



# **United Arab Emirates: Criminalising Political Dissent - UAE 94 trial deeply flawed**

Judicial Observation Report  
August 2013

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## I. INTRODUCTION

1. The trial of 94 intellectuals, activists, and human rights defenders, took place before the Special Security Court within the Federal Supreme Court in Abu Dhabi, United Arab Emirates (UAE) between 4<sup>th</sup> March and 2<sup>nd</sup> July 2013. A coalition of four human rights organisations - the Gulf Centre for Human Rights (GCHR), the International Federation for Human Rights (FIDH), the Arab Network for Human Rights Information (ANHRI) and the Cairo Institute for Human Rights Studies (CIHRS) - appointed observer Melanie Gingell, a barrister of Doughty Street Chambers in London to monitor and report on the trial.
2. On 27<sup>th</sup> January 2013, the 94 defendants were charged with founding, organising and administering an organisation aimed at overthrowing the government, contrary to article 180 of the penal code. The offence carries a maximum sentence of 15-years' imprisonment.
3. At the conclusion of the trial on 2<sup>nd</sup> July 2013, 69 defendants were convicted and 25 acquitted. Many were sentenced to 10 years and others to 7 years imprisonment. The group tried in absentia received 15 years imprisonment and the UAE has started extradition proceedings against them.
4. The observer attempted to gain access to the first two hearings on 4<sup>th</sup> and 11<sup>th</sup> March and the final hearing which took place on 2<sup>nd</sup> July 2013. She was denied entry to all hearings. As set out in the first report<sup>1</sup>, international observers were asked to comply with procedures and provide documents. All procedures were complied with but the observers were still denied entry.
5. The coalition was informed in writing by the UAE Ministry of Justice that the final hearing in the trial of the UAE 94 would be open to the public and that international observers would be permitted entry in order to monitor proceedings. However, on attending at the Ministry of Justice on the day prior to the hearing the observer was informed that she would not be admitted.
6. On the day of the hearing it was not possible to approach the Federal Supreme Court as the surrounding roads were subject to police roadblocks. There was a very heavy police presence in the surrounding area.
7. No independent observation of the trial was allowed. The international media were also barred from the proceedings.

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<sup>1</sup> See at "Trial Observation Report", 26<sup>th</sup> March 2013 at <http://www.fidh.org/United-Arab-Emirates-Flagrant-disregard-of-fair-trial-guarantees-shown-at-13083>

8. The content of this report is therefore based on information gained from interviews with family members who were allowed access to the hearings, from local activists, from local press reports and other reports of international organisations.
9. This report concludes that the trial was marred by recurrent and serious breaches of internationally agreed standards of fair trial. This has led to 69 unfair convictions and the imposition of lengthy terms of imprisonment from which there is no right of appeal.
10. It further finds that credible allegations of torture, which were repeatedly made by defendants to the tribunal, were ignored. The allegations are consistent with other reports of torture that have been made in UAE over the last 10 years<sup>2</sup> leading to the fear that torture is systematic within the state's penal system and the conclusion that it has occurred in this case. The failure by the authorities to allow independent observation of the trial and to instigate any investigations into the allegation adds weight to this conclusion. The failure to investigate the allegations of torture puts the authorities in breach of their international obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by the UAE in July 2012.

## **II. THE DEFENDANTS**

11. The large group of defendants includes prominent human rights lawyers, academics, judges, teachers and student leaders. They are all Emiratis with an interest in political reform. Many are members of a local group, the Reform and Social Guidance Association (Al-Islah), which advocates greater adherence to Islamic precepts. The group has engaged in peaceful political debate for many decades in the UAE. They have called on the ruling families of the UAE to take evolutionary steps towards democracy in the country.

## **III. THE CHARGES**

12. All 94 defendants were charged under articles 117, 180/1 and 182 of the Federal Penal Code.
13. The primary charge against the 94 defendants of founding and administering an institution aimed at overthrowing the government is pursuant to Article 180 of the federal penal code. It provides that:

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<sup>2</sup> See AI reports on UAE <http://www.amnesty.org/en/region/uae?page=8>

