

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2 and 16/4.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the trial of Messrs. **Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali al-Khamis, and Ahmed Abdul Khaleq.**

The five human rights defenders were the subjects of an urgent appeal by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 27 September 2011, concerning their on-going detention and trial. Furthermore, Messrs. Ahmed Mansoor and Nasser bin Ghaith were the subjects of an urgent appeal by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of expression; and the Special Rapporteur on the situation of human rights defenders on 26 April 2011 (A/HRC/18/51, page 94), following their arrest and detention. We regret that to date no reply to these communications has been transmitted by your Excellency's Government.

According to the updated information received:

All five activists in this case are charged with violating Articles 176 and 8 of the United Arab Emirates' (UAE) Penal Code for political comments regarding public officials made on the UAE Hewart website – an online political discussion forum – that allegedly publicly insulted the President, vice-President and ruler of

Dubai, as well as the crown Prince. Mr. Mansoor is also charged as a co-conspirator. The UAE Government reportedly suspended public access to the website in early 2010. Article 176 of the Penal Code provides for a sentence of up to five years in prison for the crime of "publicly insult[ing] the State President, its flag or national emblem." Article 8 of the Code widens the application of the provision to include the vice-president, the crown Prince, members of the Supreme Council of the Federation, and other top officials.

The case is being prosecuted as a State security case subject to State security criminal procedure, which allegedly allows restrictions on procedural safeguards normally afforded to criminal defendants and requires that defendants be tried before the Federal Supreme Court as the court of first and only instance.

The first trial session took place on 14 June and was reportedly held behind closed doors. A further three hearings were also allegedly held in camera on 18 and 25 July and 26 September. Thereafter, three more hearings followed, where international observers were reportedly allowed to attend. The Supreme Court is scheduled to issue its verdict on 27 November. All five men reportedly continue to remain in detention in al-Wathba prison in Abu Dhabi. They reportedly started a hunger strike on 13 November 2011, in protest at their situation.

We have been informed of continuing and additional due process violations in the on-going trial of the five human rights defenders:

It is reported that the five defendants were not charged until nearly two months after their arrest and have been denied - despite repeated requests to this effect by their lawyers to the court - any meaningful opportunity to see the charges and evidence against them. We have been informed that during the 26 September hearing, the presiding judge reportedly told defendants that they would be provided with the charge sheet only once the prosecution rested its case, which is in fact normally the time when the defence should have the opportunity to present its case. It is also reported that the Ministry of Justice has produced at least two different versions of the charge sheets, leading to confusion and significant lack of clarity surrounding the alleged crimes involved in this case.

In addition, we have been informed that prison authorities do not permit confidential attorney-client visits as the defendants and their lawyers must reportedly speak through a glass, over monitored phones. They are also allegedly deprived of any ability to confidentially share documents because to do so requires passing the documents through prison authorities. We have been also informed that State security officials have specifically restricted the access of Messrs. Mansoor and bin Ghaith to their attorney although they are reportedly permitted to call another attorney who represents five defendants.

We have also received additional information in relation to the continuous change in the composition of the panel of judges reviewing the case, an issue that was already mentioned in our previous appeal of 27 September 2011. It is reported that all four judges on the panel are foreigners: two are Egyptian, one is Syrian, and one is Sudanese. As foreign judges, they do not have tenure positions in the

Court, as do Emirati judges, and reportedly need to have their contracts renewed by the executive branch when they come up for renewal every four to six years. It is further reported that the temporariness of the judges involved in the case has compromised the requirement of impartiality and the competence of the judges to adjudicate in this case as the judges have repeatedly changed throughout the course of the trial. Thus, during the first three hearings, a panel of three judges reportedly heard the case. At the first hearing, a Sudanese judge presided, and the other two panel members were an Egyptian judge and a Syrian judge. At the second and third hearings, the Sudanese judge was reportedly not present; instead a new Egyptian judge was added, apparently in his place. The second and third hearings were presided over by the same panel of three judges – two Egyptians and one Syrian. At the fourth hearing, these same three judges allegedly remained but the Sudanese judge returned, making a panel of four judges. During the fifth hearing, the same panel of four remained.

