To the Honourable Judge Mohammad Al-Shamsi

Judge of the Court of Appeal

The Sharjah Courts

BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

14th August 2014

Request for permission to intervene as amicus curiae in the case of Ahmad Monal Zeidan, British national, case number 1187/2013, appeal number 1494/2014

With this letter the Bar Human Rights Committee of England and Wales submits its request for leave to intervene as amicus curiae in the above named case, together with its submissions contained in the amicus curiae brief.

We respectfully present these submissions in the public interest and seek to draw this Honourable Court's attention to matters of international human rights law.

We are grateful for the Court's consideration of our request.

Yours respectfully,

Kirsty Brimelow QC

Chair, Bar Human Rights Committee of England and Wales

Case Number 11378/2013, Appeal Number 1494/2014

Before: The Honourable Judge Mohammad Al-Shamsi

Date of submission: 14.08.2014

AHMAD MONAL ZEIDAN AND OTHERS

REQUEST FOR LEAVE TO SUBMIT

AMICUS BRIEF ON BEHALF OF

THE BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

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1. This submission is presented by the Bar Human Rights Committee of England and Wales (BHRC). The BHRC is the international human rights branch of the Bar of England and Wales. It is an independent body concerned with protecting the rights of advocates, judges and human rights defenders around the world. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. The remit of the BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its remit.

2. The BHRC requests in its capacity as amicus curiae leave to intervene before the Honourable Court of Appeal of Sharjah. In our respectful submission it is in the public interest that we be given leave to present our brief before the Court, on matters of international law relevant to the appeal concerning Ahmad Monal Zeidan.

3. The amicus brief seeks to present international legal principles relating to the allegations made by Ahmad Monal Zeidan concerning his treatment while being detained by police. We do not seek to address the Court upon the evidence in the case relating to the crimes that the appellants have been convicted of committing. We do, however, hope to assist the Court by drawing attention to the international obligations that apply to a state when allegations of torture are made, and when a foreign national is arrested. In particular we seek to address the Court regarding the international law obligations to prevent torture, to exclude evidence obtained through torture and to investigate allegations of torture, as well as the requirement to afford access to consular assistance.

4. The amicus brief further elaborates on the standing of amicus curiae before international and regional tribunals, including the practice in Lebanon. This demonstrates that amici have been accepted by tribunals across the world in providing helpful articulation of relevant principles and law.

5. In furtherance of these principles, the BHRC respectfully requests that the Court of Appeal grant us leave to intervene in the appeal as amicus curiae, pursuant to its discretion provided in Articles 179 and 239 of the Federal Criminal Procedures Code.

KIRSTY BRIMELOW QC
Chair of the Bar Human Rights Committee of England and Wales

CASE NO. 11378/CRIMINAL 2013

AHMAD MONAL ZEIDAN AND OTHERS

AMICUS CURIAE
WRITTEN SUBMISSIONS ON BEHALF OF THE
BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES
AND THE HUMAN RIGHTS COMMITTEE OF THE LAW SOCIETY

INTRODUCTION

1. Kirsty Brimelow QC, Chair of the Bar Human Rights Committee of England and Wales (BHRC) and Queen's Counsel at Doughty Street Chambers, at 53-54 Doughty Street, London, WC1N 2LS, United Kingdom, respectfully presents this *amicus curiae* brief to the Court of Appeal of the United Arab Emirates in the appeal filed by Ahmad Monal Zeidan against his conviction of 28th May 2014.

2. This brief has been prepared on behalf of the Bar Human Rights Committee of England and Wales (BHRC). The BHRC is the international human rights branch of the Bar of England and Wales. It is an independent body concerned with protecting the rights of advocates, judges and human rights defenders around the world. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. The remit of the BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent

but legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its remit.

3. This brief has been further endorsed by Professor Sara Chandler, Chair of the Human Rights Committee of the Law Society of England and Wales. The Law Society of England and Wales was founded in 1825 as a professional body to represent practising and training solicitors. The Society gained its first Royal Charter in 1831, and fourteen years later was recognised as an independent, private body by the Crown. Currently the Law Society regulates and represents over 138,000 solicitors in England and Wales. The Human Rights Committee is a specialist body of the Law Society which is comprised of practitioners and experts in domestic and international human rights law. The Committee is focused on promoting human rights worldwide and upholding the rule of law and access to justice.

