UAE Criminal Code before an independent judiciary in full compliance with the applicable procedural, evidentiary and legal standards of the UAE, which in all cases meet or exceed international standards of due process, fairness and justice. The trial, which was open to members of the media, civil society organizations, national human rights organizations and family of the accused (with a special hall accommodating 500 persons set up specifically to seat the large number of observers) has concluded and the case is currently *sub judice*, with a judgment expected to be issued on 2 July 2013. Contrary to the reports reflected in the joint communication, the judgment to be issued by the Federal Supreme Court will be subject to appeal, as provided by the UAE code of criminal procedure.

The joint communication sets out a version of events related to this case which is far removed from the truth and unfounded in virtually every detail. While the source of this misinformation has succeeded in bringing the case to the attention of the High Commissioner for Human Rights and the distinguished Special Rapporteurs, it has only been able to do this by making false claims, the most egregious of which was the allegation that certain detainees were subject to physical abuse, beatings and torture. These allegations are categorically denied in the strongest terms.

The UAE Government, while grateful for the opportunity to correct this misinformation, wishes to express its sincere hope that groups or individuals which are hostile to its continued and peaceful existence under the rule of law should not find support for their cause through manipulation of the good work carried out by the United Nations.

(b) Abdullah Al-Hadidi

The case of Mr. Abdullah Al-Hadidi involves an individual who attended trial proceedings in Case number 17/2013 as an observer. Without wishing to assume his connections to the accused persons or his motivation in wanting to witness the trial proceedings, the charges against him were threefold. First, that he violated Article 248 of the UAE Criminal Code by assaulting a public officer during the course of the trial proceedings. Second, that he violated Article 265 of the UAE Criminal Code by publishing false accounts of the trial proceedings. And third, that he violated Article 45 of Law Number 1 of 1970 by refusing to obey an order of a public officer.

Mr. Al-Hadidi was arrested pursuant to an arrest warrant (contrary to the account contained in the joint communication) and subsequently tried before a criminal magistrate, Judge [REDACTED], in the Court of First Instance. Mr. Al-Hadidi was represented by counsel, Mr. [REDACTED], and given the opportunity to present evidence, which was considered by the Court. A judgement was issued in the case (Case No. 6482/2013) on 8 April 2013 in which he was found guilty of a violation of Article 265, but was acquitted of the other two charges. The Court sentenced Mr. Al-Hadidi to 10 months in jail.

This case, which is in many respects an unspectacular criminal proceeding except for being linked to Case number 17/2013 and having been raised before the High Commissioner for Human Rights, was prosecuted and conducted in accordance with all due process requirements under UAE law. The UAE Government is of the view that such a matter does not merit the attention of the High Commissioner for Human Rights, let alone the accusation that the arrest and trial of Mr. Al-Hadidi involves a violation of fundamental human rights.

IV. Response to the Questions Raised by the Special Rapporteurs

In the joint communication, the Special Rapporteurs have asked our Government to respond to a number of questions or requests "*when relevant to the case under consideration*". These questions and requests are the following:

1. "*Are the facts alleged in the summary of the cases accurate?*"

The facts alleged in the summary set out in the joint communication are highly inaccurate and misleading, and we are grateful for the opportunity to correct the record. Among such basic inaccuracies are the following:

- (a) Arrest warrants were issued for all of the accused.
- (b) Of the 94 accused persons in Case number 17/2013, 13 were in fact bailed.
- (c) The accused were represented by their freely selected counsel who had access to and conducted interviews with the accused in private (without the presence of

security personnel as alleged in the account referenced in the joint communication).

- (d) The period of pre-trial detention of the accused in Case number 17/2013 was of a definite period of time and, given the nature of the alleged crimes, subject to renewal by court order, also for a defined period of time.
- (e) The accused were entitled to telephone contact with their families three times per week, and to regular family visits and visits from national human rights organizations while in detention.
- (f) The conditions in which the accused were held were fully satisfactory, and had been seen and observed by the Emirates Human Rights Association, a registered non-governmental organization, which publicly reported these satisfactory conditions, including access to health care and a good standard of food.
- (g) The trial in Case number 17/2013 was observed by numerous witnesses, including family members, national media and human rights organizations. A special chamber was set up by the Court to accommodate 500 observers. While given the public interest in the trial, some spectators may not have been able to enter and witness the proceedings, the Court made an extraordinary effort to allow a large public audience to witness the trial.
- (h) While some of the accused have raised with the Court during the trial the allegation that they were subject to physical and mental duress and abuse (including in connection with the extraction of confessions) while in detention and even during the trial itself, the Government vigorously denies this. These allegations have been laid before the Court by the accused and are expected to be addressed by the Court in its judgment.
- (i) The trial in Case number 17/2013 has in fact concluded and is now awaiting the issuance of the judgment, which is expected to occur on 2 July 2013.
- (j) The charges against the accused have nothing to do with restricting their freedom of association or expression. Rather, they involve serious allegations of establishing a clandestine organization under cover of a civil society organization for the purpose of seeking the overthrow of the UAE Government through violent means.
- (k) Specific allegations as to the independence of the UAE judiciary which are made in the joint communication are false, including the nomination process for judges. With respect to Federal Supreme Court judges, this process is based on law and requires the nomination by the Supreme Judicial Council and the appointment by the UAE Head of State upon the agreement of the Federal Supreme Council, the highest authority in the UAE.

