

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection 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.

REFERENCE: 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 4/2013

6 August 2013

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 promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, 17/2, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the **sentencing of 69 individuals, including human rights lawyers, judges, academics and student leaders**, on 2nd of July 2013. Their names are listed in a separate annex.

Many of the individuals are members of al-Islah (Society for Reform and Social Guidance), a long-standing civil society organization in the United Arab Emirates operating in sectors such as education and charity and which calls for democratic reform and greater adherence to Islamic principles in the United Arab Emirates. The 69 individuals were among the 94 individuals subject of a communication sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 16 April 2013. While we thank your Excellency's government for the reply received on 10 June 2013, we remain concerned at the issues expressed therein, in particular the arrests and detentions, allegations of the use

of torture and/or cruel, inhuman and degrading treatment, reported lack of fair trial and due process guarantees, and reported lack of independence of the judiciary.

According to the new information received:

The 69 individuals who were sentenced on 2 July 2013 allegedly supported a petition signed by 133 scholars, human rights defenders and lawyers in March 2011, which inter alia called for reform on social, broadcast and print media and led to the detention of five individuals, known as the "UAE 5". The 69 individuals were detained, along with 25 others, during the spring and summer of 2012, many reportedly without charge. On 27 January 2013, the 94 individuals were reportedly charged with founding, organizing and administering an organization aimed at overthrowing the government. They first appeared before the Federal Supreme Court on 4 March 2013.

The majority of the detainees were allegedly not presented before the State prosecutor within the time frame of 21 days stipulated by domestic law. Furthermore Mr. Ahmed Ghaith al-Suweidi was reportedly considered a missing person as he was held incommunicado for four months after his initial detention. Despite denials from the authorities that Messrs. Rashid al-Roken and Abdullah al-Hajiri had been arrested on 17 July 2012, and Mr. Najeeb Amiri on 31 July 2012, all three appeared in court on 4 March 2013 and were reportedly charged with sedition.

It is alleged that throughout the trial proceedings there have been numerous irregularities, in addition to those already mentioned in the Urgent Appeal dated 16 April 2013.

On 28 February 2013, the defence lawyers reportedly received court documents of over 1,500 pages in preparation for the first trial due to be heard on 4 March 2013. Allegedly, the defence team have been harassed, had members deported and been unable to meet freely and privately with their clients. It is further reported that one of the defence lawyers was prevented from making legal submissions prior to the day of the trial.

Furthermore, international observers who had intended to observe the trial on 4 March 2013 were reportedly prevented from entering the UAE. Despite having completed procedural requests, all trial observers were allegedly denied access to the trial on 11 March 2013. Only family members were, however, allowed access to the court. Moreover, defence lawyers were allegedly prevented from bringing any materials into court, including case files. Additionally, one of the defence lawyers, who represents 76 of the defendants, was not allowed to have his assistants attend the trial with him.

It is further alleged that comments reportedly made by members of the royal families publicly condemning the defendants may have interfered with the defendants' right to a fair trial by an independent tribunal, particularly as the

judges of the Federal National Court are appointed by members of the ruling family. Moreover, it is alleged that defamatory campaigns carried out by State security services on social, broadcast and print media may have further jeopardized the defendants' presumption of innocence and right to a fair trial. Attempts to bring cases against the people responsible for this campaign have reportedly been blocked or simply not acted upon.

Reportedly, there have been allegations of torture, or other forms of cruel, inhuman or degrading treatment or punishment, as far back as the defendants' court appearance in September 2012. These allegations are allegedly based on eyewitness' testimonies. During the first hearing on 4 March 2013, several defendants reported severe torture whilst in detention, the details of which were outlined in the communication of 16 April 2013. Medical examinations were ordered by the judge on this occasion, but it is reported that no investigation has taken place with regard to these allegations. Furthermore, Mr. Obaid Yousif al-Zaabi was allegedly arrested after criticizing UAE authorities with regard to the trial and alleging that his brother Ahmed had been tortured. According to the response received from your Excellency's government on 10 June 2013, the government expected the allegations of torture to be addressed in the verdict expected on 2 July 2013. However it is reported that there has been no independent investigation thus far, despite the fact that further credible allegations of torture have been made since then.

Finally, on 2 July 2013, 69 of the 94 defendants were sentenced for "plotting to overthrow the State". The verdict was given in separate sentences; one group was allegedly sentenced in absentia to 15 years in prison; a second group was sentenced to ten years imprisonment with three years' probation and a third group was sentenced to seven years imprisonment. The remaining 25 were acquitted. However, two of the acquitted, Messrs. Ahmed al-Hammadi and Mohamed al-Shaami were reportedly re-arrested on 3 July 2013. State security agents had allegedly told them that this would happen even if they were acquitted. According to the information received, the two men were released on 9 July 2013, but were not given any reason for their six days' detention.

Concern is expressed at the allegations of an unfair trial expressed in this communication. Serious concern is expressed at the sentencing of 69 of the 94 accused, despite consistent concern surrounding irregularities in the proceedings. Grave concern is expressed at the allegations of ill-treatment directed towards the defendants whilst in detention which, if corroborated, would amount to torture, and the lack of thorough investigations of these serious allegations.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons 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 (UDHR).

Article 10 of the UDHR in particular stipulates that: “Everyone is entitled in full equality to a fair and public hearing by an independent an impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Regarding the allegations that the defence lawyers did not have adequate time to prepare their clients’ defense, we would like to refer your Excellency’s Government to 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, and in particular principle 21, which states: “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.”