THE LEGAL BASIS FOR THE AMICUS CURIAE BRIEF

4. This section considers the legal basis upon which the court is invited to admit and consider this amicus brief. It firstly provides a brief consideration of the concept of amicus curiae. It then gives an overview of the use of amicus curiae briefs in relevant international law contexts, namely international criminal law and international human rights law. It finally considers some of the legal principles that favour the admission of amicus briefs in courts in the United Arab Emirates (UAE).

a. The use of *Amicus Curiae*

5. *Amicus Curiae* is the Latin term which translates as "friend of the court". The system and practice of submitting Amicus Curiae briefs to courts is common in many countries and international tribunals.

6. The purpose of the amicus curiae is to assist the court regarding certain points of law and practice that are relevant in the view of the amicus to the case being considered by the court. The amicus curiae is not a party to the case and does not represent any of the parties. The amicus curiae may however have an interest in the outcome of the case.

7. We understand that this is a system of intervention previously adopted by the United Arab Emirates (UAE) in other jurisdictions.[1]

8. The use of amici is particularly common when reminding a national jurisdiction of international law and common jurisprudence across nations. This is the intention of our submission to the Court. The BHRC does not express comment on the facts or merits of the criminal case against Mr Zeidan. We respectfully seek to draw the Court's attention to the international law issues that the case has generated.

b. The *Amicus Curiae* in international law

9. The admission of amicus curiae briefs in international criminal tribunals is well established.

International Criminal Court

10. Although the International Criminal Court has yet to develop a practice relating to the admission of amici curiae, it is clearly envisaged that the court will accept amicus briefs in appropriate circumstances. Rule 103 of the Rules of Procedure and Evidence[2] provides, so far as is relevant, as follows:

> Rule 103 *Amicus curiae* and other forms of submission
>
> At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

[1] We are aware of one reported example where Ras Al Khaimah intervened in the New York Supreme Court in 2009, http://www.businesswire.com/news/home/20091013006466/en/Emirate-Files-Amicus-Suitability-Host-America's-Cup#.U9uqQMZ6f8u

[2] Available at http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Documents/RulesProcedureEvidenceEng.pdf

11. Thus the ICC has a broad discretion to admit observations from amici curiae, regulated only by the requirement that the Court must consider such admission to be desirable for the proper determination of the case. The power applies *mutatis mutandis* to proceedings in the Appeals Chamber: see Rule 149. Under Rule 103(2) the prosecution and defence have the right to respond to any observations filed under this provision. The ICC's amicus practice is no doubt informed by the practice of the *ad hoc* UN criminal tribunals, which is considered below.

The International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda

12. The International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) Rules of Procedure and Evidence[3] each have an identical Rule 74 which is entitled "Amicus Curiae" and provides as follows:

> A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

13. Again, the tribunals enjoy a wide discretion regarding the admission of amicus curiae submissions and both tribunals have made extensive use of amicus curiae in various contexts. Amici have been appointed or given leave to provide expert assistance regarding issues of general and criminal international law (see for example *Tadić*[4] and *Blaškić*[5] in the ICTY and *Semanza*[6] in the ICTR).

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[3] ICTY rules are available at http://www.icty.org/sid/136 and ICTR rules are available at: http://www.unictr.org/Legal/RulesofProcedureandEvidence/tabid/95/Default.aspx

[4] See decisions in *Prosecutor v Tadić*, case No IT-94-1, at http://www.icty.org/case/tadic/4#tdec, including *Prosecutor v Tadić, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses*, 10 August 1995

[5] See decisions in *Prosecutor v Blaškić*, case No. IT-95-14, at http://www.icty.org/case/blaskic/4 , including *Prosecutor v Blaškić, Decision on the Objection of the Republic of Croatia to the Issuance of SubpoenaeDucesTecum*, 18 July 1997

[6] See decisions in *Prosecutor v Semanza*, case No ICTR-97-20, at http://www.unictr.org/tabid/128/Default.aspx?id=41&mnid=4, including *Prosecutor v Semanza, Decision on the*

Other international criminal tribunals

14. Amicus curiae submissions are accepted by other international criminal tribunals, such as the Special Court for Sierra Leone. Rule 74 of the Rules of Procedure and Evidence of the SCSL[7] is in similar terms to Rule 74 of the ICTY and ICTR Rules. The SCSL has also issued a practice direction regarding the admission of amicus curiae briefs.[8]

