

## **Opinion of Geoffrey Robertson QC**

1. I am asked to provide a short opinion on the international legal aspects of the trial of four Libyan businessmen - Salim Alaradi (a dual Canadian national), Kamal and Mohamed Eldarrat (dual US nationals) and Issa al-Manna – which is due to commence on 15<sup>th</sup> February 2016 in a closed court in Abu Dhabi. They were amongst ten Libyans lawfully resident in the UAE who were arrested without warrant by state security in August/September 2014 and thereafter held incommunicado for three months at a secret prison: in due course four of these men were released without charge and two are being dealt with separately. The four whose trial begins next week were moved to Al Wathba Central Prison in Abu Dhabi but not charged with any offence until 18<sup>th</sup> January 2016, when they were arraigned before the State Security Chamber of the UAE Federal Supreme Court and charged with financing and co-operating with terrorist organisations. As “state security” matters, these charges fall within the jurisdiction of the State Security Chamber, which invariably sits in secret. There is no appeal from its judgements, which can impose the death penalty.
2. The four cases are similar, and I shall deal with one by way of example, that of Salim Alaradi, the dual Libyan/Canadian national. He has held, since 1996, a UAE residence permit and has run a business with his brother (also arrested but subsequently released) manufacturing domestic appliances abroad and then selling them locally as well as in other countries. I have had the opportunity to consider submissions made on his behalf to the UN Working Group on Arbitrary Detention and investigations of his case by Human Rights Watch and Amnesty International, together with confidential consular records and other confidential records made available to me. I set out below the allegations concerning his treatment that are, in my judgement, likely to be true.
3. Salim Alaradi was holidaying with his mother, wife and five children, who live in Canada, at a popular beach hotel in Dubai. At about midnight he received a call from the hotel lobby, requesting that he come to the lobby to answer some questions from the State Security Agency (SSA). He did so, and was arrested without warrant and without being permitted to notify either his family or any lawyer. He was whisked away and held incommunicado for two months and 9 days, during which the government denied

all knowledge of his arrest. He was then permitted to make a three minute call to his wife, to inform her that he was alive and to ask after his children. After three months, a Canadian consular visit was allowed: the Consul was only permitted to look at him from a distance, but not to speak. After four months (i.e. in January 2015) he was moved to Wathba, and a half hour visit was permitted by his wife and later by Canadian diplomats. He suffers from various ailments, and Canadian authorities from the outset have requested medical care, but he was not permitted to see a doctor until May 2015.

4. During the period he was in secret detention – at an air force base, it is believed – he claims he was tortured, a claim corroborated (a) by serious bruising observed on his body, (b) by similar claims by several of the men who were detained at the same time and have now been released, (c) by evidence of torture and ill-treatment in the UAE gathered by Amnesty International and Human Rights Watch and by the UN’s Special Rapporteur on the Independence of Judges and Lawyers, whose May 2015 Report to the Human Rights Council after a visit to the UAE described how “*credible information and evidence*” pointed to the fact that “*many of the individuals who were arrested without a warrant and taken to unofficial places of detention were also subjected to torture...*”
  
5. Mr Alaradi says that his ill-treatment took the form of sleep deprivation (for 17 days he was forced to sleep on the tiles of a cell floor without bedding or blankets and under a harsh light) and being chained for long periods in stress positions. Torture took the form of *bastinado* (beatings on the soles of the feet); being hung upside down and used as a punching bag, and being beaten up by several guards at the same time. He was made to carry heavy weights while being beaten, subjected to water-boarding techniques and blasted for lengthy periods by ice-cold air. His brother (one of the four detainees subsequently released) was in an adjacent cell, and heard him screaming. The objective of the torture was apparently to force him to confess to membership of the Muslim Brotherhood (which he denies): he was forced to sign a document (which may have been a confession) that he was not allowed to read. Accounts from his lawyers indicate that during the preliminary hearing on 18<sup>th</sup> January he stood and showed his bruises to the judges – they said he should apply to raise the issue during the trial.

6. Although the UAE has not ratified the *International Covenant on Civil and Political Rights* (ICCPR), that Convention sets out the international law principles applicable to arrest, detention and criminal trial. The *Convention against Torture* (CAT), which the UAE has ratified, contains provisions which require claims of torture to be investigated and for evidence obtained by torture to be inadmissible. The UAE is party to the *Arab Charter of Human Rights*, which absolutely restricts torture. Essentially;

- No-one should be subject to arbitrary arrest or detention. Anyone arrested must be brought promptly before a judge to authorise detention and must have the right of *habeas corpus* – to challenge unlawful detention (ICCPR Article 9)
- No-one shall, in any circumstances, be subjected to torture or to cruel, inhuman or degrading treatment or punishment (ICCPR Article 7, CAT Articles 1 & 2, Arab Charter Article 14)
- Every state has a duty to investigate credible claims of torture and to provide means or redress and compensation (CAT Articles 12-14)
- Every state has a duty to ensure that its courts do not accept or admit evidence resulting from torture (CAT Article 15)
- Everyone shall be entitled to a fair and public hearing by an independent and impartial tribunal, with right to a lawyer and to adequate time and facilities to prepare his defence (ICCPR Article 14)
- Everyone convicted of crime shall have the right to appeal his conviction and sentence to a higher Tribunal (ICCPR Article 14(5))
- No-one shall be held guilty of an offence if the act was not an offence at the time it was committed (ICCPR Article 15)

In my opinion, the treatment of Mr Alaradi and his three co-defendants is in breach of these provisions. In his case, for example:

### Wrongful Treatment

7. Mr Alaradi was arrested at midnight, without a warrant or a judicial order, by members of the state security authority. As he was on holiday at the hotel with his family, there was no urgency about his arrest that might have precluded an authorisation process. He was given no reasons and no opportunity to inform his family or to seek legal advice. This was a breach of his right to liberty and security.

