



United Arab Emirates: Briefing Paper on Suppression of Free Expression, including Threats and Intimidation against the “UAE 5”

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Summary

Dr. Charlotte Peevers travelled to the United Arab Emirates in late October-early November to investigate issues surrounding the trial and detention of the “UAE 5” – five activists detained since April and accused of “publicly insulting” Emirati rulers in an Internet forum.² The investigation included alleged threats made against the detainees, and the wider censorship of political and legal concerns arising out of the case. Peevers interviewed family and lawyers of the accused, one of the accused, and others.

Peevers concludes that the UAE 5 have been subject to an alarming series of threats and intimidation, orchestrated by private actors but with the apparent acquiescence of Emirati authorities who have failed to uphold basic standards of UAE and international law by ignoring what are transparently crimes under domestic and international law. These threats not only seek to intimidate the UAE 5, but also seek to undermine the judicial process and influence judicial decision-making.

The families of those detained and one of their lawyers have filed over a dozen specific complaints, each supported with documentary evidence, in order to assist the authorities in holding accountable those who would seek to interfere with the course of justice. That the

¹ GCHR and Human Rights Watch are also part of a larger rights coalition working to free the UAE 5. The other groups are Alkarama (Dignity), Amnesty International, the Arabic Network for Human Rights Information (ANHRI), Front Line Defenders and Index on Censorship.

² For the trial observation report see:

http://www.ifex.org/united_arab_emirates/2011/11/03/trial_report_launch/

authorities have ignored all these complaints further undermines the authorities' claims to be acting 'according to law' in prosecuting the UAE 5: the political motivation underlying this trial is brought into sharp relief when those committing crimes of interfering with justice, and threatening the lives of others through violence are deemed immune from prosecution.

The report recommends that the UAE authorities:

- Immediately open an investigation into the threats made against the UAE 5, in particular the death threats aimed at Ahmed Mansoor and the online slander campaign, whose perpetrators are identifiable;
- Provide appropriate redress to the UAE 5, in accordance with UAE and international law, in particular to ensure that perpetrators of public threats and acts seeking to pervert the course of justice are held to account through due process of law; and
- Conduct an investigation into the arrest, denial of bail and pre-trial detention conditions of the UAE 5, to consider the proportionality of their response to misdemeanour offences.

Background

The five defendants referred to as the "UAE 5" are Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali al-Khamis, and Ahmed Abdul Khaleq. All are UAE nationals, with the exception of Abdul Khaleq who, although born and resident in the Emirates, does not have Emirati citizenship and is stateless (*bidoon*).

The UAE 5 were detained in early April 2011 and held without charge for over one month. In early June 2011, the State Security Prosecutor charged the men with misdemeanor offences under the Federal Penal Code, namely Article 176 and Article 8. The charges allege that the five "publicly insulted" government officials through an online forum, the 'Emirates Dialogue Forum' (also known as Al Hewar or UAE Hewar - www.uaehewar.net). The website had been blocked by the government since February 2010.

The government alleged that Ahmed Mansoor was the administrator of the UAE Hewar website. The government also charged Mansoor for each alleged violation made by the other four defendants, on an apparent theory that he was responsible for their statements. In addition to the Article 176 violations, the government also charged Mansoor with other crimes related to his political speech. Specifically, the government charged him with inciting others to break the law, calling for an election boycott, and calling for demonstrations.

Although all the articles related to the charges of publicly insulting rulers were posted between July and October 2010, authorities did not arrest the UAE 5 until April 2011, following the publication of a petition, calling for universal suffrage and widening of powers to the Federal National Council.

Article 176 of the Penal Code permits a sentence of up to five years in prison for “whoever publicly insults 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 senior officials.