*A punishment of temporary imprisonment shall be inflicted on any person who institutes, founds, organises or administers a society, corporation, association, organisation, group, gang, or a subsidiary thereof of whatever name, aiming at overthrowing, seizing, or opposing the basic principles supporting the government regime in the State, or preventing any institution of the state or any public authority from exercising its functions, or attempting at the citizens' personal or other freedom or public rights guaranteed by the constitution or law, or harming the national unity or social peace. A punishment of imprisonment for a period not exceeding ten years shall be inflicted on any person who joins a society, corporation, association or the organisations stated in the first paragraph of this article or cooperates therewith or participates therein in any manner or provides them with any financial or material aid whilst being aware of their purposes.<sup>3</sup>*

#### **IV. ARRESTS AND PRE-TRIAL DETENTION**

14. The arrests began in early 2012 when 7 Emirati citizens were arrested after having been stripped of their nationality in December 2011. The arrests continued until many men were detained and held incommunicado in secret detention centres without charge. Of these people, at least 25 had signed a petition in March 2011 calling for democratic reform in the country. Arrests continued until a total of 94 were charged within the same indictment.

#### **V. THE HEARINGS**

15. The hearings took place in the Special Security Court within the Federal Supreme Court in Abu Dhabi before a tribunal made up of Presiding Judge Falah Al-Hajiri, Judge Mohamed Ahmed Abdulqader and Judge Adbulrassol Tantawy. There were a total of 14 days set aside to hear the case of the 94 defendants. The hearing days were not consecutive and took place on various dates between 4<sup>th</sup> March and 2<sup>nd</sup> July 2013. Several of the sessions did not last for a full day.
16. At the first hearing on 4<sup>th</sup> March, the 61 male defendants who had been detained and 13 women who had been granted bail entered pleas of not guilty. At the second hearing on 11<sup>th</sup> March a further 12 defendants (some of them relatives of the detainees) had been arrested and entered pleas of not guilty. This brought the total present at the hearings to 86. The remaining 8 were tried in absentia as they were outside the country.
17. At the final hearing on 2<sup>nd</sup> July 2013, 69 were found guilty and 25 acquitted including the 13 women defendants.

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<sup>3</sup> <http://www.scribd.com/doc/122309224/UAE-Penal-Code-amended-1987#page=72>

18. Many defendants were sentenced to 10 years and the 8 who were tried in absentia were sentenced to 15 years. The rest received terms of 7 years and some financial penalties. The sentences are followed by a three-year monitoring period for those sentenced to 10 years.

## **VI. RIGHT TO A FAIR TRIAL**

19. The right to a fair trial guarantees all persons a public hearing before a legally constituted, competent, independent and impartial tribunal.<sup>4</sup> By international law, this right is an absolute one that may suffer no exception.<sup>5</sup>

## **VII. UAE, REGIONAL AND INTERNATIONAL LEGAL FRAMEWORK: RIGHT TO A FAIR TRIAL**

20. There are constitutional fair trial guarantees under the terms of Article 28 of the UAE constitution that: “an accused shall be presumed innocent until proven guilty in a legal and fair trial.”

21. The Arab Charter on Human Rights is the binding regional instrument ratified by the UAE:

Article 13 (1) of the Arab Charter guarantees the right to a fair trial in criminal proceedings “before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him...”

Article 13 (2) guarantees that trials “shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights.”

Article 14 (1) provides that: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.”

Article 14 (5) provides that: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”

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<sup>4</sup> International Covenant on Civil and Political Rights Article s 2(1),3.14 (1),26.

<sup>5</sup> United Nations Human Rights Committee, *General Comment 32*, paragraphs 18 and 19.

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Article 16 sets out the presumption of innocence and the following minimum guarantees including equality of arms, adequate time to prepare a defence, to be able to communicate with his/her family, the right to appeal and to security of person and privacy:

1. *The right to be informed promptly, in detail and in a language which he understands, of the charges against him.*
2. *The right to have adequate time and facilities for the preparation of his defense and to be allowed to communicate with his family.*
3. *The right to be tried in his presence before an ordinary court and to defend himself in person or through a lawyer of his own choosing with whom he can communicate freely and confidentially.*
4. *The right to the free assistance of a lawyer who will defend him if he cannot defend himself or if the interests of justice so require, and the right to the free assistance of an interpreter if he cannot understand or does not speak the language used in court.*
5. *The right to examine or have his lawyer examine the prosecution witnesses and to secure the attendance of witnesses on his own behalf and for such witnesses to be examined in the same way as the witnesses against him.*
6. *The right not to be compelled to testify against himself or to confess guilt.*
7. *The right, if convicted of the crime, to file an appeal in accordance with the law before a higher tribunal.*
8. *The right to respect for his security of person and his privacy in all circumstances.*

22. In addition to the binding instruments set out above there are relevant persuasive standards contained in the Universal Declaration of Human Rights (1948), the United Nations Basic Principles on the Independence of the Judiciary (1980) and the United Nations Basic Principles on the Role of Lawyers (1990).

