

# **REDRESS**

*Seeking Reparation for Torture Survivors*

## **SUBMISSION OF THE REDRESS TRUST TO THE MEETING ON BAHRAIN**

### **THE HOUSE OF LORDS**

**17 August 2004**

#### **I. Introduction**

The Redress Trust (“REDRESS”) is an international non-governmental organisation with a mandate to assist torture survivors to seek justice and reparation and it fulfils this mandate through a variety of means, including casework, law reform, research and advocacy. Over the past 12 years, it has accumulated a wide expertise on the rights of victims of torture both within the United Kingdom and internationally. REDRESS regularly takes up cases on behalf of individual survivors and has wide experience with interventions before national and international courts and tribunals. At the domestic level, REDRESS assists lawyers representing survivors of torture seeking some form of remedy such as civil damages, criminal prosecutions or other forms of reparation including public apologies. At the international level, REDRESS represents individuals who are challenging the effectiveness of domestic remedies for torture and other forms of ill-treatment, including the scope and consequences of the prohibition of torture in domestic law, the State’s obligation to investigate allegations, prosecute and punish perpetrators, as well as the obligation to afford adequate reparations to the victims.

REDRESS has closely followed the situation of torture survivors in Bahrain and has actively supported their efforts to obtain redress both within Bahrain and abroad. It presents these submissions in order to contribute to discussions and debate on Decree 56 of 2002, which

purports to grant a blanket amnesty to all officials who allegedly perpetrated crimes of torture and other crimes in relation to “offences that endangered or pose a threat to state/national security” under Decree 10 of 2001 and which fell within the jurisdiction of the State Security Court.

These submissions reflect REDRESS’ accumulated expertise on the legality of amnesties under domestic and international law. Recently, REDRESS intervened in the matter of the *Prosecutor v. Morris Kallon*<sup>1</sup> at the Special Court for Sierra Leone on the applicability of the Lomé Accord amnesty to the Court’s jurisdiction in light of the obligation of States to prosecute serious crimes under international law. It has also put forward arguments to the Inter-American Commission of Human Rights and the United Nations Committee against Torture that the Chilean amnesty violated torture survivors rights to justice and reparations.<sup>2</sup>

## **II. The practice of torture in Bahrain**

During the period in which the State Security Act 1974 was in force,<sup>3</sup> 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 public petitions to the Emir.<sup>4</sup> Individuals who were connected to this petition were deemed to be acting against the

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<sup>1</sup> SCSL-2004-15-AR72 (E).

<sup>2</sup> See, in this regard, REDRESS, Observations to the Report Submitted by Chile under Article 19 of the Convention (CAT/C/39/Add.14), Third Periodic Report due in 1997, submitted by REDRESS to the Committee against Torture in April 2004, available at: [http://www.redress.org/publications/Chile\\_Report%20to%20the%20CAT.pdf](http://www.redress.org/publications/Chile_Report%20to%20the%20CAT.pdf).

<sup>3</sup> 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.

<sup>4</sup> 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’, p. 29.

regime and were subsequently detained under the State Security Laws, subjected to torture and a number were forced into exile.<sup>5</sup>

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 procedure<sup>6</sup> and has been the subject of a resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities<sup>7</sup> as well as urgent appeals from the *Special Rapporteur* on Torture and the Working Group on Arbitrary Detention.<sup>8</sup> 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.

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<sup>5</sup> US Department of State, Bahrain Country Report on Human Rights Practices for 2001; Amnesty International report: "Bahrain Violations of Human Rights" p. 3; US Department of State, Bahrain Country Report on Human Rights Practices for 1996, p. 3.

<sup>6</sup> From 1991 to 1993, 47<sup>th</sup>-49<sup>th</sup> 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).

<sup>7</sup> Situation of human rights in Bahrain, Sub-commission resolution 1997/2, adopted at the 24<sup>th</sup> 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 Shi'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."

<sup>8</sup> 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.