Regarding allegations of harassment and deportation of members of the defence teams, as well as allegations that the lawyers could not meet privately with the clients, we would like to refer Your Excellency's Government to the following principles of the Basic Principles on the Role of Lawyers:

- Principle 16, which states: “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”;

- Principle 17, which states: “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”; and

- Principle 18, which states: “Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”

Regarding allegations of lack of independence of the judiciary, we would like to refer 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, and in particular principle 1, which states: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”

Regarding allegations of defamatory campaigns carried out by State security services, we would like to refer your Excellency's Government to article 11(1) of the UDHR, which states: “Everyone charged with a penal offence has the right to be

presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

We should also like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Excellency’s Government acceded on 19 July 2012.

With regard to the allegations of torture, or other forms of cruel, inhuman or degrading treatment, we would like to draw the attention of your Excellency’s Government once again to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

With regard to the alleged incommunicado detention of Mr. Ahmed Ghaith al-Suweidi, we would like to draw the attention of your Excellency’s Government to paragraph 8b of Human Rights Council Resolution 16/23, which reminds States that “Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

With regard to the allegation concerning the lack of a prompt and impartial investigation into the allegations of torture and ill-treatment, we would also like to remind your Excellency’s Government’s to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency’s Government’s attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States “To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;”.

We would like to appeal to your Excellency's Government 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 UDHR which provides that "[e]veryone 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."

We would also like to call on your Excellency's Government to take all necessary steps to secure the rights to freedom of peaceful assembly and of association in accordance with fundamental principles as set forth in article 20 of the UDHR which provides that "[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In addition, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de

facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

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 the above-mentioned persons 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. Please provide the details, and where available the results, of any investigation, judicial, medical or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why. In particular, please provide information concerning steps taken by your Excellency's Government to investigate the allegations of torture and other cruel, inhuman or degrading treatment.
3. Please provide information concerning access of human rights monitors and independent civil society representatives to all places of detention within the UAE.
4. Please provide detailed information concerning measures which are taken to prevent human rights violations being perpetrated by members of the security forces, particularly members of the prison services.
5. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.
6. Please provide the full details concerning the legal grounds for the arrest and detention of the above mentioned persons and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR.
7. Please explain why access to the trial was allegedly denied to international and other observers and how this is in line with international human rights principles on the right to a fair and public hearing.

8. Please provide detailed information on the legal proceedings against the 69 individuals and explain how these complied with international human rights standards on the right to a fair trial and due process guarantees, in particular the principle of equality of arms.

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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons 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.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Group 1, those sentenced in absentia to 15 years in prison:

Mohammed Saqr Yousef Al Zaabi
Abdul Rehman Khalifa Salim bin Subaih
Saeed Nasser Saeed Nasser Al Tenaiji
Mohammed Jassem Mohammed Darwish Al Nuaimi
Khalaf Abdul Rehman Al Rumaithi
Jassim Rashid Al Shamsi
Ahmed Mohammed Abdullah Mohammed Al Shaiba
Hamad Mohammed Rahma Obeid Al Shamsi

Group 2, those sentenced to ten years' imprisonment with three years' probation:

Saleh al-Dhufairi
Mohamed Abdulrazzaq Alsidiq
Ahmed Ghaith al-Suweidi
Ali al-Hammadi
Shaheen al-Hosani
Husain al-Jabiri
Hassan al-Jabiri
Ibrahim al-Marzooqi
Ahmed al-Zaabi
Sultan bin Kayed al-Qasimi
Salim Sahooh
Ahmed al-Tabour al-Nuaimi
Abdulrahman al-Hadidi
Mohamed al-Mansoori
Khalifa al-Nuaimi
Rashid Omran al-Shamsi
Khalid al-Shaiba al-Nuaimi
Ibrahim al-Yassi
Husain al-Najjar
Mohamed Abdulla al-Roken
Essa al-Sari
Salim Hamdoon al-Shehhi
Issa Khalifa al-Suweidi
Juma Darwish al-Felasi
Tariq al-Qasim
Saif al-Egleh
Hamad Roqait
Tariq Hassan al-Qattan
Musabeh al-Rumaithi
Abdulrahmeem al-Zaroon
Abdulsalam Darwish

Saeed Nasser al-Wahidi
Ali Abdullah Mahdi al-Manie
Khalid Mohammed Alyammahi
Hassan Mohammed al-Hammadi
Ahmed Saqer al-Suweidi
Saif Aletr
Najeeb Amiri
Fuad Mohammed al-Hammadi
Ahmed Saif al-Matri
Abdulaziz Hareb
Ali Abdulla al-Khaja
Abdulla al-Jabri
Rashid Khalfan bin Sabt
Ali Salim al-Gawws al-Zaabi
Ali Saeed al-Kindi
Hadif al-Owais
Mohammed al-Abdouli
Abdulraheem Naqi
Khaled Fadel Ahmed
Salem Mousa al-Halyan al-Tuniji
Ahmed Hajji al-Qobaisi
Ahmed Hassan al-Rostomani
Ahmed Kayed al-Muhairi
Ismael Abdullah al-Hosani
Ali Mohammed bin Hajar al-Shehhi

Group 3, those sentenced to seven years' imprisonment:

Omran Ali Hasan Al Radhwan Al Harthi
Mahmoud Hasan Mahmoud Ahmad Al Hosani
Abdullah Abdul Qader Ahmad Ali Al Hajiri
Mansour Hasan Ahmed Al Ahmadi
Fahd Abdul Qader Ahmed Ali Al Hajiri.