23. The United Nations Basic Principles on the Independence of the Judiciary<sup>6</sup> state in the following articles:

1. *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.*

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<sup>6</sup> 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.

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*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.*

*3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.*

*4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.*

*12. 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.*

24. The United Nations Basic Principles on the Role of Lawyers<sup>7</sup> state that:

*1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.*

25. The Universal Declaration of Human Rights Article 3 guarantees “the right to life, liberty and security of person.”

26. Although the UAE is not a signatory to the International Covenant on Civil and Political Rights, it constitutes an authoritative source and guideline reflecting international best practice in relation to the conduct of criminal trials. Article 14 states:

*1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*

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Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).



3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*

*(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*

*(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*

*(c) To be tried without undue delay;*

*(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

5. *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*

## **VIII. VIOLATIONS OF THE RIGHT TO A FAIR TRIAL**

### **Right to a fair trial before a competent, independent and impartial court**

27. There are concerns that the tribunal in this case was not independent and free to conduct the trial in a proper manner. These concerns are based upon:

(1) At the first hearing on 4<sup>th</sup> March the judge ordered that five defendants, Khamis Al-Sam, Abdulsalam Darwish, Ibrahim Al-Yassi, Saif Al-Ichlah and Adnan Julfar, be transferred to hospital in order to be examined by medical specialists. This order was never carried out. This was the only time that the judge acknowledged the poor physical condition of defendants in the trial. The judge did not pursue the failure to comply with the order. He further refused to entertain the defendants' frequent appeals at later hearings to investigate allegations of torture.

(2) At the 6<sup>th</sup> session on 16<sup>th</sup> April the judge demanded to know why the case papers had not been supplied to the defendants. The judge called for the prison wardens to be brought to court to explain. There was no compliance with this order.

(3) At the 6<sup>th</sup> session the judge also criticised local media who had published articles endorsing prosecution evidence and approving the charges against the defendants. The local media nevertheless continued to publish a series of prejudicial articles in the run up to the final hearing.

- (4) At the 7<sup>th</sup> session on 30<sup>th</sup> April the judge ordered that the defendants be returned to state run prisons (instead of secret detention places where some of them were being held).
- (5) At the hearing on 6<sup>th</sup> May the defendant Mohammed Abdullrazaq stated that the judge's order at the end of the last hearing had been overruled by security services in that the 7 defendants who had had their citizenship stripped from them were taken back to Al-Sader jail instead of Al-Razeen with the other defendants. They were held there incommunicado in solitary confinement.
- (6) The judge again ordered that the prison wardens allow the defendants to have the case papers. He ordered that the Public Prosecutor personally supervise that this order be carried out. This order was complied with in a partial manner at later stages in the trial.
28. The discrepancy between the judicial approach to allegations of torture and that to providing case papers lead to concern that the tribunal was not free to follow lines of inquiry concerning torture and that some other agency had intervened. But further, where the judge did attempt to control proceedings through orders, often these were not carried out.
29. After the first hearing the judge did not pursue his initial ruling to have certain defendants medically examined. He allowed defendants to make allegations of torture within the proceedings but did not make any rulings in relation to the allegations. In particular he did not order any investigation into the allegations.
30. In contrast to this, the tribunal repeatedly ordered the prosecution to ensure that case papers were delivered to the defendants in detention over the course of many hearings. These orders, however, were never fully carried out.

## **Right to a Public Hearing**

31. Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects fundamental freedoms and human rights.<sup>8</sup>
32. The trial was not held in public. The authorities made no suggestion that there should be restrictions warranted by the interests of justice or of national security; on the contrary, the authorities continued to claim the hearing was fully open to the public despite denying entry to some family members, members of the general public, the international media and international legal observers. Further, people who have used social media to publicise aspects of the trial have been imprisoned (see below).