I. Threats to the UAE 5

A particularly striking and worrisome development in the case of the UAE 5 has been an online campaign launched on Facebook and other online networks by apparent supporters of the ruling elite, consisting of intimidating and defamatory comments about the UAE 5. This campaign has been conducted with complete impunity, despite specific requests by the lawyers for the UAE 5 to have the comments investigated by the state. This online campaign, together with vocal and visible protests outside the court condemning the UAE 5 as traitors, appears intended to prejudice the outcome of the trial and intimidate the UAE 5, their families, and their lawyers.

As the detainees themselves explain, in a statement issued on November 10, 2011, when they declared the start of a hunger strike:

The brunt of the campaign has been managed by two websites, Lethal Character (Shaksiyya Fatake) and Proud Emirati, which have fomented a climate of general hostility to us and our families. This campaign has brought enormous pressure to bear and interfered with a judicial proceeding.

The following are examples of this Internet defamation and intimidation campaign that were posted on Facebook and on blogs posted by named individuals:

- “I hope that our wise government strikes with an iron fist to exterminate the cockroaches so that none of these cockroaches pops up again.”
- “Chopping off the tongue is too little for him, better to chop off his head.”
- “Sons of bitches, may God curse you ... Ahmed Mansoor. By God, I won’t be slaked even with your blood. You dogs, by God we’ll cut you to pieces. We are the children of Zayid and all of us are Khalifa.”

The defamation and intimidation campaign started during the UAE 5’s pre-trial detention and created a general environment hostile to the defendants and spread a spirit of antipathy towards them and their families. The state authorities did not confront those behind this organized campaign, although the defendants and their lawyers submitted numerous complaints against them with the police and the Public Prosecution. Lawyer Abdul Hameed al-Kumaiti submitted more than 15 criminal complaints on behalf of himself and the defendants against people, citing their names, telephone numbers, and websites, on the grounds of threat, incitement to commit a felony against a person, and libel and slander. These complaints have

been utterly disregarded without any consideration by both the Public Prosecutor and the police authorities despite their duty to investigate and prosecute suspected criminal offences.

Threats to Ahmed Mansoor

As early as March 2011, Ahmed Mansoor alleged he received death threats following his signature on the petition calling for reforms to the Federal National Council. An example of this early campaign is a message sent via Facebook on April 5, 2011, which reads:

Ahmed Mansoor, you are dead. I swear that I will search for you in every house. I swear to God that I will cut you in pieces...if I don't slaughter you, my cousins will cut your head, you dog.

The most serious threat so far received has been directed at Mansoor by Sa'id Bakhit al-Kitbi, an Emirati poet. A few days before the October 23 trial hearing, a professionally prepared voice recording was widely circulated via text messages and social media, apparently seeking to sow discord, incite to violence, and influence public opinion. In the recording, al-Kitbi urged Emiratis to demonstrate outside the Federal Supreme Court building on October 23 to show their support to the government. Further, al-Kitbi's poem incited, threatened, and gave license to kill Mansoor, saying explicitly:

Aid your homeland without doubt or hesitation.
He who impugned it has fallen, he is not Mansoor [the name Mansoor literally means 'victorious']
You must know it well, I swear by all the sheikhs.
Draw with it a line and say, That's it, no further,
And he who crosses the boundaries is lost.
Strike him with it, and if you kill him you are absolved.

The content of this poem is clearly an incitement to violence, indeed to a personal attack on Mansoor resulting in his death.

Abdul Hameed Al-Kumaiti, lawyer for Ahmed Mansoor and the other defendants, filed a complaint against al-Kitbi with the Federal Public Prosecutor on October 26, 2011. The complaint related to crimes of incitement to commit a felony against an individual, influencing the course of justice, and "imputing matters injurious to honor or status via the Internet" (using the Internet to insult someone), in violation of the law, based on Articles 263, 351, 352, and 353 of the Penal Code and Articles 24 and 9 of the law on the suppression of information technology crimes (Law 2/2006).

Further to al-Kitbi's incitement to murder, Ahmed Mansoor has received numerous threatening communications through the on-line campaign highlighted above, including calls to revoke his

citizenship and for his execution, despite the fact that he faces only a misdemeanor offence for which execution could not on any basis be warranted.

