

REPORT ON BAR HUMAN RIGHTS COMMITTEE HEARING OBSERVATION: HUMAN RIGHTS DEFENDERS IN BAHRAIN

A report of the hearing of Mr. Hasan Mashaima (Secretary General of Haq Movement of Civil Liberties and Democracy); Dr. Abdul-Jalil Al-Singace (Head and Spokesperson for HAQ); Mr. Mohammed Habib Al Muqdad (prominent religious figure closely allied to HAQ) and others (case no.1057/2009/7)

High Criminal Court Bahrain – 24 March 2009

Acknowledgements

The hearing observation was undertaken by Kirsty Brimelow on behalf of the Bar Human Rights Committee of England and Wales. This report was written by Kirsty Brimelow (Vice-chair of the Bar Human Rights Committee and Barrister at Doughty Street Chambers). It was edited by Priscilla Dudhia and Jacqueline Macalesher.

Responsibility for the content of this report, and the views expressed within, lies solely with the Bar Human Rights Committee.

About the Bar Human Rights Committee of England and Wales

The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm 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. It 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 BHRC extends to all countries of the world, apart from its own jurisdiction of England & 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 agenda.

Introduction

During March 2009, BHRC undertook a mission to observe the hearing of three human rights defenders and thirty-two other co-defendants accused of “terror” related activities in the Kingdom of Bahrain. The case concerned violations of international human rights standards.

This report describes the background, the progress and the results of the hearing. It outlines key recommendations for the Kingdom of Bahrain.

Overview of the human rights situation in the Kingdom of Bahrain

Major political and human rights reforms adopted by King Shaikh Hamad bin `Isa al-Khalifa in 2001-2002 have slowed dramatically, and in some cases been reversed. Arrests of government critics have been a major blow to the reform process. Arbitrary restrictions on freedom of expression, association and assembly have continued to repress human rights defenders and journalists, and internet sites known for carrying criticism of the government have been banned¹. Such restrictions are legitimised through statute.

One of the most significant pieces of legislation in Bahrain is the Penal Code of 1976, which is extremely broad in the range of acts that could be caught by the statute. Acts such as “encouraging hatred of the state”, “distributing falsehood and rumours”, “insulting the judiciary” and “broadcasting abroad false information or statements or rumours about the internal affairs of the country” are prohibited. Bahrain has previously prosecuted activists under the Penal Code for exercising their human rights and making political statements.²

In July 2007 the King ratified amendments to Decree n o. 18 of 1973 on Public Meetings, Processions and Gatherings (the Bahrain Gathering Code), which mandates prior notification of “every meeting held in a public or private place participated [in] by individuals who do not have [a] personal invitation”. The Code imposes penalties, including imprisonment, for speech-related conduct, even where there is no threat or incitement to violence or hatred. Moreover, it outlaws demonstrations for election purposes³, political rallies⁴ and generally limits the freedom of assembly to Bahraini citizens.

¹ The Minister of Information is permitted to issue orders banning internet websites, and it has been reported that twenty-two websites, including some known for carrying criticism of the government, have been banned on the basis of Articles 19 and 20 of the Press and Publications Law of 2002: see “Internet Censorship Count: 22 sites blocked in Bahrain” (*Bahrain Center for Human Rights*:15 October 2007), <http://www.bahrainrights.org/internetblocks>.

² For example, in 2007, two activists who distributed leaflets calling for a boycott of elections faced charges in a criminal court for disseminating materials that could “harm the public interest.” In a statement published by Bahrain’s official news agency on 5 November 2008, the Interior Minister, Sheikh Rashid bin Abdullah Al Khalifa, threatened Bahraini activists with prosecution for having meetings abroad “for the purpose of discussing internal affairs of the Kingdom of Bahrain in violation of the law,” citing article 134 of Bahrain’s penal code. While, the statement did not specify what individuals or groups were involved, it was published following a briefing by members of Bahraini rights groups in Washington, DC, on 15 October 2008 to the US Congressional Task Force on International Religious Freedom. Participants, some of whom are also affiliated with opposition political groups, alleged that the country’s Sunni Muslim ruling family systematically discriminates against Bahrain’s Shia majority. (“Bahrain: End Threats to Rights Activists”, (*Human Rights Watch*: 13 November 2008), <http://www.hrw.org/en/content/bahrain-end-threats-rights-activists>).

³ Article 10(b).

⁴ Article 10(a).