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."<sup>9</sup>

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 apparently dramatically dropped. Only isolated incidents have been reported and the conditions of detention have improved.<sup>10</sup> This can be attributed to the introduction of some crucial reforms.<sup>11</sup> 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.<sup>12</sup> It viewed the repeal of the state security laws "amount to a major political shift in favour of human rights".<sup>13</sup> However it also recognised that : "Not all the instruments currently in force are flawed, the problem lies rather in

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<sup>9</sup> 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, p. 1; Amnesty International report: "Bahrain Violations of Human Rights" 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.

<sup>10</sup> US Department of State, Bahrain Country Report on Human Rights Practices for 2001, and Working group on arbitrary detention, para 90.

<sup>11</sup> The most significant change has been the repeal of the State Security Law. This has included the abolition in February 2001 of the State Security Court which held secret trials with few procedural guarantees. 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. This resulted in the release of a large number of detainees and the return of many Bahrainis living in exile and the cancellation of international search warrants. For further information on reforms, see, REDRESS. Reparation for Torture: A Survey of Law and Practice in 30 Selected Countries (Bahrain Country Report), May 2003, available at: <http://www.redress.org/studies/Bahrain.pdf>.

<sup>12</sup> See Report of Working Group on Arbitrary Detention, in particular paras. 9 to 13.

<sup>13</sup> Ibid para. 18.

their practical application”.<sup>14</sup> Much remains in the will of the relevant authorities to continue with the reform process and to ensure that existing safeguards are effectively implemented in practice.

### **III. Seeking Remedies for Torture in Bahrain: the Impact of the Amnesty Decree**

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 United Nations Working Group on Arbitrary Detention.<sup>15</sup> 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.”<sup>16</sup>

However, to date, no alleged perpetrator has been tried for torture or ill treatment even though the practice of torture in Bahrain during the 1980s and 1990s has been well documented.<sup>17</sup> There have been reports of one case in 2001 where an individual who suffered torture while in police custody was personally compensated by the Emir,<sup>18</sup> and in November 2002, 8 torture victims lodged complaints relating to their treatment with the Directorate of Public Prosecutions for an effective investigation,<sup>19</sup> and requesting that charges be laid against one of the alleged perpetrators, Adel Felaifel, who was already being investigated on relation to fraud and embezzlement charges. There have also been numerous demonstrations and calls from the public for such a prosecution to be initiated. Additionally, more than 30,000 people were reported to have petitioned the King to repeal Decree No. 56. At the time of writing, no known investigation has been opened in relation to these cases.

The calls for an investigation with a view to prosecuting such crimes has been met with stiff opposition from the Government. Decree 56 of 2002, which purports to grant a blanket amnesty for any case (civil or criminal) lodged by persons accused of or convicted of “offences that

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<sup>14</sup> para. 56.

<sup>15</sup> para 28.

<sup>16</sup> *Ibid*, para 24.

<sup>17</sup> US State Department Report 2001.

<sup>18</sup> US State Department Report 2001.

<sup>19</sup> Open letter to the Ambassador of Bahrain dated 17 December 2002 from REDRESS, OMCT, APT FiACAT and IRCT.

endangered or pose a threat to state/national security” which fell within the jurisdiction of the State Security Court, effectively extends Decree 10/2001, the general amnesty of February 2001, to cover human rights violations committed by government and security officials as well as offences by political opponents of the government.<sup>20</sup> It 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,” and counters the prohibition of torture in the National Charter which provides that:

“No person shall in any way be subjected to any kind of physical or moral torture, inhumane, humiliating indignant treatment...Law ensures punishment of those who commit an offence of torture, a physically or psychologically harmful act”.<sup>21</sup>

#### **IV. The Legality of Amnesties Under International Law**

##### **The international obligation to guarantee fundamental human rights**

The U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Article 2.1 provides: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

When acts of torture or ill-treatment are plainly tolerated in the sense that the superiors of those immediately responsible though cognisant of such acts, take no action to punish them or prevent their repetition, or that higher authority, in the face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings, a fair hearing of such complaints is denied, the European Court of Human Rights has held that such practices are “incompatible” with the European Convention,<sup>22</sup> reasoning that

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<sup>20</sup> Decree 56 provides that: “No lawsuit related to or result from crimes that were subject to general clemency will be heard in front of any judicial panel irrespective of the plaintiff’s person or position and the accused person, whether he was civilian, a civil employee, or a military officer who was directly involved in the crime or was a partner to the crime that occurred during the period the preceded the issuance of this decree.”