15. It has been observed that in addition to adopting a liberal approach to the grant of permission to appear as amici, the SCSL has been proactive in seeking submissions from leading academics and international organisations.[9]

16. In *Prosecutor v Kallon* Presiding Judge Robertson made the following general observations in relation to the exercise of the discretion to admit amicus submissions:[10]

> The "proper determination" of the case refers, quite simply, to the Court reaching the decision which most accords with the end of justice – i.e. that gets the law right. Sitting as we do in Freetown, albeit with the benefit of the Internet and of capable resident lawyers, we can nevertheless be assisted by outside counsel provided at its own expense by an organization with a legitimate interest in the subject matter of our hearings. The issue is whether it is desirable to receive such assistance, and "desirable" does not

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Kingdom of Belgium's Application to File an Amicus Curiae Brief and on the Defence Application to Strike the Observations of the Kingdom of Belgium Concerning the Preliminary Response by the Defence, 9 February 2010

[7] Available at http://www.rscsl.org/Documents/RPE.pdf

[8] http://www.rscsl.org/Documents/PRACTICE_DIRECTION_Amicus_Curiae.pdf

[9] See Williams and Woolaver, 'The Role of the Amicus Curiae before International Criminal Tribunals' International Criminal Law Review 6: 151-189, 2006

[10] *Prosecutor v Kallon*, Case No. SCSL-2003-07, *Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae Brief and to Present Oral Submissions*, 1 November 2003, para 5. See http://www.rscsl.org/Documents/Decisions/RUF/Appeal/07-128/SCSL-03-07-PT-128.pdf

> mean "essential" (which would be over restrictive) nor does it have an over-permissive meaning such as "convenient" or "interesting". The discretion will be exercised in favour of an application where there is a real reason to believe that written submissions, or such submissions supplemented by oral argument, will help the Court to reach the right decision on the issue before it. (para 5)

17. Amicus briefs are also accepted by the Special Tribunal for Lebanon under Rules 131, 97 and 176 of the Rules of Procedure and Evidence.[11]

c. The Amicus in International Human Rights Law

Inter-American Court of Human Rights

18. The Inter-American Court of Human Rights has a long history of accepting *Amicus* briefs and did so before there was any explicit provision dealing with the issue in the Rules of Procedure.[12] The practice is now governed by Article 44 of the Rules of Procedure, entitled "Arguments of Amicus Curiae", which provides that any person or institution seeking to act as Amicus Curiae may submit a brief to the Court.

19. The Court made the following general observations regarding the value of the Amicus brief in its decision in the case of *Kimel v Argentina:*[13]

> ... the Court notes that amicus curiae briefs are filed by third parties which are not involved in the controversy but provide the Court with arguments or views which may serve as evidence regarding the matters of law under the consideration of the Court. Hence, they may be submitted at any stage before

[11] See for example *Prosecutor v Ayyash et al.* case No. STL-11-01, *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, 16 February 2011 at http://www.stl-tsl.org/en/the-cases/stl-11-01/rule-176bis/filings/orders-and-decisions

[12] See Shelton, 'The Participation of Nongovernmental Organizations in International Judicial Proceedings', American Journal of International Law, Vol 88, 1994, pp611-619 at 638.

[13] I/A Court H.R., *CasoKimel Vs. Argentina. Fondo, Reparaciones y Costas*. Sentencia de 2 de mayo de 2008 Serie C No. 177, para 16, available at http://www.corteidh.or.cr/casos.cfm

> the deliberation of the pertinent judgment. Furthermore, in accordance with the usual practice of the Court, amici curiae briefs may even address matters related to the compliance with judgment. On the other hand, the Court emphasizes that the issues submitted to its consideration are in the public interest or have such relevance that they require careful deliberation regarding the arguments publicly considered. Hence, amici curiae briefs are an important element for the strengthening of the Inter-American System of Human Rights, as they reflect the views of members of society who contribute to the debate and enlarge the evidence available to the Court. (para 16)

20. The Inter-American Court's extensive amicus practice continues to date: see the recent judgment delivered by the Court in *Caso Masacre de Santo Domingo v Colombia* in which an amicus brief from the organization COALICO *("Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia")* was received and considered.[14]

European Court of Human Rights

21. Similarly, the European Court of Human Rights (ECtHR) has a long-established practice of accepting amicus curiae briefs which is now reflected in Article 36 of the European Convention on Human Rights and Rule 44 of the Rules of Court. Article 36 provides as follows:

> 1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
> 2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in proceedings.

