

BAHRAIN

I. INTRODUCTION

1. The Legal Framework

1.1 The Constitution

The Al Khalifa family rules over a population of about 700,000.¹ The ruling family is from the Sunni sect of Islam which constitutes less than one third of the indigenous population. The remaining two thirds of the indigenous population are Shi'a muslims.² In addition to this, Bahrain has a sizeable expatriate community (of approximately one third of the total population), many of whom are from Asia.³

Bahrain was formerly a British protectorate and after gaining independence from British administration in 1971, Bahrain continued to be ruled under the aegis of the Amir with his government and a national assembly (Parliament) made up of members from different political parties.⁴ In 1973 Bahrain's Constitution was introduced setting out a number of important guarantees of individual rights.

Due to increasing unrest amongst women's groups and strikes amongst a cross-section of numerous industries the government sought in 1974 to introduce a State Security Act to curb such activity.⁵ As a result of the controversial nature of this Bill which effectively suspended provisions relating to an individual's rights to security and liberty of the person in the 1971 Constitution, the national assembly refused to consent to the Bill without some amendments being made.⁶ This led the government to dissolve the assembly in order to enact the State Security Laws and effectively suspend some of the constitutional rights.⁷ This remained the position until 2001 when the National Assembly was reinstated and the National Action Charter, the

¹ The Al-Khalifa family has reigned Bahrain since late 18th Century. Bahrain Country Report on Human Rights Practices 2001, US Department of State Report, released by the Bureau of Democracy, Human Rights and Labour, 4 March 2002 estimates that out of the 700,000 population, one third are non-nationals.

² Ibid.

³ Ibid.

⁴ Human Right Watch Report: 'Routine Abuse, Routine Denial Civil Rights and the Political Crisis in Bahrain', June 1997, p.17: 'People's Bloc of eight leftist and Arab nationalist and Arab nationalist candidates with ties to underground and trans-national parties such as the Communist (the National Liberation Front) and the Arab Nationalist Movement (the Popular Front for the Liberation of Bahrain); a Religious Bloc of six, mainly teachers and religious court judges based in rural Shi'a constituencies; an Independent Middle - sixteen in a number not bound to either of the other blocs organizationally or ideologically and representing "a varying combination of wealth, education, family pre-eminence, government contacts, and the ability to employ or affect the employment of people."

⁵ Ibid., p. 18.

⁶ Foreign and Commonwealth Office, Foreign Policy: Regional Country Profiles – Bahrain, p. 2; HRW: 'Routine Abuse, Routine Denial Civil Rights and the Political Crisis in Bahrain', supra, p. 19.

⁷ US Department of State, Bahrain Country Report on Human Rights Practices for 2001 supra, p. 1; Foreign and Commonwealth Office, Foreign Policy: Regional Country Profiles – Bahrain, p. 2; see also Amnesty International report: 'Bahrain Violations of Human Rights' 9th May 1991, p. 4; note, the democratic basis of the system of government is also reflected in article 32 of the 2002 Constitution: "The system of government rests on a separation of the legislative, executive and judicial authorities" however, the relationship of each of these institutions to the Emir which is also set out in Article 32 reaffirms the Emir's overall power.

action plan for the future of Bahrain was adopted by overwhelming support in a referendum.⁸

The National Charter set out an action plan for the modernisation of the State of Bahrain. The National Charter outlines principles and values, which regulate the social, political and economic life of the Bahraini people and serves to enrich the shared common vision for the future of Bahrain. The Charter seeks to achieve this by strengthening “the principles of human coexistence and civilized dialogue”⁹ and the principle of democracy. Chapter one of the National Charter enshrines a number of important principles of human rights. However, all the proposed reforms promised by the Charter have yet to be completed, in particular reforms to the institutional and political structure of the state.

Following the adoption of the National Charter, the 1971 constitution was restored with amendments. The human rights set out in chapter one of the National Charter also are enshrined in the amended Constitution. The rights covered include equality and non-discrimination,¹⁰ due process,¹¹ prohibition of torture,¹² freedom from arbitrary arrest,¹³ freedom of association¹⁴ and assembly,¹⁵ the right to family life¹⁶ and employment¹⁷ and to privacy.¹⁸ It may also be noted that in addition to the rights stated above the Bahraini Constitution seeks to protect the rights of political refugees by prohibiting their extradition.¹⁹

Among those institutions which have undergone reform is the court system. Since the State Security Laws were repealed, the Security Courts have been abolished. The State Courts include specific courts to deal with civil and criminal cases. In addition to this, Bahrain has a number of military courts and a newly established Constitutional Court. Military courts only have jurisdiction over military offences committed by members of the Defence Force, the National Guard, and the Security Forces.²⁰ The Constitutional Court oversees the constitutionality of laws and statutes and the Government, Consultative Council, Chamber of Deputies as well as individuals have the right to challenge the constitutionality of laws.²¹

⁸ The Charter has been described as representing the aspirations of the people of Bahrain because the principles embodied within it have been subject to approval by the nation through a referendum. The National Charter, the sublime address of H.H the Amir Shaikh Hamad bin Isa Al Khalifa, www.bahrain.gov.bh/others/charter/amir_e.asp 04/04/2003.