Additional information has been provided to us also in connection with the lack of respect of the principle of equality of arms during the trial. It is reported, for instance, that on September 26, after the Court had heard the last of the prosecution's witnesses, the presiding judge declared that the following hearing, on October 2, would be reserved for closing arguments from both sides, even though the defence had not yet had an opportunity to call any witnesses or cross-examine the prosecution's witnesses. Following objections, the Court modified its decision, admitting that they could not hear closing arguments before the defence had presented its case and reportedly agreed that the defence could call a witness during the October 2 hearing. However, at the hearing of 2 October, the Court reportedly heard closing arguments from the prosecution, in spite of the fact that the defence had still not presented its case. We have also been informed that the Court – besides depriving the defence of the right to call to cross-examine witnesses - has acted prejudicially against the defence also by way of routinely curtailing their right to be heard, including cutting them off abruptly when they objected to procedural deficiencies or when they made motions.

The lack of impartiality and of due respect for the principle of equality of arms in this case is also reportedly demonstrated by the fact that, during the 2 October hearing, the Court permitted four private attorneys to intervene in the case, despite the Court's previous ruling that these lawyers did not have the right to intervene nor standing to appear. The private attorneys allegedly claimed instead that they had a right to file civil claims for damages against the defendants for the emotional harm they suffered as a result of the statements the defendants made about the UAE rulers. Despite the defendants' objections to the intervention of these lawyers, and the Court's previous stance, the Court allowed the lawyers to remain in Court, to sit at counsel table and to stand and make counter-arguments to the defence. According to the information provided to us, their intervention appeared clearly to aim at unduly influencing the Court.

Concern continues to be expressed about the reasons for the prosecution of the five above-mentioned activists, whose only fault is reportedly to have expressed criticism about government policy and suggested political change in the country. In addition, we are concerned that this case is being prosecuted as a State security case, which allows a

series of restrictions on procedural safeguards for the defendants and their lawyers, and requires that the Federal Supreme Court is the first and only instance, i.e. depriving defendants of the right of appeal in such cases under UAE law. Concern is further expressed about various procedural flaws in the trial, as highlighted above.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the applicable international standards related to this case.

With regard to our concern in relation to the basis of the prosecution of five individuals, we would also like to remind your Excellency's Government of the obligation to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights (UDHR), which provides that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Moreover, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

With respect to the allegations concerning the obstacles for the defendants' lawyers to properly and effectively carry out their defence, we would like to bring to the attention of your Excellency's Government the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. In particular:

- Principle 8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

- Principle 16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (b) are able to travel and to consult with their clients freely both within their own country and abroad.

- Principle 18. "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

- Principle 21. "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient

time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time”.

- Principle 22. “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential”.

With respect to the allegations that during the trial the necessary fair trial guarantees - including the principle of equality of arms - have not been respected, we would like to draw the attention of your Excellency’s Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular:

- Principle 2. “The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”.

- Principle 6. “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected”.

As to the allegation that the Court – due to its composition and impermanent character - lacks independence and the necessary impartiality, we would like to refer to principle 12 of the above-mentioned Basic Principles: “Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists”. In this connection, and in relation to the temporary appointment of judges and the changing nature of the Court, we would also like to stress that the mandate of the Special Rapporteur on the independence of judges and lawyers has clarified that “temporary or provisional judges must have the same guarantees as those with a life or fixed-term tenure, given that they perform judicial tasks” and that “the discretionary dismissal of temporary judges puts the independence of the judiciary at stake”.

We would also like to stress that, according to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, prosecutors shall “in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights” (Guideline 12) and “carry out their functions impartially” in the performance of their duties (Guideline 13 (a)). Furthermore, Guideline 14 provides that “Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded”.

In addition, while we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency Government’s attention to the right to physical and

mental integrity of Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali al-Khamis, and Ahmed Abdul Khaleq.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali al-Khamis, and Ahmed Abdul Khaleq is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali al-Khamis, and Ahmed Abdul Khaleq are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali al-Khamis, and Ahmed Abdul Khaleq in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide details of any measures taken to ensure the respect of the five defendants' right to a fair trial by an independent and impartial tribunal.
4. Please provide information concerning the legal grounds for the arrest, detention and charges against Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali al-Khamis, and Ahmed Abdul Khaleq, and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights.
5. Please provide information on how the disproportionate measure of suspending public access to the Hewan website is compatible with international human rights norms and standards, in particular article 19 of the UDHR.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Chair-Rapporteur of the Working Group on Arbitrary Detention

Gabriela Knaul
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