- (l) Judgments rendered in criminal proceedings, including those at issue, are subject to appeal. Indeed, Mr. Al-Hadidi did appeal his sentence, which was confirmed by the appellate court.
- (m) With respect to Case number 17/2013, it is untrue that the list of charges was not made available to the defence team until after the first session and that the Court refused to accept defence documents.
- (n) Finally, regarding the assertion that the prosecution team and the judges retire to the same chamber, this is untrue for although they do leave the courtroom by the same door, they do not then retire to the same room during breaks in the proceedings.

2. *"Has a complaint been lodged by or on behalf of the alleged victims?"*

We understand this question to refer to whether complaints of alleged mistreatment by authorities or denial of justice have been raised by or on behalf of any of the accused persons in connection with their arrest, detention and trial. Several of the accused persons did complain in their defence during the trial that they had been subject to mental and physical mistreatment during their arrest and incarceration. These allegations, which the relevant authorities strongly deny, were duly presented to the Court through witness testimony or submissions by defence attorneys and are currently *sub judice*. We expect that the judgment of the Court, which we anticipate will be issued in July of this year, will address these allegations. We would add that representatives of the Emirates Human Rights Association visited and interviewed the accused on a regular basis during their trial and pre-trial detention and not only found no evidence of any mistreatment, but were also assured by the accused themselves that they had not been subject to any such mistreatment.

3. *"Please provide details regarding the legal basis for the detention of and charges against the 94 individuals, as well as for the sentence against Mr Abdullah Al-Hamadi [sic][should read "Hadidi"] and please explain how these charges are compatible with international human rights law, inter alia, especially with regard to the right to freedom of opinion and expression and the right to freedom of association."*

Among the relevant details are the following. The arrest and detention of the individuals in connection with Case number 17/2013 resulted from an initial investigation of the security forces and from the Attorney General's report that the accused were not part of a peaceful association calling for political debate, but rather were members of a clandestine organization which was seeking to overthrow the UAE Government by force. The detention of and charges against them were therefore based on several legal grounds. They were charged with setting up, establishing, organizing and running a clandestine organization, veiled under cover of a civil society organization, which aims at and calls for the overthrow of the government. These activities are prohibited by Article 180 of the UAE Criminal Code (as amended), promulgated in 1987.

Mr. Abdullah Al-Hadidi was arrested after being charged with a breach of the following three following provisions (also see Section III (b) above). First, Mr. Al-Hadidi was charged with assaulting a public officer under Article 248 of the Criminal Code. Secondly, Mr. Al-Hadidi was charged under Article 265 of the Criminal Law for publishing in bad faith false accounts of the trial proceedings. Thirdly, Mr. Al-Hadidi was charged under Article 45 of Law 1 of 1970 for refusing to obey to orders from a public officer, which is punishable by a maximum of 6 months in prison.

Mr. Al-Hadidi was acquitted of the first and third charges, but was found guilty of the second one and was sentenced to ten months in prison. Mr. Al Hadidi appealed his conviction and the Court of Appeal affirmed the decision.

There isn't any doubt that the criminal code provisions under which the accused in Case number 17/2013 were detained and charged, which involved accusations against them that they had formed a clandestine organization for the purpose of overthrowing the Government, are compatible with international human rights laws. These include provisions such as Articles 19 and 22 of the International Convention for Civil and Political Rights, which restrict freedoms of expression and association when such activities threaten national security, public safety or public order, or are intended for the purpose of the violent overthrow of a government.

It is also important to note that safeguarding the security and stability of the UAE from aggression or threats to its existence are considered to be basic principles of the UAE Constitution. Article 10 of the Constitution provides that:

The aims of the Union shall be the maintenance of its independence and sovereignty, the safeguard of its security and stability, the defence against any aggression upon its existence or the existence of its member states [...].