Throughout April, May, July, and September, Al-Kumaiti filed several complaints with the Federal Public Prosecutor and the Public Prosecution in Dubai against specific individuals, including poets, television and radio announcers, government employees, other individuals, and websites who have committed illegal acts against Mansoor. These include the crimes of threat, incitement to murder, libel, and slander, all of which are punishable under the Penal Code and the law on the suppression of information technology crimes.

To date, the state has failed to act on a single one of these approximately fifteen formal, legal complaints.

Pressure and Intimidation of the UAE 5

The Defendants have also reportedly suffered substantial harassment, mistreatment, and abuse in prison, as well upon initial arrest in April 2011. The circumstances in which the defendants were arrested, denied bail and held in pre-trial detention offend basic rights under the UAE Constitution, as well as under international law to which the UAE is a party.

According to interviews and documents, authorities arrested defendant Fahad Salim Dalk at 10 p.m. on Friday, April 8, 2011, after some 10 police and security personnel raided his apartment. They searched it and its contents until 11:45 p.m., after which he was detained in a cell in a police station in the emirate of `Ajman until Sunday, April 10, without any stated cause and without being shown an arrest warrant. At 4 p.m. on April 10, authorities transferred him by a car with blacked-out windows to Abu Dhabi with his hands restrained behind his back with iron cuffs. Security officials detained him in the vehicle until 2 a.m. on Monday, April 11, when he was brought before the State Security Prosecution for questioning. During the period of this confinement in the car (from 4 p.m. Sunday until 2 a.m. Monday), the authorities did not permit him to go to the bathroom, perform his ablutions for prayer, or remove the handcuffs. The authorities took him to Wathba Prison at 4 a.m. Monday, where he was detained in an isolation cell without electricity, a toilet, or water. He was compelled to urinate and defecate in a corner of the cell. Authorities only removed him from isolation a week later, on Tuesday, April 19, when he was transferred to a block holding prisoners convicted of various serious crimes. Since his arrest, he has lost more than 10 kg.

On Friday, April 8, 2011, authorities also arrested Ahmed Mansoor. Security personnel initially had failed to entice him from his apartment at 2 a.m., claiming that his car had been hit. That afternoon, more than eight security officers and police raided his apartment in the presence of his wife and four small children (between one and eight years old). They searched the apartment and its contents in such a way as to intimidate and frighten the family. A few hours later, they led him to the headquarters of the economic crimes suppression unit at the Dubai police, where he was detained until Sunday, April 10, without ever being given the reasons for

his detention and without being shown a warrant for his arrest. At 3 p.m. on that day, authorities transferred him in a car with blacked-out windows to Abu Dhabi. He was detained in the car until 1:30 a.m. on Monday, April 11, when he was brought before the State Security Prosecution for questioning. During the period of his confinement in the car (from 3 p.m. Sunday to 1:30 a.m. Monday), he was not allowed to go to the bathroom or move in any manner. He was taken to the Wathba Prison at 4 a.m., where he was placed in an isolation cell without electricity, a toilet, or water. He was only removed from isolation on Tuesday, April 19, when he was transferred to a block holding prisoners convicted of various serious crimes. Since his arrest, he has lost 20 kg.

Also on Friday, 8 April 2011, at dawn, the al-Hira police in Sharjah summoned Ahmed Abdul-Khaleq, after which he was transferred to the `Ajman police investigations unit, officers of which accompanied him to his home at 3 a.m. No one was at home, and so a security agent climbed the wall of the home and broke in. Police then took him to a police facility and placed him in a cell in the emirate of `Ajman, where he remained until Sunday, April 10, without ever being given the reasons for his detention and without being shown a warrant for his arrest. At 4 p.m. on that day, authorities transferred him in a car with blacked-out windows to Abu Dhabi, with his hands restrained behind his back with iron shackles. He was detained in the car until 2:30 a.m. on Monday, April 11, when he was brought before the State Security Prosecution for questioning. During the period of confinement in the car (from 4 p.m. Sunday until 2 a.m. Monday), he was not permitted to go to the bathroom, perform his ablutions, or remove his handcuffs. He was moved to the Wathba Prison at 4 am, where authorities detained him in an isolation cell without electricity, a toilet, or water. He was only removed from isolation on Tuesday, April 19, when he was placed in a block holding prisoners convicted of various serious crimes.