<sup>21</sup> Second – Protection of individual freedoms and equality of Chapter 1 Basic principles of society of the National Charter (para 2).

<sup>22</sup> Ireland v UK (1978) 25 Eur Ct HR at 64 para 159.

“under the Convention [higher state] authorities are... under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected”.<sup>23</sup>

### **The duty to investigate, bring to justice and punish those responsible for gross human rights violations, including torture**

It is self-evident that if an obligation exists to prosecute (or extradite) a person suspected of having committed torture or other serious crimes under international law, then the application of an amnesty would be an unlawful interference with that duty. In this respect, general amnesties constitute a breach of the Convention against Torture which Bahrain has ratified. There is an explicit duty to institute criminal proceedings against alleged torturers, which precludes adherents to the Convention from enacting or applying an amnesty law that forecloses prosecution.<sup>24</sup> Article 4 of the Convention specifies that all acts of torture must be offences under national criminal law, punishable by appropriate penalties. Article 7 of the Convention requires the competent authorities to investigate all acts of torture with a view to prosecution, and owing to the seriousness and international character of the offence, requires States parties to either extradite or prosecute alleged perpetrators found within their territory, regardless of where the offences were perpetrated or the nationality of the perpetrators.

As the International Criminal Tribunal for the former Yugoslavia Trial Chambers noted in the Celibici and Furundzija cases, torture is prohibited by an absolute and non-derogable general rule of international law, which applies also to internal and international armed conflicts. According to the Tribunal, this norm is not only considered to be a norm of customary law but constitutes a norm of *jus cogens*.<sup>25</sup> The Trial Chamber held that **amnesties for torture were null and void and cannot be afforded international recognition**. It further established that, ‘... and [torture] must not be excluded from extradition under any political offence exemption.’<sup>26</sup>

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<sup>23</sup> Ireland v UK at 91 para 239.

<sup>24</sup> Symposium: Int Law: Article: Settling Accounts: The Duty To Prosecute Human Rights Violations of a Prior Regime (1991) - D F Orentlicher.

<sup>25</sup> Celebici Judgment, IT-95-17/1-T (10 December 1998), 165-167, paras. 452-59; Furundzija Judgment, Case No. IT-95-17/1-T, T. CH. II, 10 Dec. 1998, 55-64, paras 143-162.

<sup>26</sup> IT-95-17/1-T (10 December 1998) , par. 157

In the same way, the Committee Against Torture has stressed that alleged torturers must be investigated and prosecuted where appropriate, according to Articles 4, 5 and 12 of the UN Convention Against Torture. It has recommended that *'In order to ensure that the perpetrators of torture and ill-treatment do not enjoy impunity, the State party shall ensure the investigation and, where appropriate, the prosecution of all those accused of having committed such acts.'*<sup>27</sup> The Committee also made it clear that this is not only a treaty-based obligation.<sup>28</sup> The former Special Rapporteur on torture recommended, in relation to Chile, that all allegations of torture should be subjected to a thorough public inquiry and in cases where the evidence justifies it, those responsible should be brought to justice. The only exception he mentions is where the proceedings are barred by a statute of limitations, implying that amnesty laws do not constitute an exception.<sup>29</sup>

Importantly, the international obligation to bring to justice and punish serious violations of human rights has been recognized and established in all regional human rights mechanisms. The Inter-American Court stated in its first judgment that states must prevent, investigate and punish any violation of the rights recognized by the Convention.<sup>30</sup> This has been re-emphasized in subsequent cases. In the 'Street Children case', the Court reiterated 'that Guatemala is obliged to investigate the facts that generated the violations of the American Convention in the instant case, identify those responsible and punish them.'<sup>31</sup>

The Inter-American Court of Human Rights, in the *Barrios Altos Case, Chumbipuma Aguirre y otros v. Perú* (14 March 2001) held that amnesty provisions, prescription and the exclusion of responsibility which have the effect of impeding the investigation and punishment of those responsible for grave violations of human rights, such as torture, summary, extrajudicial or arbitrary executions, and enforced disappearances, are prohibited as contravening human rights of a non-derogable nature recognized by international human rights law. The Court held further that the self-amnesty laws lead to victims being defenceless and to the perpetuation of impunity, and, for this reason, were manifestly incompatible with the letter and spirit of the Convention.