⁹ *ibid.*

¹⁰ Article 18.

¹¹ Article 20.

¹² Article 19(d).

¹³ Article 19 (b).

¹⁴ Article 27.

¹⁵ Article 28.

¹⁶ Article 5.

¹⁷ Article 13.

¹⁸ This can also be found in articles 25 and 26 of the Bahraini Constitution.

¹⁹ Article 21.

²⁰ Article 105.

²¹ Article 106.

Today, the Amir (King) continues to rule Bahrain as the constitutional monarch.²² As set out in the National Charter, the Amir has promised to introduce reforms to guarantee the rule of law and democracy in the country.

1.2 Incorporation and status of international law in domestic law

Bahrain is a party to the following relevant international human rights and humanitarian law treaties:

- Geneva Conventions (30 November 1971)
- Protocol I & II (30 October 1986)
- Genocide Convention (27 March 1990)
- CERD (26 April 1990)
- CRC (14 March 1992)
- Convention against Torture (5 April 1998)
- CEDAW (18 July 2002)

Article 37 of the 2002 Constitution stipulates that "a treaty shall have the force of law once it has been concluded and ratified and published in the Official Gazette". However, Bahrain is not strictly a monist state because article 37 further provides that certain treaties "must be promulgated by law to be valid," including those relating to "State territory, ... rights of sovereignty, the public and private rights of citizens, ... treaties which involve the State Exchequer in non-budget expenditure or which entail amendment of the laws of Bahrain."

2. Practice of Torture: Context, Occurrence, Responses

2.1 The Practice of Torture

During the period in which the State Security Act 1974 was in force,²³ torture was endemic in Bahrain. The State Security Act contained measures permitting the government to arrest and imprison individuals without trial for a period of up to three years for crimes relating to state security. Other measures relating to the 1974 Act were introduced, (namely the establishment of State Security Courts) which added to the conditions conducive to the practice torture.

Torture appears to have been most prevalent between 1994 and 1997 when civilians sought the return of a liberal Constitution and their Parliament by presenting two

²² Amir's powers are set out in the 2001 Constitution – article 33 provides that the King is head of State and he exercises his power through his Council of ministers. He has the power to appoint and dismiss his Prime Minister, members of the Consultative Council (one of the chambers of the National assembly), Supreme Commander of Defence Force, chairs the higher judicial council.

²³ This led the government to dissolve the assembly in order to enact the State Security Laws. In essence this was the root cause of human rights violations within Bahrain during the last 20 or so years. US Department of State, Bahrain Country Report on Human Rights Practices for 2001 supra, p. 1; Foreign and Commonwealth Office, Foreign Policy: Regional Country Profiles – Bahrain, p. 2; Amnesty International report: "Bahrain Violations of Human Rights" 9 May 1991, p. 4.

public petitions to the Emir.²⁴ Individuals who were connected to this petition were deemed to be acting against the regime and were subsequently detained under the State Security Laws, subjected to torture and a number were forced into exile.²⁵

The Special Rapporteur summed up the practice of torture during this period in his 1997 report to the Human Rights Commission:

"most persons arrested for political reasons in Bahrain were held incommunicado, a condition of detention conducive to torture. The Security and Intelligence Service (SIS) and the Criminal Investigation Department (CID) were alleged frequently to conduct interrogation of such detainees under torture. The practice of torture by these agencies was said to be undertaken with impunity, with no known cases of officials having been prosecuted for acts of torture or other ill-treatment. In cases heard before the State Security Court, defendants were reportedly convicted solely on the basis of uncorroborated confessions made to political or security officials or on the testimony of such officials that confessions had been made. Although defendants often alleged that their "confessions" had been extracted under torture, impartial investigations of such claims were reportedly never ordered by the court. In addition, medical examinations of defendants were rarely ordered by the court, unless the defendant displayed obvious signs of injury. Such outward displays of injury were said to be uncommon, since torture victims were usually brought to trial well after their injuries had healed.