Hassan Ali al-Khamis was arrested at 2 a.m. on Wednesday, April 13, 2011, by the General Directorate of Investigations of the Dubai police and his home was searched. His hands were restrained with iron shackles for 36 hours. He staged a hunger strike until he was informed of the reason for his arrest.

In a public statement issued on October 1, 2011³, Dr. Nasser bin Ghaith stated that when authorities detained him in April 2011, they placed him in solitary confinement for ten days, with hands and feet shackled at all times, without access to light, water, or toilet facilities. Bin Ghaith described this as “a cell not suitable for animals.”

In the statement, bin Ghaith indicated that all of the UAE 5 defendants were being housed in Al Wathba prison in the same wing as prisoners convicted of serious offences such as rape and murder. This is despite the fact that the UAE 5 face only misdemeanor offences. He reported that the authorities had recruited other inmates to “spy” on them, “to monitor our movement, to know every single thing we say or do.” He speculated in the statement that “[m]aybe the purpose behind that was to provide people with special interest with daily reports on our stay.”

³ <http://www.hrw.org/news/2011/10/01/statement-emirati-detainee-dr-nasir-bin-ghayth>

Bin Ghaith also reported that the prison authorities frequently moved the five defendants from cell to cell. He reported that he has been the target of verbal and physical harassment, including attempts that threatened his life. Previously, he reported an incident wherein an inmate, whom he believed was placed in his cell to monitor him and physically provoke him, attacked him, provoking bin Ghaith to respond in self-defense. When bin Ghaith protected himself, prison authorities intervened and accused him of provoking the altercation. They placed him in solitary confinement in a cell without air conditioning, despite the 40-degree Celsius heat, and shackled him by the hands and feet.

Bin Ghaith also reported that after he complained to the prison administration, the State Security Prosecutor and the Court about the severe harassment, mistreatment and threats he was subjected to in prison, the authorities retaliated against him by shackling his feet and hands and again placing him in solitary confinement. He was required to eat, pray, and sleep with the shackles on. In addition, bin Ghaith reported that after the defendants leaked their first statement to the public in late August, prison authorities, believing he had authored the statement, encouraged other inmates to harass him.

Rights such as those to pre-trial bail have been denied.⁴ The authorities have denied the defendants bail despite having not presented any evidence that they would pose a security threat or a flight risk.

On November 10, 2011, the UAE 5 issued a joint statement indicating that they would begin a hunger strike on November 13, 2011, because of the intolerable pressure being brought to bear on them, their families, and their lawyers. As of November 22, the defendants continued with their hunger strike and prison officials have prevented the five from meeting with each other since the strike started. They are reported to be in poor health, according to a defense lawyer.⁵

Pressure and Intimidation of Families

Since the arrests in April, family members report having their phone conversations surveilled and having State Security agents monitoring them. The families are extremely fearful about fellow Emirati citizens acting as vigilantes as a consequence of the online slander campaign against them and the UAE 5.

The families are permitted to visit the defendants just once a week and although they can speak via telephone, these calls are recorded and therefore are not private. Mansoor has four young children who have not seen him since his arrest. Their mother reports that they have traumatic memories of the night of Ahmed Mansoor's arrest and have often been unable to sleep. In the absence of Mansoor's earnings as a highly skilled engineer, his family is struggling to cope financially and is reliant on assistance from family members. The family is concerned

⁴ See trial observation report at http://www.ifex.org/united_arab_emirates/2011/11/03/trial_report_launch.