### Wrongful Detention

8. Holding Mr Alaradi incommunicado for two months was a brutal breach of his right to habeas corpus and to have his detention properly authorised. It meant that his wife and family had no idea where he was, or even whether he was alive, and to this extent it was particularly cruel conduct, quite apart from its illegality. His co-defendants suffered it as well. After the families were informed they were not allowed to know, for a further two months, where the men were, and in this period their right to instruct lawyers and their right, under the *Vienna Convention on Consular Relations*, to have consular assistance was rendered nugatory. It does not appear that the UAE government contests this allegation, and indeed incommunicado detention appears to be a routine aspect of its treatment of political prisoners.

### Torture

9. There is no doubt, in my view, that the assaults of which Mr Alaradi complains amount to torture. Regular beatings, inflicting a level of pain and bruising intended to induce a confession, are torture, and courts have held that *bastinado* reaches this severity level. Of course, beatings whilst suspended upside down or whilst held in a stress position would obviously qualify. Torture is not countenanced by international law - it is conduct which cannot be condoned even in an emergency, yet it would appear from investigations by Human Rights Watch and Amnesty to be a common treatment for political prisoners in the UAE. So far as this case is concerned, the duty of the court is to investigate these credible allegations, made by all four defendants, and to reject any confessions that have been induced by the ill-treatment – a remedy specifically required by Article 15 of the *Convention against Torture*.

### Open Justice

10. Whether this duty will be undertaken by the judges may never be known; the State Security court sits in secret. Under Article 14 of the ICCPR this is permitted where the

evidence would, if disclosed, damage national security, but this could not be the case in relation to an enquiry into the ill-treatment of state prisoners (such evidence might well embarrass the State, but certainly not endanger it). When the trial begins on 15<sup>th</sup> February, the press and public should be permitted to attend all hearings that relate to allegations that the defendants have been tortured. Any judicial refusal to hold such hearings will be proof that the judges lack independence.

### Appeal

11. There is no right to appeal a judgement of the State Security Court, even if it sentences a defendant to death. This is a straightforward breach of the international covenant, which the government itself should remedy.

### Retro-active Law

12. The defendants are being prosecuted under Federal Law 7 of 2014 for financing a terrorist organisation. The Emirate Constitution provides that legislation comes into force one day after it is published in the Federal Gazette. Law 7/2014 was not gazetted until 31<sup>st</sup> August - 3 days after Alaradi's arrest. It follows that any criminal act he committed must have taken place before the date of the law under which he has been charged. This may seem a technical objection, but it is legally important - both international and local UAE law contain a prohibition on retro-activity.

### Further Action

13. The treatment of the detainees is contrary to the provisions of the *International Covenant on Civil and Political Rights* and the *Convention against Torture*, the latter of which the UAE has ratified although it has not acceded to protocols which permit complaints. The UN Working Group on Arbitrary Detention will shortly – probably this week - deliver its decision in the case, which I understand will find that the four defendants were wrongfully arrested, subjected to "*enforced disappearance*" and detained without any of the judicial oversight required by International Law. The UAE is bound by Resolution 2170 (2014) of the Security Council to comply with their obligations under international human rights law. In my judgement that would require the State prosecutor to withdraw charges brought in consequence of unlawful arrest and detention. It would certainly require, when the Court re-convenes on 15<sup>th</sup> February, a public hearing into the allegations of torture and a ruling as to the inadmissibility of any confessions induced by torture techniques. There must also be a public hearing and

decision on the retrospectively issue - publicity would not conceivably impede national security. The state must legislate to provide an appeal from any conviction and sentence by the National Security Court.

14. The charges against the defendants, revealed at their arraignment in January after 16 months imprisonment, do not allege that they were members of the Muslim Brotherhood - designated a terrorist organisation in November 2014, after their arrest - or its Libyan affiliate, the Justice and Construction party. The charge refers to financing the February 17 Brigade - one of the paramilitary forces which co-operated with the West to topple Gaddafi - and Libyan Dawn - an operation overseen by the Chief General of the Libyan military. Neither of these entities (it is doubtful whether 'Libyan Dawn' qualifies as an organisation) is on the UN's current list of terrorist organisations, nor on the lists published by the US and Canada. They are not even on the Libyan government list - which makes the prosecution even more difficult to understand.
  
15. In my opinion these men have been treated by the state in ways which are manifestly contrary to international law. Their initial arrest lacked all procedural safeguards, and their detention in a clandestine prison without informing their families was cruel as well as unlawful because it lacked any judicial oversight. There is credible evidence that they were tortured. Their trial cannot be fair unless it is held, at least in part, in public and in that public part the judges consider impartially the allegations of torture and reject any confession obtained thereby. I am content to have this opinion published and to support my views if requested by the media.

Geoffrey Robertson QC

A handwritten signature in cursive script, appearing to read 'Geoffrey Robertson', written in black ink.

Doughty Street Chambers

11<sup>th</sup> February 2016