In addition to its use as a means to extract a "confession", torture was also reportedly administered to force detainees to sign statements pledging to renounce their political affiliation, to desist from future anti-government activity, to coerce the victim into reporting on the activities of others, to inflict punishment and to instil fear in political opponents. The methods of torture reported include: falaga (beatings on the soles of the feet); severe beatings, sometimes with hose-pipes; suspension of the limbs in contorted positions accompanied by blows to the body; enforced prolonged standing; sleep deprivation; preventing victims from relieving themselves; immersion in water to the point of near drowning; burnings with cigarettes; piercing the skin with a drill; sexual assault, including the insertion of objects into the penis or anus; threats of execution or of harm to family members; and placing detainees suffering from sickle cell anaemia (said to be prevalent in the country) in air-conditioned rooms in the winter, which can lead to injury to internal organs."²⁶

²⁴ Hansard 3 June 1997, Motion concerning Bahrain: question posed by George Gallaway and responded to by Derek Fatchett, Minister of State, Foreign and Commonwealth Office, pp. 1, 3; HRW: 'Routine Abuse, Routine Denial Civil Rights and the Political Crisis in Bahrain', supra, p. 29.

²⁵ US Department of State, Bahrain Country Report on Human Rights Practices for 2001, supra; Amnesty International report: "Bahrain Violations of Human Rights" supra, p. 3; US Department of State, Bahrain Country Report on Human Rights Practices for 1996, p. 3.

²⁶ Fifty-third session, Item 8(a) of the provisional agenda UN Doc. E/CN.4/1997/7, 10 January 1997, para 26; see also US Department of State, Bahrain Country Report on Human Rights Practices for 2001, supra, p. 1; Amnesty International report: "Bahrain Violations of Human Rights" supra, Summary, p. 2; and Report of the Working Group on Arbitrary Detention – Visit to Bahrain, para 90 according to which prisons are no longer overcrowded and conditions of detention are satisfactory. UN Doc.E/CN.4/2002/77/Add.2.

Since, the Emir, Sheikh Hamad Bin Isa Al-Khalifa succeeded his father, Sheikh Isa Bin Sulman Al Khalifa in 1999, the occurrence of torture has dramatically dropped. Only isolated incidents have been reported and the conditions of detention have improved.²⁷ This can be attributed to the introduction of some crucial reforms and political will of the Emir and his government to bring about these changes. However, Bahrain's criminal justice system (which is currently based on the Anglo-saxon model) does not yet offer adequate protection against torture. There is still no clear separation of powers;

"prosecution and investigation functions are carried out by police officers and officials under the authority of the Ministry of Interior..... The police monopoly on the entire preparatory phase of proceedings and the wide powers invested in the police under the present system of criminal justice have led to abuses which the justice system has either condoned or been powerless to prevent. The same officers are entrusted with executing judicial decisions and administering prisons."²⁸

However, the Bahraini authorities have acknowledged these flaws and have indicated to the United Nations Working Group on Arbitrary Detention that wide reaching reforms are in the pipeline. It is hoped that these reforms will provide the much needed safeguards.

Even though current police powers leave the system open to abuse, the Criminal Code provides for judicial supervision of all detainees. The Criminal Code stipulates that all detainees must be brought before a court within 48 hours where no warrant of arrest has been issued.²⁹ It is now for the judge to decide whether the person should remain in custody or not after the 24 hours has expired.³⁰ A person may be remanded in custody for up to 7 days only by order of the Court. This period is extendible at the Court's discretion and the detainee has the right to have the legality of his detention reviewed on a monthly basis.³¹ The only exception where a person may be detained for an indefinite period is in relation to State security crimes under article 79 paragraph 3 of the Criminal Code which states:

"In crimes prejudicing State security, whether from inside or outside of the country, as provided in the Criminal Code detention for an indefinite period shall be authorised".³²

The Working Group on Arbitrary Detention was satisfied that in practice the judicial supervision of detention was being complied with in accordance articles 25 and 79 of the Criminal Procedure Code, however, they found that:

²⁷ US Department of State, Bahrain Country Report on Human Rights Practices for 2001, supra and Working group on arbitrary detention, supra, para 90.

²⁸ Ibid., paras 51 and 54.

²⁹ Articles 25 and 79(1) of the Criminal Procedure Code.

³⁰ article 79(2) of the Criminal Procedure Code.

³¹ article 79 (3) of the Criminal Procedure Code.

³² It is important to note that this judicial scrutiny of the arrest procedure and legality of arrest was suspended under the security laws. The security laws permitted the police or security and intelligence services to detain a person for up to three years on grounds of national security. The legality of the detention could only be brought before the State Security Courts three months after the detention and further challenges to the detention could then be made every 6 months thereafter. See Article 1 of the Legislative Decree on State Security Measures of 22 October 1974 referred to in the Working Group on Arbitrary Detentions report, supra at para 9c.