⁵ <http://www.gc4hr.org/news/view/24>

that following the trial, whatever the outcome, Mansoor will be unable to work in the Emirates again since he will lack security clearance. Prior to his arrest, he was pressured to transfer employment to Pakistan⁶, even though the company seeking to transfer him, Etisalat, was not in fact his direct employer, but is the state company for telecommunications.

II. State Interference in Legal and Judicial Process

The lawyers acting on behalf of the detainees report that State Security agents have them under constant surveillance. The lawyers reported that State Security agents harassed their clerical staff or other lawyers in their office and made evident their constant surveillance by, for example, calling the office and asking why the lawyer was meeting with a particular person in their office.

Al-Kumaiti indicated at the court that State Security agents harassed and then deported two of his employees. He believes that the sole basis for the harassment was that they had their names at the bottom of legal pleadings submitted on behalf of the defense. The presence of their names was solely to confirm who had typed up the defense documents, that is, it was an internal reference for the law firm. The employees have had nothing to do with the legal proceedings and yet have suffered significant financial detriment and fear further reprisals. In addition, one of his clerks quit after enduring substantial harassment from state security because of his affiliation with al-Kumaiti's practice.

Apart from specific pressure being brought to bear on lawyers acting on behalf of the UAE 5, there is a general climate of intimidation and interference in judicial and legal process and representation in the Emirates.

On April 6, the Jurist Association, along with three other nongovernmental organizations, co-signed a public appeal calling for greater democracy in the country. On April 21, the Ministry of Social Affairs by decree dismissed the board of the Jurist Association and replacing its members with state appointees. According to the decree, the Jurist Association violated section 16 of the Law no. 2 of 2008 (Law on Associations), which prohibits nongovernmental organizations and its members from interfering "in politics or in matters that impair State security and its ruling regime."

The Jurist Association, established in 1980 to promote the rule of law and raise professional standards in the legal profession, has faced mounting government restrictions in recent years. In 2010, the government prohibited association representatives from attending meetings abroad and cancelled symposiums in the UAE that it considered controversial. Members told Human Rights Watch that officials pressured them to quit the association.⁷

⁶ <http://www.hrw.org/news/2011/04/09/uae-government-detains-human-rights-defender>

⁷ <http://www.hrw.org/news/2011/04/22/uae-government-dissolves-rights-group-s-board>

III. Legal Framework – Rights, Duties and Obligations

a) Freedom of Expression

Under Emirati law, freedom of expression is enshrined within Article 30 of the Constitution. Under the Arab Charter on Human Rights, which the UAE has ratified, freedom of speech is protected (Art. 32). Further, the International Covenant on Civil and Political Rights (ICCPR), Article 19(2), similarly protects this fundamental right. Although the UAE is not a signatory to the ICCPR, it constitutes an authoritative source and guideline reflecting international best practice, not least because the UAE is itself a signatory to the Arab Charter on Human Rights, which enshrines many of the same provisions.

Although freedom of expression guarantees in international law permit a degree of limitation, such limitations must be the least intrusive to address the need, be imposed by law and in a non-discriminatory manner, and be strictly necessary and proportionate in a democratic society.⁸ The use of ‘defamation-type’ criminal law restrictions by the Emirati authorities does not meet this stringent test for limitation of this basic right.

b) Protection from Threats to Life

The Emirati authorities are obliged by domestic and international law to ensure protection of the right to life and, to that end, positive obligations to investigate threats to life and ensure a remedy to those whose right to life is threatened.

Domestic Criminal Law

Article 351 of the Federal Penal Code imposes a penalty of up to seven years on a person who threatens another, in writing or orally, with the commission of a felony against him or her, or his or her property, or who injures the attacked person’s honor as long as it is “accompanied by a demand, an authorization to do something or refrain from an action.”⁹ The protection against felony attack, which would obviously include protection against incitements to murder or commit violence, is further enshrined by Article 352.¹⁰

⁸ See for example United Nations Human Rights Committee, General Comment No. 34, in particular paragraph 22.