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<sup>27</sup> Conclusions and recommendations of the Committee against Torture, Kyrgyzstan, A/55/44, paras.70-75, 18 November 1999.

<sup>28</sup> United Nations Committee against Torture, Decision concerning communications 1/1988, 2/1988 and 3/1988 (Argentina), 23 November 1989, paragraph 7.2, in United Nations document General Assembly, Official Reports, Forty-fifth Session, Supplement Nr. 44 (A/45/44), 1990.

<sup>29</sup> Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, para 76; Addendum, Visit by the Special Rapporteur to Chile, [E/CN.4/1996/35/Add.2, 4 January 1996](#).

<sup>30</sup> [Velásquez Rodríguez Case](#), Judgment of July 29, 1988, Inter-Am Ct. H.R. (Ser. C) No. 4 (1988), para 166.

<sup>31</sup> [The "Street Children" Case](#), Judgment of May 26, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 77 (2001), para. 101 and operative clause 8.

The Court concluded by stating that as a consequence of the manifest incompatibility of the self-amnesty laws with the American Convention on Human Rights, the laws concerned have no legal effect and may not continue representing an obstacle to the investigation of the facts of the case, nor to the identification and punishment of those responsible.<sup>32</sup> The Inter-American Commission and Court of Human Rights have consistently opposed the legality of amnesties in international law in many countries, including El Salvador, Chile, Argentina, and Uruguay.

The European Court of Human Rights has recognized that where the alleged violations include acts of torture or arbitrary killings, the state is under a duty to undertake an investigation capable of leading to the identification and punishment of those responsible.<sup>33</sup>

**The duty to guarantee the right of all persons to an effective remedy and to be heard by an independent and impartial tribunal for the determination of their rights.**

Under Article 14 of the Convention against Torture, “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation”. In General Comment 20 concerning the prohibition of torture and cruel treatment or punishment, the Human Rights Committee states that ‘Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.’<sup>34</sup>

A violation of human rights creates a duty on the part of the wrongdoing state(s) to provide an effective remedy and to afford reparation to the victim(s). This principle - namely, that the right

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<sup>32</sup> Cited in the Interim Report on the question of torture and other cruel, inhuman or degrading treatment or punishment, submitted by Sir Nigel Rodley, Special Rapporteur of the Commission on Human Rights, in accordance with paragraph 30 of General Assembly resolution 55/89. Interim Report A/56/156 3 July 2001.

<sup>33</sup> European Court of Human Rights Case Zeki Aksoy v. Turkey, 18 December 1996, para 98. See also, [Aydin v. Turkey](#) App. No. 23178/94 Judgment of 25 September 1997, para 103; [Selçuk and Asker v. Turkey](#) App. Nos. 23184/94 and 23185/94 Judgment of 24 April 1998, para 96; [Kurt v. Turkey](#) App. No. 24276/94 Judgment of 25 May 1998, para 139; and [Keenan v. United Kingdom](#) App. No. 27229/95 Judgment of 3 April 2001, para 122.

<sup>34</sup> Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7) : 10/03/92. CCPR General comment 20. (General Comments).

to a remedy for a violation of a human right protected by a human rights instrument is itself a right expressly guaranteed by the same,<sup>35</sup> is incorporated in every international human rights instrument<sup>36</sup> This principle has also been recognized as non-derogable.<sup>37</sup> Most human rights instruments guarantee both the procedural right to an effective access to a fair hearing (through judicial and/or non-judicial remedies)<sup>38</sup> and the substantive right to reparations (such as restitution, compensation and rehabilitation).<sup>39</sup>

### **The incompatibility of amnesties with a) the obligation to prosecute or extradite and b) its corollary obligation to afford full reparation to victims**

Amnesties have consistently been held to be unlawful by international bodies. We set out below relevant statements, findings and judgments of international jurisprudence.