"Nearly everybody questioned stated that every seven days they were taken before the court and their pre-trial detention was systematically extended unless they posted bail. In criminal cases, it seems that the judge sometimes extends pre-trial detention without setting eyes on the detainees, who do not even leave the courthouse holding cells to be brought before the court."³³

Confessions are now governed by article 128 of the Criminal procedure code. Article 128 provides that a confession is only admissible as evidence if it is made before an investigating judge.³⁴ Even though this is a marked change from the practice under the State security laws, where a person could be convicted solely on the strength of a confession given during the investigation process,³⁵ current practice does not provide safeguards against false confessions because "a lawyer is not always present at this stage of proceedings and the accused is in the hands of the police".³⁶ This practice is left further open to abuse by the fact that a detainee does not always have access to a lawyer during pre-trial detention and even when they are allowed to consult a lawyer, the communications with their lawyer are often in the presence of a prison guard.³⁷

Even though at present, torture is no longer endemic in Bahrain, laws and practices still do not provide individuals with adequate safeguards against torture. However, the authorities are continuing to carry out a number of wide reaching reforms which should, if implemented, provide the necessary safeguards. Much will then remain on the will of the relevant authorities to ensure that these safeguards are effectively implemented in practice.

2.2. National Responses

Under Shaikh Hamad Bin Isa Al-Khalifa's rule, a number of important reforms have been introduced into Bahrain. From the perspective of the protection against torture, the most significant change has been the repeal of the State Security Law. This has included the abolition of the State Security Court which held secret trials with few procedural rights guaranteeing the right to a fair trial in February 2001.³⁸

³³ Ibid., para 59.

³⁴ Article 75(i), (ii) of the Criminal procedure code prohibits the use of or threat of violence during investigation or prevent a person from making any statement of his own free will and Article 76(3) of that code states that any confession must be recorded by a magistrate provided the magistrate is satisfied that the confession was made voluntarily. Under articles 84 and 85, an accused will be charged and brought before a court – and either he or his "wakil" should be given the opportunity to answer charges put by the court, point out any defects and to plead either guilty or not guilty.

Article 90 provides that when an accused admits a charge then Court shall record this as finding of Court and pass sentence on it. Article 124 states that every defendant has right to a legal representation (*wakil*).

³⁵ Article 5 of Decree 7 year 1976 states that "The confession of the accused, whether made against himself of against other co-accused, shall be weighed with care by court and whether the said confession was made to the investigating judge or in court during trial or *was made only in the course of the investigation by the public prosecutor or in the statement to the public prosecutor or the police*. The court may act on this confession for its judgment. However, the provisions contained in this paragraph shall not apply to crimes punishable death and the confession of the accused alone shall not avail against such crimes unless it has been made in court or before the investigating judge." (emphasis added).

³⁶ Supra, para 60.

³⁷ Ibid, para 88.

³⁸ Supra 1. US Department of State, Bahrain Country Report on Human Rights Practices for 2001.

In addition to this, the Emir granted an amnesty to all political prisoners held under the State Security laws other than life-threatening offences pursuant to articles 333 and 336 of the Criminal Code.³⁹ This resulted in release of a large number of detainees.⁴⁰ The effects of this decree also resulted in the return of many Bahrainis living in exile and the cancellation of international search warrants.⁴¹

The establishment of a Human Rights Committee has the promise of playing an important role to ensure the respect of human rights in Bahrain. The Human Rights Committee was elected from the members of the Shura Council for a period of four years. This Committee has described its objectives as follows:

“to consider the texts of bills and other legislation relating to human rights; to cooperate with the authorities concerned with human rights issues; to monitor the progress of human rights issues; to take part in any national or international studies, research and seminars on human rights; to cooperate with national human rights institutions throughout the world, especially in Gulf Cooperation Council countries; to represent Bahrain on the Inter-Parliamentary Union Committee on the Human Rights of Parliamentarians, in Geneva; and to consider any matters referred to it by the Amir, to whom the Committee reports directly every year”⁴²

From the interview given to the Working Group on Arbitrary Detention, it appears that the Human Rights Committee can receive applications from individuals. However, it is unclear what powers it will have when dealing with such applications.⁴³

A number of legislative reforms have already been completed. For example Decree 4 of 1999 and Decree 19 of 2000 sets up a Higher Judicial Council that has enhanced the separation of powers and independence of the judiciary. This Council now has vested in it all the powers that formerly rested with the Ministry of Justice (this includes the appointment and removal of judges). However, the Working Group on Arbitrary Detention has expressed the hope that this system will be further reformed to ensure the independence of the judiciary are carried out (in particular that the appointments are made on a competitive basis and representative of the different religious groups in society).⁴⁴

A number of other legal reforms are still in the drafting stages. For example, the Working Group on Arbitrary Detention were informed of a new organisational model pending which would make radical reforms to the current criminal justice system. These reforms include a new code of criminal procedure which “makes substantial changes, increasing judicial supervision of the police and circumscribing the role hitherto played by the services of the Ministry of Interior”.⁴⁵ This reform proposes to

³⁹ Decree no 10 of 2001.