⁹ A penalty of no more than seven years imprisonment shall be levied on any person who threatens another, in writing or orally, with the commission of a felony against himself or his property, or against another person or his property, or who imputes or discloses matters injurious to honor, if this is accompanied by a demand, an authorization to do something or refrain from an action, or with the intent thereof.

¹⁰ A penalty of imprisonment shall be levied against any person who threatens another with the commission of a felony against his person or his property, or against another or his property, or who imputes matters injurious to his honor or status or discloses such things in cases not explicated in the foregoing article.

The Federal Penal Code also makes it a misdemeanor offence to threaten another with word, deed, written, or verbal gesture, punishable with one year's imprisonment or a fine not exceeding 10,000 dirhams (\$2,700 US).¹¹ Similarly, Articles 9 and 24 of the Suppression of Information Technology Crimes criminalizes and imposes serious penalties for acts of incitement to action against individuals.¹²

Ahmed Mansoor's lawyer has repeatedly filed formal complaints on the basis of the above legislation to protect Mansoor's rights during the lengthy trial process, and to ensure that the authorities meet their obligations under the Federal Penal Code to investigate allegations of criminal conduct.

Constitutional Protections

Under the UAE Constitution, the state has a positive obligation to protect life. First, Article 10 establishes that the state shall ensure "the protection of the rights and liabilities of the people of the Union." Second, Article 14 stipulates that a "pillar of society" shall be "ensuring [the] safety and security...of all citizens." Finally, and most importantly in the context of the threats made to the lives of the UAE 5, is the guarantee within Article 41 that:

Every person shall have the right to submit complaints to the competent authorities, including the judicial authorities concerning the abuse or infringement of the rights and freedom stipulated in this part.

Any right must be an effective right, that is, one that can be exercised properly by a citizen of the state, without hindrance by the state. As indicated below, the Emirati authorities have fundamentally breached the rights of the UAE 5 in failing to investigate or accept complaints made on their behalf alleging breaches of Constitutional protections and the Federal Penal Code.

International Law

The UAE has ratified the Arab Charter on Human Rights and is therefore bound to ensure the protections it guarantees, as well as to act in good faith in implementing those protections in accordance with customary international law as codified in the Vienna Convention on the Law of Treaties.

Article 5 of the Arab Charter on Human Rights enshrines the inherent right to life which shall be protected by law. It also enshrines the protection of each individual against unlawful attacks on honor and reputation and to have such protection through the exercise of law (Article 21).

¹¹ Article 353, Federal Penal Code.

¹² Any person who uses the Internet or another information technology means to threaten or extort another person to do or refrain from an action shall be punished by a term of imprisonment not to exceed two years or a fine not to exceed 50,000 dirhams, or both. If the threat is for the commission of a crime or to impute matters injurious to honor or status, the penalty shall be a term of imprisonment not to exceed ten years.

Article 23 guarantees that each State party to the Charter undertakes to ensure that any person whose rights or freedoms are violated shall have an effective remedy.

Article 7 of the ICCPR enshrines a duty to investigate and hold perpetrators responsible, and is evidence that there is an international duty to investigate human rights violations. The UN Human Rights Committee (HRC), the body of international experts that reviews state compliance with the ICCPR, has said that “the state party has a duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities.”¹³ Further, HRC General Comment 20 on implementation of Article 7 of the ICCPR states that “those who violate Art. 7 ...must be held responsible.”

The HRC Comments on Article 2 of the ICCPR are consistent with the view that states have positive obligations to investigate violations of the rights protected under the ICCPR:

The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.¹⁴

The development of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (the “UN Investigation Principles”)¹⁵ and the Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions (the “Minnesota Protocol”)¹⁶ point to the importance of investigation to protect the right to life.