The incompatibility of amnesty laws with state obligations to investigate and punish serious crimes under international law was recognized in the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights which called on states "to abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law".<sup>40</sup>

The U.N. Human Rights Committee dealt with the issue as early as 1978 in relation to Chile's amnesty law and has since made similar observations in regard to amnesty laws passed by Lebanon, El Salvador, Haiti, Peru, Uruguay, France, Yemen, Croatia and Argentina. In its General Comment on Article 7 of the International Covenant on Civil and Political Rights

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<sup>35</sup> As explained by the Human Rights Committee, "Article 2, paragraph 3, of the Covenant requires a State party to the Covenant to provide remedies for any violation of the provisions of the Covenant. This clause is not mentioned in the list of non-derogable provisions in Article 4, paragraph 2, but it constitutes a treaty obligation inherent in the Covenant as a whole. Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under Article 2, paragraph 3, of the Covenant to provide a remedy that is effective." [General Comment N° 29, CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 14.]

<sup>36</sup> Idem.

<sup>37</sup> See, for example, General Comment 29 on States of Emergency (Art. 4) of the UN Human Rights Committee, CCPR/C/21/Rev.1/Add.11, 31 August 2001, at para. 14.

<sup>38</sup> Some instruments explicitly call for the development of judicial remedies for the rights they guarantee, although effective remedies could be supplied by non-judicial bodies (Article 2(3)(b), International Covenant on Civil and Political Rights).

<sup>39</sup> See Jeremy McBride, "Access to Justice and Human Rights Treaties" (1998) 17 Civil Justice Q.235.

<sup>40</sup> See The Vienna Declaration and Programme of Action, Section II, para. 60, at [www.unhcr.ch/huridocda/huridoca.nsf/Sym.../A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/Sym.../A.CONF.157.23.En?OpenDocument).

prohibiting torture, the Committee stated that: "amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible".<sup>41</sup> The Committee has also consistently criticised states that have sought to impose amnesties for serious breaches.<sup>42</sup>

Declaratory instruments such as the already cited Joint Principles have also dealt with the issue of amnesties, determining that the perpetrators of serious crimes may not be included in amnesties unless the victims have been able to obtain justice by means of an effective remedy.<sup>43</sup> Other human rights bodies have also stressed the incompatibility of amnesty laws with the obligation to bring to justice perpetrators of serious crimes under international law.

The Committee against Torture has also consistently voiced concerns as to the use of amnesty laws. It has repeatedly recommended that *'In order to ensure that perpetrators of torture do not enjoy impunity, the State party ensure the investigation and, where appropriate, the prosecution of those accused of having committed the crime of torture, and ensure that amnesty laws exclude torture from their reach.'*<sup>44</sup> Specifically, the Committee against Torture took the view that the passing of the "Full Stop" and "Due Obedience" Laws in Argentina by a "democratically elected" government for acts committed under a *de facto* government is "incompatible with the spirit and purpose of the Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment]" (Committee against Torture, Communications N° 1/1988, 2/1988 and 3/1988, Argentina, decision dated 23 November 1989, paragraph 9.)

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<sup>41</sup> See Human Rights Committee General Comment No. 20 (44) on Article 7, para. 15 at [www.unhchr.ch/tbs/doc.nsf/view40?SearchView](http://www.unhchr.ch/tbs/doc.nsf/view40?SearchView).

<sup>42</sup> For example: Comments on Uruguay, U.N. Doc. CCPR/C/79/Add.19 (1993); Concluding Observations on the Second Periodic Report of El Salvador CCPR/C/79/Add.34 (1994); Nineteenth Annual report of the Human Rights Committee A/50/40 (1995) Nineteenth Annual report of the Human Rights Committee A/50/40 (1995); Preliminary Observations of the Human Rights Committee: Peru CCPR/C/79/Add.67 (1996); Concluding Observations: France, May 1997 CCPR/C/79/Add.80; Concluding Observations of the Human Rights Committee: Lebanon. 01/04/97. CCPR/C/79/Add.78. (Concluding Observations/Comments); and Concluding Observations on the Fourth Periodic Report of Chile (1999), CCPR/C/79/Add.104; Concluding observations of the Human Rights Committee: Argentina. 03/11/2000. CCPR/CO/70/ARG; Concluding Observations on the second periodic report of the Congo: Congo. 27/03/2000. CCPR/C/79/Add.118; Concluding observations of the Human Rights Committee: Croatia. 30/04/2001. CCPR/CO/71/HRV para 10-11.