⁴⁰ US State Department Report 2001, *supra*, estimated that 1,500 detainees were released as a result of decree 10 of year 2001.

⁴¹ See *ibid.* and report of Working Group on Arbitrary Detention, *supra*.

⁴² *supra* 26, p.8.

⁴³ *ibid.*, para 16.

⁴⁴ *Ibid.*, paras 44-46.

⁴⁵ *Ibid.*, para.78. US State Department Report 2001, p. 3. See also HRW: ‘Routine Abuse, Routine Denial Civil Rights and the Political Crisis in Bahrain’, *supra*, p. 57.

set up a public prosecutor's office and allow the referral of difficult investigations to investigating judges.⁴⁶

Even though these developments have brought important changes to protect individuals from torture, the government has not yet tackled the problem of impunity. To date, no perpetrator of torture has yet been tried and more worryingly a blanket amnesty law prohibiting any form of civil or criminal claim being brought for torture was passed in October 2002 against members of the Security and Intelligence Services.⁴⁷ Before justice and the rule of law can be fully restored in Bahrain, impunity and the rights of torture survivors to an effective and enforceable remedy needs to be resolved.

2.3. International Responses

Given the absence of a regional human rights mechanism in the Middle East, the United Nations is the main body monitoring Bahrain's compliance with its human rights obligations. Bahrain's decision to accede to the Convention against Torture in 1998, bringing its domestic law and policies under the examination of the Commission against Torture, is of major importance because Bahrain is not yet a party to the International Covenant on Civil and Political Rights. However, Bahrain's first state report to the Committee against Torture is long overdue.⁴⁸

Even though Bahrain has not yet acceded to the individual right of petition to the Committee against Torture, Bahrain has withdrawn its reservation under Article 20 of the Convention. This empowers the Committee to initiate an enquiry where it has reason to believe that "torture is being systematically practiced" in Bahrain.

Bahrain's past track record for gross violations of human rights, in particular torture has been frequently raised in a variety of UN fora; it has been one of the countries subjected to the 1503 procedure⁴⁹ and has been the subject of a resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities⁵⁰ as well as urgent appeals from the *Special Rapporteur* on Torture and the Working Group on Arbitrary Detention.⁵¹

Bahrain has also attracted the condemnation of its use of torture by the European Union during the 1990's; the European Parliament has passed two resolutions (the

⁴⁶ Ibid., para.80.

⁴⁷ Decree no 52 year 2002.

⁴⁸ The initial report was due on 4 April 1999, see Report of the Committee against Torture, Twenty-seventh session (12-23 November 2001); Twenty-eighth session (29 April-17 May 2002), UN Doc.A/57/44, 2002.

⁴⁹ From 1991 to 1993, 47th-49th session, see Office of the High Commissioner for Human Rights, States examined under the 1503 procedure by the Commission on Human Rights (as up to 2003).

⁵⁰ Situation of human rights in Bahrain, Sub-commission resolution 1997/2, adopted at the 24th meeting, 21 August 1997, in which the Sub-Commission noted "the information concerning a serious deterioration of the human rights situation in Bahrain, including discrimination against the Shī'a population, extrajudicial killings, persistent use of torture in Bahraini prisons on a large scale as well as the abuse of women and children who are detained, and arbitrary detention without trial or access by detainees to legal advice" and expressed "its deep concern about the alleged gross and systematic violations of human rights in Bahrain."

⁵¹ See e.g. UN Doc. E/CN.4/1996/35, 9 January 1996, para.33; UN Doc. E/CN.4/1998/38, 24 December 1997, para.24 and Opinion No.15/1997 of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/1998/44/Add.1, 3 November 1998.

first in 1995 and the second in 1997), both of which condemned the use of torture. In 1995, the European Parliament demanded that "an independent inquiry be opened into allegations of murder and torture" and that Bahrain "abolish the State Security Law and other legal provisions which restrict liberties and human rights".⁵² In 1997, the European Parliament passed a further resolution on Bahrain calling on the government "to release political prisoners, to facilitate the return of exiles and institute due process of law, according to accepted international standards".⁵³

Furthermore, concerns about Bahrain's human rights record has been raised by British MPs in Parliament. This appears to have been triggered by the large number of Bahraini's in exile in the UK and by the alleged involvement of Ian Henderson, a UK national as head of the Security and Intelligence Services.⁵⁴