[14] I/A Court H.R., *Caso Masacre de Santo Domingo v Colombia*, Preliminary Objections, Merits and Reparations Judgment of November 30, 2012 Series C No. 259, para 14, available at http://www.corteidh.or.cr/casos.cfm

Thus, the criterion for admission of amicus curiae briefs in this jurisdiction is the interest of the proper administration of justice.

22. It has been suggested that amongst the categories of person whose intervention is welcomed by the ECtHR are 'entities, groups or individuals with relevant specialist legal expertise or factual knowledge' and that the participation of public interest groups has positively contributed to the ECtHR's judgments on important issues.[15] The role of the amicus curiae has been recognised by the ECtHR in its judgments – for example in *Karner v Austria* the Court highlighted the submissions of three intervening NGOS *"whose intervention in the proceedings as third parties was authorised as it highlights the general importance of the issue*".[16]

c. The amicus curiae in the UAE courts

23. In the UAE, the provision exists by which amicus curiae submissions could be admitted pursuant to the following domestic law:

(a) Article 179 of the Federal Criminal Procedures Code which provides that the Court may consider any other evidence that will assist the Court in finding the truth;
(b) Article 239 of the Federal Criminal Procedures Code which grants the Court the discretion to consider any information it believes relevant in making its decision in a case relating to inquiry and testimony.

24. The authors of this brief would therefore respectfully underline the value of the amicus brief in assisting the judiciary and furthering the interests of justice. This has been recognised by international courts and tribunals, in particular those concerned with criminal law and human rights.

[15] Bartholomeusz, 'The Amicus Curiae before International Courts and Tribunals', Non-State Actors and International Law 5: 209-286, 2005 at p237, p241

[16] App no 40016/98, Judgment, Chamber (First Section), 24 July 2003, para 27, available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61263

25. The instant case is one which engages fundamental principles of due process and human rights and which may have considerable impact on the treatment of suspects of crime and the wider public interest in the process of bringing alleged perpetrators of crime to justice in the UAE. To admit these submissions would be in accordance with the interests of justice. We respectfully request that this amicus brief be admitted before the Court of Appeal.

FACTUAL SUMMARY

26. Ahmad Zeidan, a British national, was arrested with a group of seven other men on 13th December 2013 in the Sharjah on suspicion of possession and trafficking of narcotics. Mr. Zeidan was found guilty of consumption of illicit drugs and facilitation of the consumption of cocaine on 28th May 2014. He was sentenced to a total of 9 years' imprisonment.

27. Following arrest Mr Zeidan was taken into custody and held for eight days. During this time he alleges that he was subjected to physical and psychological torture: specifically that he was forced to remove his clothing, threatened with sexual violence, was repeatedly beaten, and that he was hooded and held in solitary confinement. He was further denied access to a lawyer or contact with his family. He was also denied access to consular assistance from the British Embassy.

28. After the eight days of incommunicado detention Mr Zeidan signed a confession in Arabic, a language he states that he is unable to read. He claims this statement is not an accurate account of what happened on 13th December 2013.

29. Mr. Zeidan requested a full and independent investigation into his treatment whilst in detention. The Public Prosecutor initiated an investigation, which included a medical examination. The lawyers for Mr. Zeidan have been denied access to any records of this investigation.

SUBMISSIONS OF THE AMICUS

30. In summary it is respectfully submitted to this honourable Court that:

(i) The failure to initiate a full, prompt and impartial investigation into the allegation of torture and/or inhuman treatment is contrary to Article 12 of United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;

(ii) The evidence allegedly obtained by torture should have been excluded from consideration by the First Instance Court unless and until an independent investigation had been conducted;

(iii) The right to consular access is an established international norm under article 36 of the Vienna Convention on Consular Relations [VCCR], which acts as a safeguard against ill treatment.

(i) Failure to initiate a full and impartial investigation

30. The BHRC is concerned to protect the rights of individuals to be free from torture by promoting legal and procedural safeguards for the prevention of torture and other forms of ill treatment. It is respectfully submitted that international perspective is of particular importance in the context of cases in which allegations of torture have been raised. The prohibition of torture is universally recognised and enshrined in the primary international and regional human rights instruments. It is an absolute prohibition and admits no derogations under treaty law. International and regional courts and monitoring mechanisms have also supported this non-derogability.