State authorities continue to use the press law (Law 47/2002) to restrict coverage of controversial matters, including official corruption. While in May 2008 the government announced a new draft press law that would remove criminal penalties for most journalistic infractions, they appeared to retain the option of criminal penalties for certain types of written or spoken comment, including those found to harm national unity. The draft has been awaiting approval by the National Assembly as of November 2008.⁵

Anti-terrorism legislation has been utilised to further stifle the promotion of human rights. In August 2006, the King signed into law the Protecting Society from Terrorists Act. The UN Special Rapporteur on Human Rights and Counter-Terrorism has expressed concern that this law contains an excessively broad definition of terrorism and terrorist acts, and could be used to penalise the peaceful exercise of human rights.⁶ There need not be an intention to kill or cause serious bodily harm in order for an individual to be found guilty under this statute. Article 1 prohibits any act that would “damage national unity” or “obstruct public authorities from performing their duties”. Article 6 of the Act prescribes the death penalty for acts that “disrupt[s] the provisions of the Bahraini Constitution, law[s], or prevents any of the state enterprises or public authorities from exercising their duty” or “harm[s] national unity”. Such broad terminology enables the government to place restrictions on the freedoms of association and assembly which may allow for the criminalisation of peaceful demonstrations. The Act also allows for extended periods of detention without charge or judicial review, heightening the risk of arbitrary detention and torture or inhumane treatment.

While the Kingdom of Bahrain, in its submission to the United Nations Human Rights Council’s Universal Periodic Review (UPR) mechanism in April 2008, stated “there are no cases of torture in the Kingdom”, reports by Amnesty International and Human Rights Watch seem to suggest otherwise. A report by Amnesty International in 2007 revealed that in August 2007, a group of detainees, most of whom were being held at the Dry-Dock prison on the Island of al Muharraq, were beaten by riot police following announcement of their intention to go on a hunger-strike. After appearing before the High Criminal Court, they were reportedly taken outside the prison grounds, their hands tied behind their backs, and were forced to lie face-down in the heat of the sun for more than two hours, during which time they were allegedly beaten with sticks and kicked. The following September saw the release of the men, having received a pardon from the King.⁷ However, no investigation into their alleged ill-treatment is known to have been carried out. In early 2008, Human Rights Watch reported that judicial interrogators have tortured, and in one case sexually assaulted, opposition political activists detained after violent protests. Again, no investigation into their alleged ill-treatment is known to have been carried out.⁸ Such impunity has been institutionalised in law, with immunity having been granted to officials for acts of torture committed prior to February 2001.⁹

Human rights defenders are also facing increased challenges in carrying out their human rights activities. The Government, under Law 21/1989, continues to exercise the right to reject the

⁵ See “Freedom of the Press 2008 – Bahrain” (*UN Refugee Agency*: 29 April 2008), <<http://www.unhcr.org/refworld/country,,FREEHOU,,BHR,4562d8cf2,4871f5ed28,0.html>>.

⁶ UN Special Rapporteur Calls for Further Amendments to Counter-Terrorism Legislation in Bahrain”, (*United Nations Office at Geneva*: 25 July 2006), <[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/D88131384D6C4F56C12571B600452A63?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/D88131384D6C4F56C12571B600452A63?OpenDocument)>.

⁷ “Amnesty International Report 2007: Bahrain”, <<http://www.amnesty.org/en/region/bahrain/report-2007>>.

⁸ “Bahrain: Investigate Alleged Torture of Activists” (*Human Rights Watch*: 20 January 2008), <<http://www.hrw.org/en/news/2008/01/20/bahrain-investigate-alleged-torture-activists>>.

⁹ Decree 56/2002.

registration of non-governmental organisations (NGOs).¹⁰ According to Frontline Defenders, registration is often used to hinder the work of human rights defenders. The authorities unreasonably delay registration, which may take up to several years, or refuse it without providing any reasonable grounds. Members of unregistered organisations and committees are often harassed and their events disrupted on the grounds that the organisation is unregistered.¹¹

Human Rights defenders have been subjected to arbitrary detention, torture and ill-treatment, fabricated judicial proceedings, threats, harassment and media smear campaigns¹². Despite provisions for basic rights in Bahraini law and the fact that it has ratified a number of international human rights treaties, the enjoyment of civil and political rights is in practice limited.

Bahrain's International Human Rights Obligations

Bahrain has signed and ratified a number of international human rights instruments and treaties. Of particular significance to the rights allegedly violated in the hearing under consideration, are the International Covenant on Civil and Political Rights 1977¹³ ('ICCPR') and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴ ('CAT'). It is of note, however, that Bahrain has not signed the First Optional Protocol to the ICCPR. This enables those who claim to be victims of a violation of the ICCPR to file "individual" communications or complaints with the Human Rights Committee. Accordingly, while Bahrain is bound by the reporting mechanism enshrined in the ICCPR and therefore subject to scrutiny in this way from the Human Rights Committee, there is no recourse for an individual in respect of a specific violation.

The provisions of the ICCPR relevant to this hearing are set out below

Article 7 – Prohibition against Torture

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Article 9 – The Right to Liberty and Security of Persons

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

¹⁰ For example, the Bahrain Youth Society for Human Rights; the Child Association; the Committee of the Unemployed and Low-Paid Workers; the Committee of those Returning from Exile; the Committee for Adequate Housing; and the Committee of Feminist Petition have all had their registration requests rejected. ("Bahrain: Increasing restrictions on the activities of human rights defenders" (*FrontLine Defenders*: 3 February 2009), <<http://www.frontlinedefenders.org/node/1786>>.