4. *"Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to reported allegations of torture and/or cruel, inhuman or degrading treatment as well as reports of breaches of fair trial standards. If no inquiries have taken place, or if they have been inconclusive, please explain why."*

As mentioned above, certain members of the accused in Case number 17/2013 have raised during the court proceedings that they were subject to abuse, mistreatment and duress, including in the extraction of confessions. These allegations, which are vigorously denied by the State, were put before the Court which is currently considering the arguments made and the evidence which was presented. The Court will presumably address this issue in its judgment. Reports by the Emirates Human Rights Association, which has had regular contact with the accused and had been in a position to consider their physical and mental condition, strongly refute these allegations of abuse and mistreatment.

5. *“Please explain what measures have been taken to ensure that all international minimum standards for the conduct of a fair trial are adhered to in these cases.”*

The right to a fair trial is guaranteed by Article 94 of the UAE Constitution. Articles 1 to 8 of Law No. 3 of 26 May 1993 guarantee the independence of Judges. Moreover, the allegations set out in the joint communication stating that the judges involved in Case number 17/2013 are not independent because of their nationality is irrelevant as Article 18 (2) of Law No. 11 of 25 July 1973 provides that only citizens from the United Arab Emirates are eligible to be nominated as judges in the UAE Federal Courts. The independence of the judges is also guaranteed by the provisions of Article 97 of the Constitution which provides that the President and Judges of the Federal Supreme Court can not be removed while they administer justice. The assertion that judges who are of foreign origin would not be independent because of the question of the extension of their temporary contracts and visas, raising doubts about their independence, is demeaning to those judges' professional ethics and standards.

Federal Supreme Court Case number 17/2013 was conducted in all respects in accordance with the principles of fairness and equality of arms. As elaborated elsewhere in this document, the accused were entitled to freely choose their own lawyers and to consult with those lawyers in privacy and without the presence of security personnel. Moreover, the defence counsel was given ample had time to prepare their defence as the list of charges was made available to them in good time.

The accused also benefited from the presumption of innocence as guaranteed by Article 28 of the UAE Constitution and were tried for crimes specifically prohibited by the law in accordance with Article 27 of the UAE Constitution.

Moreover, despite the gravity of the accusations, which involved matters of State security in Case number 17/2013, the trial was open to the families of the accused and to the national media as well as national human rights organizations. As mentioned previously (see Section IV (g)), a special court chamber was set up to receive some 500 people in order to accommodate the large number of persons wishing to observe the trial.

6. *“Please explain what measures have been taken to ensure that individuals, including human rights defenders in the United Arab Emirates, are able to carry out their peaceful and legitimate activities without fear of judicial harassment or other restrictions.”*

The observance of human rights and fundamental freedoms is a principle that the UAE embraces. The UAE has incorporated fundamental human rights principles enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights into its Constitution and laws. In accordance with a number of human rights standards endorsed by the international community, Chapter III of the UAE Constitution is devoted to the subject of public freedoms, rights and duties, and contains a number of provisions (Articles 25 to 44) which

guarantee the protection of these rights, as well as a number of provisions of Chapter II regarding the Social and Economic Pillars of the Federation.

As stated above, the UAE has acceded or signed most of the UN Conventions on human rights, including the treaties against torture and other cruel, inhuman or degrading treatment or punishment, regarding the rights of the child, the rights of the persons with disabilities, the elimination of all forms of racism and of all forms of discrimination against women, among other treaties. The UAE is strongly committed to joining other international conventions protecting human rights in the future and to supporting the activities of peaceful human rights defenders who will have all judicial and administrative guarantees to carry out their activities without fear from anyone as long as they respect the law.

The efforts made by the UAE to guarantee human rights through enacting legislation and pursuing policies are reflected in the periodic review report of 2009 presented before the Human Rights Council, which received international acclaim.

V. Concluding Remarks

The Government of the UAE takes its international obligations in the area of human rights very seriously, including with regard to special procedures emanating from concerns of Special Rapporteurs. The matters raised in the joint communication involve serious and unfounded allegations implying severe restrictions on the rights and freedoms of UAE citizens. This response has been prepared in conjunction with the Ministry of Justice in order to convey in an expedited manner the written assurances of the UAE Government that the reports and information which led to issuance of the joint communication are inaccurate and misleading.

The Government of the UAE values and appreciates the work of the Office of the High Commissioner for Human Rights, as well as the various Special Rapporteurs involved in the protection of human rights throughout the world. We will continue to do our utmost to advance the human rights objectives they watch over and to uphold our own commitments to the international community and to our own citizens in that regard.