More recently, Bahrain has received praise for the improvements it has made to its human rights record. In October 2001, the Working Group on Arbitrary Detention visited Bahrain for the first time. Although it confirmed the condemnatory decisions and opinions it had previously made in relation to the state security laws with further investigations, it congratulated Bahrain on "the decisive scale and scope of the reforms that have been undertaken and the accompanying acts of clemency" following the repeal of the State Security laws and the release of political prisoners.⁵⁵ It viewed the repeal of the state security laws "amount to a major political shift in favour of human rights".⁵⁶ However it also recognised that : "Not all the instruments currently in force are flawed, the problem lies rather in their practical application".⁵⁷ However, it is encouraging to note that the authorities have assured the Working Group on Arbitrary Detention that "there is a genuine willingness to build a State governed by the rule of law".⁵⁸

II. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

Torture was prohibited under the original Constitution of 1973 and the prohibition is replicated in 2002 Amended Constitution under Chapter III "Public Rights and Duties" under article 19d:

"No person shall be subjected to physical or mental torture, or inducement, or undignified treatment, and the penalty for so doing shall be specified by law. Any statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void".

⁵² Points 3 and 5 of Resolution on the continued human rights violations in Bahrain B4-0208 and 0276/95.

⁵³ Para 3 of Urgency Resolution under Rule 47 of the Rules of Procedure passed on 18 September 1997.

⁵⁴ Commons written answers 31 Jan 1995 reported in Hansard – see also debate on Bahrain in the House of Commons on 3rd June 1997.

⁵⁵ See Report of Working Group on Arbitrary Detention, in particular paras. 9 to 13.

⁵⁶ Ibid para. 18.

⁵⁷ Ibid para. 56.

⁵⁸ Ibid. In the Working Group on Arbitrary Detention's report following their visit, they commented that: "this [State] emergency legislation underlay most of the decisions and opinions (six) in which, between 1996 and 2000, the Working Group found that the detention of 34 individuals whose cases had been brought to its attention was arbitrary...For further information on this matter, the delegations conducted interviews with former detainees – some released recently, others a while ago – and with lawyers who had practices at the State Security Court. This enabled it to amass a body of specific, consistent testimony confirming the nature of the violations reported by the Working Group in its communications" (paras 9 and 10).

The Constitution also includes clauses prohibiting discrimination "on the basis of sex, origin, language, religion or creed" (article 18) and providing guarantees of the right to fair trial includes a further clause that: "It is forbidden to harm an accused person physically or mentally" (article 20d).

The prohibition of torture was included within the second basic principles of the society, "the protection of individual freedoms and equality" in Chapter 1 of the Bahrain National Charter. These provisions expand on the prohibition of torture set out in the 1973 Constitution: "Law ensures punishment of those who commit an offence of torture, a physically or psychologically harmful act".

Torture is also a specific statutory crime which is set out in a number of the provisions of the Penal Code. However the Penal Code does not contain a clear definition of torture that reflects the definition set out in the Convention against Torture. This is hardly surprising given that the Criminal Penal Code was enacted in 1976, long before Bahrain became a signatory to the Convention. On account of the lack of Bahraini jurisprudence, it is unclear whether the existing crimes covers the full scope of the definition of torture in the Convention in compliance with its obligations.

In addition to this the Criminal Procedure code has a number of provisions which provide safeguards against torture such as article 75(i) which prohibits the use of force or threat of violence during investigation or prevents a person from making any statement of his own free will and article 21 which provides that "an arrested person shall not be subjected to more restraint than is necessary to prevent his escape".

III. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

1. The Substantive Law: Criminal offences and punishment

Crimes under the Penal Code are divided into two categories: felonies and misdemeanours. A crime will amount to a felony only where *mens rea* is present whereas a misdemeanour is committed even where there is an absence of intention to commit the act.⁵⁹

The crime of torture is principally set out in article 208 of the Criminal Code that states:

"a prison sentence shall be the penalty of every civil servant or officer entrusted with a public service who uses torture, force or threat, either personally or through a third party, against an accused person, witness or expert to force him to admit having committed a crime or give statements or information in respect thereof.

The penalty shall be life imprisonment should the use of torture or force lead to death".

⁵⁹ Articles 13 and 14 of the Penal Code.

Perpetrators of torture or inhumane and degrading treatment may fall within other crimes set out in the in the Criminal Code and may amount to an aggravated crime pursuant to article 75(4) of the Criminal code which provides that:

"the committing of the offence by a civil servant by reason of or while performing his duties unless the law prescribes a special penalty in view of his capacity".⁶⁰

For example: rape or sexual assault by an official is an aggravated crime under articles 344 and 348 of the Penal Code as amended by Legislative decree no 7 of year 1985 and legislative decree no 1 of year 1986. Article 232 follows the wording of the crime of torture carried out by a public official in article 208 except it does not need to be inflicted by a public official:

"A prison sentence shall be the penalty for any person who uses torture, force or threatens to use them, either personally or through a third party, against an accused person, witness or expert to make him admit the commission of a crime or to give statements or information in respect thereof."