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<sup>8</sup> Arab Charter on Human Rights, Article 13(2)

33. Strict procedures were put in place for family members to gain entry to the court. Each male defendant was allowed two family members and each female one family member. They had to provide copies of ID cards and car registration plates. They could take nothing in with them. Some family members were arbitrarily refused entry to certain hearings.
34. Some people who discussed what happened inside the courtroom have been imprisoned. On 8<sup>th</sup> April 2013 Abdullah Al-Hadidi, the son of a defendant, was convicted under Article 1 of the new Cybercrimes Decree of spreading false information about the trial and sentenced to 10 months imprisonment. He had tweeted that allegations of torture within the trial should be investigated. On 11<sup>th</sup> May 2013 Waleed Al-Shehhi, an Emirati not connected to the trial used his twitter account to make statements supportive of the UAE 94. He was initially detained at an unknown location, until he was transferred to Al-Wathba jail on 17<sup>th</sup> May. At least ten individuals from the families received calls from the court after the hearing on 19<sup>th</sup> March 2013 informing them that they may no longer attend the hearings. These individuals had all tweeted about the court proceedings.
35. The international media was denied entry to the proceedings. Following the first hearing on 4<sup>th</sup> March the security services confiscated cameras and recording equipment when journalists tried to interview defendants' relatives in a public place.
36. Prior to the first two hearings, international legal observers were required to provide documents and attend at different ministries to get permission to enter. Despite complying with all the requirements they were not admitted. One member of the legal observation team was followed by security services.
37. Prior to the last hearing on 2<sup>nd</sup> July 2013, the observer was informed in writing by the ministry of justice that she would be admitted. She was not, and further she and a journalist were taken by police and detained at a police station because they spoke to relatives of the defendants in a public place after the hearing. They were later released without charge. A senior officer apologised to the observer.
38. Representatives of the local media were admitted. Their reporting during the course of the trial was so partisan as to be criticised by the tribunal.
39. Overall, it was obvious that this trial was not held in public. The authorities did not approach this issue in an open and transparent way. Their claims that the hearing was public were demonstrably untrue.

## **Presumption of Innocence**

40. The terms of the local press coverage was such as to ignore the presumption of innocence. For example on 28<sup>th</sup> January 2013 *The National* published an article quoting the Attorney General, Salim Saeed Kubaish setting out the prosecution case at length as if it had already been proven. The paper reports him as saying for example that the UAE 94 “launched, established and ran an organisation seeking to oppose the basic principles of the UAE system of governance and to seize power.”
41. The local press continued to report the case in partisan terms throughout the life of the trial.
42. The defendants were treated as if they were convicted criminals in the course of the trial. They were brought to court in handcuffs and shackles. Until the fourth hearing, they were obliged to wear prison uniform in court instead of civilian clothing as would be usual for remand prisoners.

## **Right to Defence**

43. The prosecution evidence ran to approximately 7000 pages and it would therefore have taken many hours over many months to prepare a defence adequately. None of the defendants or their lawyers received documents in good time so as to allow this to happen. Some of the defendants received incomplete court documents after the trial had begun. Many did not receive documents until very late in proceedings. This problem was raised before the tribunal on many occasions but the situation was not remedied.
44. One defence counsel had to act for 86 of the defendants as other lawyers were reluctant to come forward. There were a total of 7 defence lawyers in the case. One withdrew in the course of the trial citing personal reasons.
45. Not all the defendants had had an opportunity to see a lawyer before the trial commenced. At the third hearing on 18<sup>th</sup> March, for example, a defendant told the judges that he had not yet been able to see a lawyer.
46. On 19<sup>th</sup> March Khames Al-Sam, a sitting judge prior to his arrest, told the tribunal that he had been denied the opportunity to prepare a defence over the previous 6 months.

47. At the hearing of 26<sup>th</sup> March the defendant Dr Al-Roken, a human rights lawyer, handed the tribunal a formal request that the defendants be allowed access to the case papers and be allowed to prepare a defence. This document listing many violations of the right to a fair trial was signed by 72 defendants. The tribunal declined to consider this application and the trial continued. At the same hearing the defence lawyer for the 86 defendants complained to the judge that he had again been unable to visit those of his clients detained at Al-Wathba jail.
48. At the hearing on 6<sup>th</sup> May 2013, the defendant Khalid Al-Shiba told the tribunal that the lengthy handwritten notes he had prepared having read the case file had been confiscated by the prison authorities.
49. The trial took place over the course of 13 days. This meant that there was inadequate time for 94 defendants to be heard sufficiently or at all.
50. Overall, the observer was driven to the conclusion that the defendants were not given the chance to defend themselves properly and were not given adequate time and facilities for the preparation of their defence.