In terms of the interpretation of international legal norms, the Namibian Supreme Court has gone so far as to say that “it is arguable that the recognition of a right to an effective remedy for violations of human rights... forms part of customary international law” (*Mwandingi v Minister of Defence* [1991] 1 SA 851 (Namib.)).

¹³ This was in relation to alleged torture and killing: *Miango v Zaire* Communication No. 194/1985, U.N. Doc. CCPR/C/OP/2 at 220

¹⁴ Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8

¹⁵ Recommended by Economic and Social Council resolution 1989/65 of May 24, 1989.

¹⁶ Part III of the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/. 12 (1991)

Threats to life are the most serious acts a state or individual may make against another individual, and ought to be investigated promptly and competently to ensure the most fundamental premise of all legal jurisdictions: equal treatment before the law.

c. Pressure and Intimidation through Prison Treatment

The housing of remand prisoners – those awaiting the outcome of their trial and therefore to be considered innocent until proven guilty – with convicted criminals runs counter to international guidance on the treatment of detainees.

The UN Standard Minimum Rules for the Treatment of Prisoners issued as long ago as 1955 and adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1955) and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, stipulates that:

“Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus...

(b) *Untried prisoners shall be kept separate from convicted prisoners...*”

By way of comparison with other jurisdictions, the United Kingdom Prison Rules stipulate that detainees not yet convicted shall be kept out of contact with convicted prisoners as far as is reasonably possible and “shall under no circumstances be required to share a cell with a convicted prisoner.”¹⁷ This rule ensures domestic compliance with the spirit of the UN Standard Minimum Rules.

Although international guidance is not formally binding, it is concerning that the UAE 5 have been placed in pre-trial detention for what are misdemeanor ‘defamation’ allegations, amongst convicted murderers and rapists. However, the Arab Charter on Human Rights *is* binding on the UAE and it stipulates in Article 20 that remand prisoners should be kept separate from the general prison population.

In the general context of inference in legal process and representation it is concerning that such detention has been imposed on individuals who cannot be said to be dangerous to the public or a flight risk, given that they have prominent, established lives in the UAE. To that extent alone, their treatment in prison points strongly to punitive measures being taken to pressure and intimidate them solely on the basis of democratic, political views they have expressed in accordance with domestic and international protections of freedom of expression.

¹⁷ Rule 7(2) of the Prison Rules 1999 promulgated under the Prison Act 1952.

d. Pressure on and Interference with Civil Society Organisations

It is apparent that nongovernmental organisations are being heavily policed and surveilled in the Emirates as the State Security apparatus becomes increasingly paranoid about the fear of the 'spread' of Arab Spring ideals of political reform and proper implementation of principles such as the rule of law and fair and equal treatment.

The interference in civil society organizations runs counter to the spirit of Article 33 of the Constitution (freedom to establish associations) and Article 24 of the Arab Charter on Human Rights, namely the freedom to freely form and join associations.

Further, the United Nations Declaration on Human Rights Defenders provides that countries should "take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action" as a result of their participation in human rights activity.

IV. Recommendations

We recommend that the authorities:

- Immediately open an investigation into the threats made against the UAE 5, in particular the death threats aimed at Ahmed Mansoor and the online slander campaign, whose perpetrators are identifiable;
- Provide appropriate redress to the UAE 5, in accordance with UAE and international law, in particular to ensure that perpetrators of public threats and acts seeking to pervert the course of justice, are held to account through due process of law;
- Conduct an investigation into the arrest, denial of bail and pre-trial detention conditions of the UAE 5, to consider the proportionality of their response to misdemeanor offences;
- Ensure that the UAE complies with its international obligations to protect the rights of those detained, in particular to ensure the separation of pre-trial and convicted prisoners, and to provide for adequate treatment which does not cause undue suffering, in breach of domestic Constitutional and international guarantees; and
- Uphold domestic and international law fairly, and without prejudice, in particular to ensure equal treatment before the law and to allow freedom of expression as is guaranteed under the domestic constitution, the Arab Charter on Human Rights, and the International Covenant on Civil and Political Rights.