Articles 238 provides that the use of "coercion, threat or offering a gift, privilege of any kind whatsoever or a promise of any of the above to force another not to give a testimony or to give a false testimony without revealing his intention" may also be an aggravated offence when committed by a public official. Additionally, there are a number of crimes for physical assault committed by a public official under articles 336 and 337 of the Penal Code.

In addition to these crimes, it is also an offence under article 230 if a "civil officer" fails to report any crime which "has come to his knowledge during or by reason of the performance of his duties" and an offence for medical officers if during the course of a medical examination they see signs of injury or death caused by a felony or misdemeanour and fail to report it to the appropriate authorities under article 231. In addition to the above, the penal code also criminalised an attempt and conspiracy to commit an offence under articles 36 and 43.

The Penal Code lists a number of defences under the chapter headed "plea of justification". The general defences include acts done "in fulfilment of duty required by law" or "in exercise of a right justified by law or custom".⁶¹ Given that torture is prohibited under the Charter and Constitution, it seems highly unlikely that such a defence will be available to perpetrators of torture. Such a defence would also be contrary to the UN Convention against Torture.

General provisions on penalties are given in part III of the Penal code under the heading of "Punishment". This states that: "the penalty for a serious crime shall be capital punishment or imprisonment and civil disqualification for a period of at least 3 years and no more than 15 years".⁶²

⁶⁰ Article 107 provides for the definition of a civil servant which includes "persons in a position of authority, staff of government ministries, departments and local administrative units".

⁶¹ Articles 15 and 16.

⁶² Article 49. Article 50 provides that: "the penalty for a misdemeanour shall be imprisonment, a minimum fine of BD 5 and legal disqualification for no more than 3 years and no less than one year"

Article 52 further provides that:

“Imprisonment means keeping a convicted person for like or for an adjudicated term in a jail intended for this purpose in accordance with the Law.

A term of temporary imprisonment shall not be less than 3 years and shall not be more than 15 years unless the law otherwise provides”.

In relation to rape, the Penal code gives specific provisions under article 232 that perpetrators "shall be imprisonment for at least 6 months if torture or use of force results in harming the safety of the body" or imprisonment "if the use of force or torture leads to death". Whereas, aggravated rape or sexual assault carries a punishment of life imprisonment, where the victim is under 16 years old, the death penalty may be imposed.⁶³

For the aggravated crimes of assault under articles 336 and 337, the maximum penalty is 14 years.⁶⁴ Acts of attempt carry a lesser penalty (articles 42 & 37) whereas complicity carries the same maximum punishments as the principal offender (art 45).

As mentioned above, disciplinary sanctions may be imposed. Civil disqualification includes the right to hold a public office or service.⁶⁵ Such a penalty "shall have the consequence of dismissing him from such service".⁶⁶

2. The prosecution of perpetrators of torture

2.1 Immunities

A general power to promulgate laws granting an amnesty is given under articles 89 and 90 of the Penal Code provided that the amnesty law does "not affect third parties' rights".⁶⁷ Decree 56 of 2002 which has recently been passed purports to grant a blanket amnesty to all officials who allegedly perpetrated crimes of torture or other crimes against victims who were granted an amnesty for "offences that endangered or pose a threat to state/national security" under Decree 10 of 2001 and

⁶³ Legislative decree no 1 of year 1986.

⁶⁴ These articles need to be read in conjunction with article 76 under chapter 5 of Part III "Aggravating circumstances" which provides "If the penalty involves imprisonment, the maximum thereof shall be doubled."

⁶⁵ Article 53 of Penal Code.

⁶⁶ Civil disqualification for a period of at least 3 years and no more than 15 years - see art 61 which varies that to between 1 and 10 years "commencing from the date of completing the inflicting of the penalty or elapse therefore for any other reasons. If the penalty is a jail term, the adjudged deprivation shall be extended by the period to be spent by the convicted person in jail." See variation for misdemeanours under art 63.

⁶⁷ Article 89 states: "Total amnesty shall be decided by law and shall have the effect of discontinuing proceedings or nullifying the conviction judgment passed in respect thereof, but it shall have no effect on penalties previously executed. A total amnesty shall not affect third parties' rights".

Article 90 states: "A special amnesty shall be decided by an Amiri decree providing for extinguishing all or part of the penalty or replacing it with a less severe penalty.