## **Right to Equality of Arms**

51. The defence was significantly disadvantaged in comparison to the prosecution. They did not have the same procedural means and opportunities available to them during the course of the trial nor were they in an equal position to make their case.
52. At the hearing on 26<sup>th</sup> March 2013, the defendants Ahmed Al-Tabour, Salim Sahooh, Abdulrahmin Al-Zarouni, Dr. Hadif Al-Owais and Rashid Khalfan Bin Sabt all asked to be allowed to speak but were not allowed to do so.
53. The prosecution team sat to the right of the judges, closer to them than the defence, who sat at tables facing the judges. When the court rose, the judges and the prosecution retire to the same room. The prosecutor had the opportunity to discuss the case with the judges outside the courtroom in the absence of the defence lawyers.
54. The defence lawyer representing the 86 defendants was initially not allowed to bring case documents into court. The defence was not afforded a transcript of the proceedings, as was provided to the prosecution. In addition, the defence was not given copies of voice recordings and videos relied on by the prosecution.

## **Right to Call and Examine Witnesses**

55. The defendants did not have the right to examine witnesses against them and to secure attendance and examination of witnesses on their behalf under the same conditions as witnesses appearing against them.
56. Defence lawyers were restricted in the number of witnesses they could call and the number of questions they could ask. At the hearing on 18<sup>th</sup> March 2013 three prosecution witnesses gave evidence. Only three defendants were allowed to ask questions. The defence lawyers were limited to five questions each. One of them had prepared a total of 400 questions.
57. At the hearing on 26<sup>th</sup> March 2013 six sealed envelopes containing videos were handed to the tribunal. The defence had not had an opportunity to see this evidence in advance. They were not given an opportunity to instruct voice recognition experts in order to rebut those instructed by the prosecution.
58. The defence wanted an opportunity to call expert witnesses to show that the signatures on statements which the prosecution claimed had been signed by the defendants had been falsified. They were denied the opportunity.
59. The matters set out above suggest that defence questioning was limited to an unreasonable degree in the course of the trial. No similar restrictions appear to have been imposed on the prosecution.

## **Right to a Public and Reasoned Judgment**

60. Everyone has the right to know the basis upon which a judgment is made against them.<sup>9</sup> Despite the fact that many were convicted and sentenced to lengthy custodial terms on 2<sup>nd</sup> July, no reasoned judgment was made available to the defendants until after their lawyers received it on 25<sup>th</sup> July 2013.

## **Right to Appeal**

61. Everyone convicted in criminal proceedings has the right to challenge his or her conviction and sentence and have it reviewed before a higher tribunal.<sup>10</sup>

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<sup>9</sup> Human Rights Committee: General Comment 32

<sup>10</sup> United Nations International Covenant on Civil and Political Rights, Article 14, para. 5

62. In this case the Special Security Court has been constituted with no higher tier of courts for appeal. The authorities have an obligation to arrange their procedures so as to ensure that there is the possibility of double judicial scrutiny in all cases. The establishment of special jurisdictions for certain categories of crime or of people is not an adequate reason to fail to provide a forum for appeal.<sup>11</sup>

## **IX. LEGAL FRAMEWORK IN RELATION TO TORTURE AND INHUMAN TREATMENT**

63. The UAE ratified the United Nations Convention Against Torture and Other Cruel or Degrading Treatment or Punishment in July 2012:

Article 2 guarantees the right to be free of torture: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

Article 12 provides that: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

Article 15 provides that: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

64. There is a constitutional guarantee against torture in the UAE Constitution in Article 26: “... No person shall be subjected to torture or to degrading treatment.”

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<sup>11</sup> Human Rights Committee Views of 1st November 1991, Raphael Henry v Jamaica, Communication No.230/1987

## **X. VIOLATIONS OF THE RIGHT TO BE FREE FROM TORTURE**

65. Credible and widespread allegations of torture of the defendants were made throughout the proceedings. They were made in court during the first hearing and repeated on several occasions. At the first hearing the tribunal ordered that five defendants be transferred to hospital and be examined by specialists. This order was never carried out and the defendants were returned to their places of detention without medical assessment or treatment.
66. Witnesses in the courtroom described the physical condition of some of the defendants as being poor. They had lost significant amounts of weight, some were incoherent, and some had to be supported in order to stand. Some of the relatives were distressed by the appearance of their family members.
67. The tribunal failed to order independent investigations into the veracity of the allegations. The trial was allowed to proceed despite the Judge's view that some of the defendants required hospital treatment.
68. A central piece of evidence relied on by the prosecution was the apparent confession of Ahmed Bin Ghith Al-Suwaidi. He retracted the statement at the first opportunity at the first hearing. He made a plea to the court to protect his life and those of his family as he had been told they would be killed if he dared to plead not guilty.