31. Under customary international law, the prohibition of torture has *jus cogens* status. Consequently, no State may recognise as lawful a situation occurring from a violation of the prohibition of torture. It also imposes obligations *erga omnes*, and as such, every State has a legal interest in the protection of such obligations, which are owed to the international community as a whole.

32. The United Nations Convention Against Torture and other Cruel, Inhuman or

Degrading Treatment or Punishment (UNCAT)[17] requires state parties to take measures to prevent, prosecute those who commit, and investigate allegations of torture or other inhuman and degrading treatment, as well as provide redress for victims. In particular, Article 12 of UNCAT provides:

> 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.

The UAE is a signatory to UNCAT, having acceded on 19 July 2012,[18] and is therefore bound by its provisions. Article 26 of the UAE Constitution in fact reflects this obligation by providing that 'a person may not be subjected to torture or to degrading treatment.'

33. Although the prosecuting authorities initiated an investigation into Mr Zeidan's complaint, the procedure followed was inadequate to meet the requirements of impartiality. Such an investigation should be conducted by an independent authority with no connection to the prosecuting authority. It is respectfully submitted therefore that the investigation that took place should be disregarded.

34. In any event, it is not clear what conclusion was drawn by the Public Prosecutor following its internal investigation, since this has not been released. Moreover, the First Instance Court made no reference in its judgment to the findings of the investigation purportedly carried out, or to any medical evidence. It simply held that the defence was rejected because the confession happened in front of the Public Prosecutor. It is respectfully submitted that this amounts to a failure to seriously address Mr Zeidan's allegations of torture and in accordance with the level of enquiry required by Article 12 of UNCAT.

[17] General Assembly resolution 39/46 of 10 December 1984.

[18] With reservations and a declaration not relevant to this issue.

(ii) The requirement to exclude evidence tainted by torture

35. The principle of non-admissibility of evidence obtained by torture, otherwise known as the exclusionary rule, is enshrined in Article 15 of UNCAT. Article 15 provides:

> 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 it was made.

36. The UN Human Rights Committee in its General Comment No. 20 stated:

> It is important for the discouragement of violations under article 7[19] that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.[20]

37. The UN Special Rapporteur on Torture has stated that the admissibility of evidence obtained under torture is one of the elements that contributes to impunity and makes torture feasible. He indicated:

> [I]t is impunity which makes torture attractive and feasible. Far too often the Special Rapporteur receives information… that courts admitted and accepted statements and confessions in spite of the fact that during trial the suspect claimed that these had been obtained under torture… that, consequently, those who are responsible for the prohibited acts go unpunished and those who are the victims of these acts are left without an effective remedy and without appropriate redress.[21]

[19] Which relates to the prosecution of perpetrators of torture.

[20] Human Rights Committee, General Comment No. 20 concerning the prohibition of torture and cruel treatment or punishment, UN Doc. HRI/GEN/1/Rev.7, para. 12 (10 March 1992).

[21] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN doc. E/CN.4/1993/26, at § 590 (15 December 1992).

38. The UN Committee against Torture has stated that laws governing processes subject to Article 15 should expressly provide for the exclusion of evidence obtained by torture: where exclusion is simply a rule developed through case law this may not provide a secure enough guarantee to satisfy the requirements of Article 15. Provisions that permit a judicial authority to assess evidence "in accordance with his innermost conviction" or allowing "the free weighing of evidence" have been found to be inadequate.

39. Furthermore, international tribunals have adopted similar rules which enshrine the principle. For example:

(a) In 1994, the International Criminal Tribunal for the Former Yugoslavia (ICTY):

> No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.[22]

(b) The International Criminal Tribunal for Rwanda (ICTR) adopted an identical provision to that of the ICTY.[23]

(c) The Rome Statute of the International Criminal Court (ICC), which was adopted in 1998 and entered into force on 1 July 2002, similarly provides:

> In respect of an investigation under this Statute, a person…[s]hall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment…
>
> Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:

[22] International Criminal Tribunal for the Former Yugoslavia, Rules of Procedure and Evidence, IT/32/Rev.44 (1994 – as amended 1995 and 1997), rule 95.

[23] International Criminal Tribunal for Rwanda, Rules of Procedure and Evidence, ITR/3/Rev.1 (1995 – as amended 1998), rule 95.

