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UAE: Trial Observer Finds Flagrant Due Process Flaws in ‘UAE 5’ Case

The Federal Supreme Court trial of five Emirati activists accused of “publicly insulting” top United Arab Emirates officials in an internet forum has been grossly unfair, and the case against them has no basis in international law as it violates their freedom of expression, a trial observer appointed by a coalition of international human rights organizations said today.

The coalition, composed of Alkarama (Dignity), Amnesty International, the Arabic Network for Human Rights Information, Front Line Defenders, the Gulf Centre for Human Rights, Human Rights Watch, and Index on Censorship, said that the interim assessment of civil liberties lawyer Jennie Pasquarella raised disturbing questions about the politicization of the case against the men and called for all five to be released immediately and unconditionally and the charges dropped.

The groups also called on the UAE authorities to open an independent judicial inquiry into the decision to prosecute the five men.

“This case has been riddled with legal and procedural flaws right from the beginning, which have made it grossly unfair in favor of the prosecution,” said Pasquarella, who monitored the trial in September and October 2011 and attended the 2 October hearing.

“UAE authorities should show a basic commitment to international legal standards, by releasing these men without delay and initiating an independent review of why and how they’ve been prosecuted on these transparently politicized charges.”

Pasquarella’s assessment found that “flagrant due process flaws” essentially denied the five men the right to a fair trial.

The defendants have not been able to see all the documents setting out the charges against them and have not – despite repeated requests to the court – had full access to all the evidence against them. Nor have they been allowed to hold confidential meetings with their lawyers.

The first four sessions of the trial were held in secret, with only State Security agents allowed to attend and take notes on the trial.

The Supreme Court, Pasquarella’s assessment says, has not treated the prosecution and defence equally, prejudicially cutting off the defence and ignoring their submissions, while allowing the prosecution to speak without interruption.

On 2 October the court heard the closing arguments from the prosecution despite the fact that the defence had still not presented its case and the defendants not having had access to all the prosecution evidence the prosecution was using to make the case. The court told the defence that it would not be allowed to call any of the prosecution’s witnesses back for cross-examination.

The court also permitted four private lawyers representing people who claimed to be victims of the actions of the defendants to take part in proceedings. The court allowed the lawyers – who

said they have a right to file civil claims for damages against the defendants for “emotional harm” – to intervene in the case by granting them access to restricted court documents and allowing them to participate in the hearings, including interjecting in support of the government and asking the court questions.

Pasquarella said the intervention “was clearly designed to unduly influence the court, to distract from and impede the defence’s ability to present their case, and to further the government’s public relations efforts to portray the defendants as enemies of the state.”

Pasquarella also found that there was no legal basis for the case against the men, saying that the vague laws under which the five were charged did not comply with international and UAE constitutional requirements that allow for freedom of opinion and other expression.

The state charged the five men in early June under articles 176 and 8 of the UAE penal code, which makes it a crime to publicly insult the country’s top officials, after they posted statements on the internet forum *UAEHewar*. None of the messages allegedly posted by the accused to the banned site did more than criticize government policy or political leaders, said the seven human rights groups that have reviewed the posts.

Under the International Covenant on Civil and Political Rights, governments cannot ban content on media outlets or websites “solely on the basis that it may be critical of the government or the political or social system espoused by the government,” according to the United Nations Human Rights Committee. While the UAE is not a party to the ICCPR, it constitutes an authoritative source and guideline reflecting international best practice. Article 30 of the constitution of the UAE also guarantees freedom of opinion, but only “within the limits of the law.”

The observer’s assessment also criticized the decision to prosecute the case under State Security procedures, which deprives the men of basic due process rights such as the right to appeal.

Pasquarella said that the government has tried the men under State Security procedures solely for public relations purposes “to further distort the public’s understanding of this case and to create public confusion about the actual conduct at issue in this case – not state security threats, but rather allegedly insulting statements.”

The full report is available on-line here: (link to be provided.)

For more on the UAE 5 campaign, see:

http://www.ifex.org/united_arab_emirates/2011/10/02/unfair_trial/

For a detailed timeline, see: http://ifex.org/united_arab_emirates/2011/10/28/uae5timeline.pdf

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Background

The five UAE residents charged with “insulting” the country’s leaders are Ahmed Mansoor, an engineer and blogger who is also a member of Human Rights Watch’s Middle East advisory committee and a member of ANHRI’s network; Nasser bin Ghaith, an economist, university lecturer at Sorbonne, and advocate of political reform; and Fahad Salim Dalk, Ahmed Abdul Khaleq, and Hassan Ali al-Khamis, all online activists.

Authorities have detained them since April, when the UAE attorney general announced that they were in “preventive custody.” Their trial opened on 14 June.

Mansoor faces additional charges of inciting others to break the law, calling for an election boycott, and calling for demonstrations. In March, shortly before his arrest, he publicly supported a petition signed by more than 130 people advocating universal, direct elections for the Federal National Council (FNC), a government advisory board, and legislative powers for the council.

Jennie Pasquarella, a lawyer for the American Civil Liberties Union, monitored the trial in September and October 2011 on behalf of Amnesty International, the Arabic Network for Human Rights Information (ANHRI), Front Line Defenders, and Human Rights Watch, with support from the International Freedom of Expression Exchange (IFEX). Representatives from the groups also attended subsequent trial sessions on 9 and 23 October.