## **Allegations of torture and inhuman treatment during the pre-trial period**

69. The family and lawyers of Ahmed Al-Suwaidi complained that he was held incommunicado at a secret location prior to the trial. This would amount to an enforced disappearance placing Al-Suwaidi outside the reach of law.<sup>12</sup>
70. The prosecution case papers record that Dr. Ahmed Al-Zaabi made an allegation of torture during the course of an interrogation, including being suspended upside down and blindfolded.

## **Hearing of 4<sup>th</sup> March 2013**

71. Dr. Al-Roken called on the court to order that Ahmad Ghaith Al-Suwaidi be given treatment because of the obvious signs of intense psychological anguish he exhibited. Dr. Al-Roken also called for his son and son-in-law to be released as they had suffered 5 months of enforced disappearance during which time they had suffered physical torture including beatings.
72. Ahmad Ghaith Al-Suwaidi made a plea that his life and those of his family be spared.
73. The lawyer for the defendant Judge Dr Ahmad Al-Zaabi alleged that his client had been tortured including having his nails extracted.
74. Issa Al-Sari said he had been locked in a vehicle for approximately half an hour while petrol fumes were directed in through the air vents causing him to choke and struggle to breathe.
75. Dr. Ibrahim Al-Yassi told the Court he had been beaten and suffered facial injuries especially to his mouth.
76. Rashid Al-Roken, Dr. Al-Roken's son, said he had been beaten several times a day.

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<sup>12</sup> Article 2 International Convention for the Protection of All Persons from Enforced Disappearance: *For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.*

### **Hearing of 11<sup>th</sup> March 2013**

77. Dr. Ahmed Saleh Al-Hammadi said he had been treated in a degrading manner. He had been handled roughly and threatened with physical violence if he did not cooperate. He said that he could hardly recognise some of the defendants now as they looked as if they had “come out of their graves.”
78. Issa Al-Sari was in a very poor psychological condition. He was talking to himself and at times shouting incoherently. He seemed to be hallucinating. Medical experts from among the relatives in court speculated that he could have been under the effects of a drug. The relatives were shocked and distressed by his appearance.
79. Ahmad Ghaith Al-Suwaidi was in a poor condition. He did not seem to be aware of his surroundings, he did not speak and only shook his head when he was spoken to.
80. A defendant suffering from a bladder disease was denied access to adequate toilet facilities.
81. Dr. Al-Roken gave further details of the torture inflicted on his son and son-in-law. He said that on one occasion over the course of ten days they were repeatedly beaten on the hands and knees and that bodily hair was pulled out. They were put in electric chairs and threatened with electrocution.
82. Lawyers requested that the health of all defendants be assessed because of their dramatic weight loss.

### **Hearing of 19<sup>th</sup> March 2013**

83. The defendant judge Khamees Al-Sam told the judge that defendants who were ill and being held in the prison medical clinic were being shackled and left in solitary confinement between 10pm and 5am.

### **Hearing on 26<sup>th</sup> March 2013**

84. The defendant judge Dr. Ahmed Al-Zaabi told the judge that he had been severely beaten during interrogation to the extent that he had urinated blood. He had several wounds including bruising on the legs. One leg was so swollen it looked like “an elephant’s leg.” He had been unable to sleep or pray. He had been unable to walk properly for a month. He had been denied medical care.

85. The judge refused to give Fatimah Humidan leave to travel for medical treatment. She presented a report from her cardiologist saying that she needed urgent heart surgery, which was not available in the UAE. The judge said that the report should say that she needed to travel abroad not just that the procedure wasn't available in the UAE.
86. The 70-year-old mother of Dr. Al-Roken was denied entry to the hearing although she had attended all previous hearings. She had travelled for two hours to attend. The security services said her name was not on the list.

### **Hearing of 6<sup>th</sup> May 2013**

87. Abdullah Al-Hajri stated that after he was detained, the prosecution denied to his family that they knew where he was. During this time he was beaten several times a day and subjected to electric shocks.
88. Ibrahim Al-Marzooqi told the judge that he had been tortured in detention for a month. The judge told him that this was not the time to discuss such things.
89. A letter was submitted to the court listing 17 types of torture to which the defendants had been subjected. It was signed by 71 of them.