<sup>43</sup> E/CN.4/Sub.2/1997/20/Rev.1, Annex II.

<sup>44</sup> Conclusions and recommendations of the Committee against Torture, Azerbaijan, A/55/44, paras. 64-69, 17 November 1999, para 69(c). See also: Conclusions and recommendations of the Committee against Torture, Senegal, A/51/44, paras. 102-119, 9 July 1996; Conclusions and recommendations of the Committee against Torture, Peru, A/55/44, paras.56-63, 15 November 1999; Conclusions and recommendations of the Committee against Torture, Kyrgyzstan, A/55/44, paras.70-75, 18 November 1999; and Conclusions and recommendations of the Committee against Torture, Croatia, A/54/44, paras. 61-71, 11 November 1998.

Resolutions of the Human Rights Commission demonstrate the unabridged obligation to prosecute and the consequent illegality of amnesty. For instance, Resolution 1999/32 stresses in particular *'that all allegations of torture or cruel, inhuman or degrading treatment or punishment should be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate such acts must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have taken place, and that national legal systems should ensure that the victims of such acts obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation'*.<sup>45</sup>

The Special Rapporteur on Torture has stated that *'A person in respect of whom there is credible evidence of responsibility for torture or severe maltreatment should be tried and, if found guilty, punished. Legal provisions granting exemptions from criminal responsibility for torturers, such as amnesties, indemnity laws etc., should be abrogated.'*<sup>46</sup>

Guideline 16 of the Robben Island Guidelines states that 'in order to combat impunity States should: a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process and b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.'<sup>47</sup>

## V. Recommendations

It is evident that blanket amnesties militate against the attainment of true justice. Decrees 56 not only violates the obligation of the Bahraini Government to investigate and bring to justice and punish those responsible for gross human rights violations, it abrogates the right to a fair trial, as it makes it impossible to individualise or identify those responsible. Decree 56 is contrary to the right to judicial and effective redress, the right to effective recourse against acts that violated

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<sup>45</sup> Resolution 1999/32 - Torture and other cruel, inhuman or degrading treatment or punishment, para. 4. See also: Resolution 1999/1, Situation of human rights in Sierra Leone; and Resolution 1999/34 – Impunity.

<sup>46</sup> *Report to the Commission on Human Rights (E/CN.4/2001/66)*.

<sup>47</sup> Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia. See also: Various communications v. Mauritania Communications 54/91, 61/91, 96/93, 98/93, 164/97-196/97, 210/98 and Jean Yokovi Degli on behalf of Corporal N. Bikagni, Union Interfricaine des Droits de l'Homme, Commission International de Juristes v Togo Communications 83/92, 88/93, 91/93.

victims' fundamental rights and renders the crimes without juridical effect. Furthermore, in passing Decree 56 Bahrain has violated its obligation to afford every person subject to its jurisdiction the right to a fair and effective remedy as well as the right of non-discrimination in the application of rights.

Consequently, REDRESS recommends as follows:

- Decree 56 should be repealed or significantly modified to exclude from amnesty those accused of serious international crimes, including torture.
- A full and impartial investigation into the allegations put forward by hundreds of torture survivors should be undertaken by the Directorate of Public Prosecutions, with a view to prosecution where sufficient evidence exists.
- Survivors of torture and their family members should be entitled to bring civil claims for the physical and psychological harm they suffered as a result of torture and ill treatment, and should be entitled to, among any other remedies, compensation and rehabilitative care.
- A full public inquiry into the endemic practice of torture in the 1980's and 90's should be undertaken with a view to acknowledging the harm caused to victims and preventing recurrence.