(a) The violation casts substantial doubt on the reliability of the evidence; or
(b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

40. Applying the exclusionary rule in the case of *Abu Qatada v. United Kingdom*, the European Court of Human Rights recently restated the position as follows:

> [T]he Court considers that the admission of torture evidence is manifestly contrary, not just to the provisions of Article 6, but to the most basic international standards of a fair trial. It would make the whole trial not only immoral and illegal, but also entirely unreliable in its outcome. It would, therefore, be a flagrant denial of justice if such evidence were admitted in a criminal trial.[24]

41. In consequence it is respectfully submitted that there is now a long established and internationally recognised rule of law that confession evidence that has been allegedly obtained through torture must not be admitted by any court. Unless and until there has been a full, careful and impartial investigation of claims of torture, there can be no assurance that evidence has been properly obtained without the use of torture; to admit evidence in the absence of such an investigation would reward those who would use torture to further their investigation of crime..

42. In Mr Zeidan's case, the Court of First Instance heard the claims of torture but took none of the required steps to ensure that the claims were fully and independently investigated prior to admitting the confession evidence. In our respectful submission the confession evidence was wholly unreliable until such steps had been taken and should have been excluded at trial, or the trial stayed pending the outcome of an independent investigation.

[24] *Othman (Abu Qatada) v. The United Kingdom* [2012] ECHR 56, para. 267.

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(iii) Denial of Consular access

43. The UAE is a signatory to the 1963 Vienna Convention on Consular Relations[25] [VCCR], having acceded on 24 February 1977 and is therefore bound by its provisions. Article 36 thereof requires that a detained foreign national must be given notice "without delay" of their right to contact their own nation's embassy or consulate. Thereafter the embassy or consulate should be granted access to the detainee.

44. With regard to its interpretation, the international courts have provided some helpful guidance. In 1999, the Inter-American Court of Human Rights issued an advisory opinion, recognising that Article 36 creates individual rights, as a "notable exception to what are essentially States' rights and obligations accorded elsewhere" in the Convention.[26]

45. In 2001, the International Court of Justice in *LaGrand* found that where a violation of Article 36 occurs, a remedy is due consisting of "review and reconsideration by United States courts of convictions and sentences", in light of the breach of the Convention.[27] The Court further made clear in its *Avena* judgment[28] that, despite the ruling concerning only Mexican nationals, it could not be taken to imply that the conclusions reached did not apply to other foreign nationals finding themselves in similar situations in other countries.[29]

46. Access to a consular official can assist a foreign national in detention to understand the law and procedure, understand spoken and written language, obtain legal advice and representation and guard against ill treatment. Given that Mr Zeidan was detained for eight days with neither consular nor legal assistance, he was deprived of this important procedural safeguard. For this reason also it is respectfully submitted

[25] UN Treaty Series Vol. 596 (1967), p 262.

[26] Advisory *Opinion of the Inter-American Court of Human Rights: Due Process of Law is a Fundamental Right* (OC-16/99), para. 82.

[27] *LaGrand (Germany v. United States of America),* ICJ Reports 2001, p 466.

[28] *Avena (Mexico v United States of America)*, ICJ Reports 2004, p12.

[29] Information sourced from JMG Robledo 'Introductory Note', VCCR, UN Audiovisual Library of International Law, http://legal.un.org/avl/ha/vccr/vccr.html

that the confession evidence obtained from Mr Zeidan during police detention should not have been relied upon by the Court of First Instance.

CONCLUSION

47. International human rights law requires the prohibition of torture and inhuman and degrading treatment. Where it is alleged to have taken place, full and independent investigation is required to ensure ill treatment cannot persist with impunity, and cannot form the basis of criminal convictions against accused persons. It is respectfully submitted that there were concerning failings in Mr Zeidan's case at First Instance such as to undermine the UAE's commitment to the UN Convention Against Torture, the Vienna Convention on Consular Relations and the various other international agreements and norms in opposition to torture, as reflected in its own Constitution. In particular, the failings by the UAE authorities to afford consular assistance during initial detention and to ensure an appropriate investigation of allegations of torture prior to the admittance of confession evidence undermine the safety of Mr Zeidan's conviction for facilitating the consumption of narcotic substances.

48. The BHRC is grateful to this honourable Court for considering these submissions. The Court is respectfully invited to consider the failings of the First Instance Court to apply international human rights law at the appeal hearing in this case and to ensure that the appropriate redress is afforded in the circumstances.

Respectfully submitted,

14th August 2014

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