### **Outside the trial hearings**

90. On 9<sup>th</sup> May the defendants who are members of Al-Islah wrote a letter to the President of the UAE which included details of abuses they had suffered. In relation to torture they wrote, "We members of Al-Islah, were unlawfully imprisoned. We were held in solitary confinement for months in cramped window-less cells. As the painfully bright lights blared day and night, we were insulted, sworn at, threatened, and verbally abused. Some of us were physically abused as well. We were denied our right to legal counsel, and to medical care - to mention only a few of the horrendous violations we went through. Those violations are both alien to our country and ill suited for it."

## **XI. CONCLUSION ON TORTURE AND INHUMAN TREATMENT**

91. By the end of these proceedings there have been constant and consistent allegations of the most serious torture and cruel, inhuman and degrading treatments of the defendants. The number of complaints, the terms of those complaints and the wide variety of the sources of those complaints amount to a formidable basis to accept that the most serious violations of the defendants' rights have taken place. The failure of the Court to undertake a thorough and open investigation of those complaints is both a breach of the Court's duty in its own right, and lends further weight to the truth of the allegations. In addition, the UAE's refusal to allow international observers into the trial is at least consistent with a deliberate attempt to conceal these inhuman treatments.

92. On all the material available to this mission, the observer has no hesitation in concluding that torture and other cruel, inhuman and degrading treatments have occurred in this case.

## **XII. OVERALL CONCLUSION**

93. For all the reasons set out above, it is concluded that the detention, trial and treatment of the defendants in this case has led to violations of numerous and widely accepted human rights, that the trial failed to even approach the most basic standards necessary for a fair trial, and that sustained and grave torture has been inflicted.

94. The accused in this case suggest that the actions for which they are being prosecuted are the exercise of the rights to freedom of association and to freedom of expression. These are important rights. They are recognised by articles 19 and 22 of the ICCPR and Article 24 of the Arab Charter, to which the UAE is a signatory. The coalition of the Gulf Centre for Human Rights, the International Federation for Human Rights, the Arab Network for Human Rights Information and the Cairo Institute for Human Rights Studies considers that this trial indeed aims at silencing lawyers, academics, judges, teachers and student leaders daring to advocate for democratic reforms in their country. This instrumentalisation of the judiciary blatantly violates their rights to freedom of opinion and expression.

### **XIII. RECOMMENDATIONS**

95. The coalition of the Gulf Centre for Human Rights, the International Federation for Human Rights, the Arab Network for Human Rights Information and the Cairo Institute for Human Rights Studies therefore calls on the UAE authorities to:

- (1) Order the immediate release of those imprisoned as a result of this blatantly unfair trial, pending the outcome of any further inquiry.
- (2) Establish an independent inquiry into the conduct of the trial of the UAE 94 and make the findings of such inquiry public;
- (3) Provide an independent investigation into the allegations of torture, cruel, inhuman and degrading treatments forthwith, and ensure medical and psychological support, rehabilitation, compensation and other relevant forms of reparation to those who have been victims of such acts and make accountable those responsible for these crimes;
- (4) Establish an appellate mechanism to reconsider all the convictions in this case, once the above inquiries have been completed in accordance with their right to a fair trial and to a defense;
- (5) Amend the relevant law and ensure the right to appeal any judicial decision including those made in special courts in accordance with the right to a fair trial and to a defense;
- (6) Ensure all fair trial guarantees including the independence of the judiciary;
- (7) Refrain from using criminal proceedings against those advocating peacefully for the respect of democratic reforms or more generally to restrict freedom of opinion and expression;
- (8) Ratify the UN International Covenant on Civil and Political Rights and the Optional Protocol to United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (9) Invite UN Special Rapporteurs on torture, freedom of opinion and on the independence of judges and lawyers to visit the UAE and grant them access to those convicted in this case, in particular those who stated that they have been tortured.

96. The coalition further calls upon the international community to:

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- (1) Systematically raise concerns regarding the blatant unfairness and politically motivated trial of the 94, in all bilateral dialogues with the UAE authorities, as well as in relevant UN bodies; and call for the immediate release of all those imprisoned as a result of this trial;
- (2) Request access of their diplomatic personnel in the UAE to the 61 prisoners of opinion currently in jail as a result of this trial.