A total amnesty shall not affect third parties' rights".

which fell within the jurisdiction of the State Security Court. The amnesty granted in Decree 56 of 2002 applies to both civil and criminal claims. Decree 56 appears to be in direct contravention with the provision in article 89 of the Penal Code that only allows amnesty laws which do "not affect third party rights". Moreover, decree 56 goes against the principles in relation to torture in the National Charter that states:

"No person shall in any way be subjected to any kind of physical or moral torture, inhumane, humiliating indignat treatment...Law ensures punishment of those who commit an offence of torture, a physically or psychologically harmful act".⁶⁸

In any event, the blanket amnesty granted by Decree 56 is contrary to the UN Convention against Torture and the provisions relating to the survivor's right to an effective investigation and an effective and enforceable remedy.

2.2 Trials

To date, no alleged perpetrator has been tried for torture or ill treatment even though the practice of torture during the 1980s and 1990s has been well documented.⁶⁹ The situation has been further aggravated by the introduction of Decree 10 of 2002 that provides a blanket amnesty for any case (criminal or civil) whatsoever being brought by persons accused of or convicted of state security crimes. In November 2002, 8 torture victims lodged complaints relating to their treatment with the Directorate of Public Prosecutions for an effective investigation.⁷⁰ At the time of writing, no known investigation has been opened in relation to these 8 cases.

IV. CLAIMING REPARATION FOR TORTURE

1. Available remedies

There are no specific statutory remedies for torture. However, article 158 of Decree Law No 19/2001 provide torture survivors with a legal basis for a civil claim for compensation for acts of torture and ill-treatment. Article 158 states that:

"Every unlawful act that has caused damage to others makes an obligation upon the person who committed it to pay compensation."

Even though article 169 of this law provides a defence to public officials where they were either acting in accordance with the law or on superior orders, arguably this would not apply given that such a defence is in direct contravention to the obligations of the state of Bahrain under the Torture Convention.⁷¹

⁶⁸ Second – Protection of individual freedoms and equality of Chapter 1 Basic principles of society of the National Charter (para 2).

⁶⁹ US State Department Report 2001, supra.

⁷⁰ Open letter to the Ambassador of Bahrain dated 17th December 2002 from REDRESS, OMCT, APT FIACAT and IRCT.

⁷¹ Article 169 of Decree Law No 19/2001 states: "A public official shall not be liable for his act which has caused damage to others, if he was acting in accordance with the law, or upon an order received from his supervisor, when

The victims may file their claims for compensation before civil courts provided that torture can be proved and substantiated regardless of whether a criminal case has been brought against the alleged perpetrator. However a victim has a 3 year time limit either "from the date on which the victim knows of the damage and the person liable for it, or fifteen years from the date on which the unlawful act has occurred, whichever comes first".⁷²

Before Decree 19 of 2001 came into force, the position was governed by the Bahrain Civil Wrongs Ordinance 1970. This legislation provided an injured party who had suffered "loss of life, or loss of, or detriment to, ...comfort, bodily welfare.." as a result of any unlawful interference with a legal right.

2. Practice

No known compensation cases for acts of torture or ill-treatment have been successfully pursued in the Courts to date. There have been reports of one case in 2001 where an individual who suffered torture while in police custody was personally compensated by the Amir.⁷³ The lack of claims for compensation has been further aggravated by the introduction of the amnesty law Decree 56 of 2002 because this prevents a claimant who had been charged under the State Security Act from lodging a civil compensation claim on account of the treatment he/she received while in custody.

The obligation on the state to provide an effective remedy and the needs of the torture survivors to receive compensation and other forms of reparation was stressed by the Working Group on Arbitrary Detention.⁷⁴ The views of civil society have also placed emphasis on the need for effective and enforceable remedies for torture survivors: "that mainstream opinion puts the highest priority on victims' right to compensation *inter alia* for torture, and in particular to the medical care with specific physical and psychological attention."⁷⁵ It is clear that Bahrain will not be able to bring the rule of law back to Bahrain until the torture survivor's right to an effective remedy has been properly addressed.

V. GOVERNMENT REPARATION MEASURES

Despite the large numbers of torture survivors in Bahrain and the demonstrations for the repeal of the amnesty laws, the government has not introduced any measures to compensate or provide for the rehabilitation of torture survivors.

he had to obey such order or he thought he had to obey, and he proves that he had justifiable reasons that made him believe his act was lawful, and that he exercised due care and diligence."

⁷² Article 180 (a) of Decree No. 19 of 2001. Article 180(b) provides that "if the action for liability arising from an unlawful act has been caused by a penal action, it shall not be barred as long as the penal action is continuing, even if the delays provided for in the preceding paragraph have lapsed."

⁷³ US State Department Report 2001, *supra*.

⁷⁴ Report of the Working Group on Arbitrary Detention, para 28.

⁷⁵ *Ibid*, para 24.