¹¹ Bahrain country overview (*FrontLine Defenders*), <<http://www.frontlinedefenders.org/bahrain>>.

¹² For example, Dr Al-Singace, and two other human rights activists, Nabeel Ahmed Rajab, the president of the Bahrain Center for Human Rights and Maryam Alkhawaja, a youth activist, was subjected to a smear media campaign after participating in a seminar on religious freedoms at the US congress in October 2008 (Media campaign against Mr. Nabeel Rajab, Dr. Abduljalil Al-Sengais and Ms. Maryam Al-Khawaja (*International Federation for Human Rights (FIDH)*: 28 October 2008), <<http://www.fidh.org/Media-campaign-against-Mr-Nabeel>>.

¹³ Date of accession 20 September 2006.

¹⁴ Date of accession 6 March 1998.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Article 14 – The Right to a Fair Trial

“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public ...

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; ...

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt. ...”

Article 19 – The Right to Freedom of Expression

“1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or morals.”

Article 22 – The Right to Freedom of Association

“1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others..."

The provisions of the CAT relevant to this hearing are set out below

Article 1 – Definition of Torture

"1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Article 4 – Criminalisation of Torture

"1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture."

Article 11 – Prohibition of Torture for those in Custody

"Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."

Article 12 – Investigation of Acts of Torture

"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."

Article 13 – Right of Complaint to the Competent Authorities

"Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

Article 14

"1. 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...
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

Article 15 – Prohibition against Evidence obtained under Torture

“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 the statement was made.”

Constitution of the Kingdom of Bahrain

Article 19 – Prohibition against Torture

“d. 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.”

Article 20 - Criminal Trials

“c. An accused person is innocent until proved guilty in a legal trial in which he is assured of the necessary guarantees to exercise the right of defence at all stages of the investigation and trial in accordance with the law.

d. It is forbidden to harm an accused person physically or mentally.

e. Every person accused of an offence must have a lawyer to defend him with his consent.

f. The right to litigate is guaranteed under the law.”

Other relevant human rights commitments by the Kingdom of Bahrain include those under the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders)¹⁵

Article 1

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”

Article 5

“For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.”

Article 12

“2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

¹⁵ The UN Declaration on Human Rights Defenders is not, in itself, a legally binding instrument. However, it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding – such as the ICCPR. Moreover, the Declaration was adopted by consensus by the UN General Assembly in 1998 and therefore represents a very strong commitment by Member States to its implementation.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.”

THE HEARINGS

Background to the case

In the early hours of Monday, 26 January 2009, three human rights defenders, Mr Hassan Mashaima, Dr Abdul-Jalil Al-Singace and Mr Mohammed Habib Amuqdad were arrested from their homes by security forces and placed in solitary detention at the Dry-Dock *Temporary Detention Centre* on the island of al-Muharraq. The three activists were arrested after refusing a summons to appear before the Public Prosecutor on 24 January 2009. It was reported that the men did not appear for questioning because the prosecution order had not stipulated the specific reasons for the arrest or charges against them, as required by Bahrain’s Criminal Procedure Code¹⁶.

The three human rights defenders under arrest were:

- **Mr. Hassan Mashaima** (aged sixty-one) - from Jidhafs region. Mr Mashaima, a retired teacher, is the current Secretary General of the Human Rights Committee of the Movement of Civil Liberties and Democracy Movement (HAQ)¹⁷. He was the previous Vice President of the Al-Wefaq political society. Mr Maishama is a known human rights activist who has been campaigning for democratic reforms and human rights in the Kingdom of Bahrain for more than fifteen years.
- **Dr. Abdul-Jalil Al-Singace** (aged forty-seven) - resident of Karbabad region. Dr Al-Singace, a professor at Bahrain University, is the head and spokesperson for HAQ. Dr. Al-Singace is also a known blogger and writer of articles which question government policies.
- **Mr. Mohammed Habib Almuqdad** (aged forty-seven) - from Bilad Al-Qadeem region. Mr Almuqdad is a Shia scholar and social activist, and is known to be outspoken on issues related to poverty, corruption, sectarian discrimination, arbitrary detention and torture. He regularly delivers speeches in Shia community centres "Matams". He is the head of the Al-Zahra Charity Institution for Orphans.

Following their arrest, all three activists were interviewed regarding their involvement in alleged “terror”-related activities, including delivering speeches against the regime. Concerns were raised regarding interview techniques and procedures that were used by the authorities. During his interrogation, Mr Mushaima claimed that the interrogator made inaccurate recordings of his answers. Despite protests, corrections were not made. Further, while Mr Mushaima was questioned in the presence of his lawyers, Ms Jalila Al-Sayed and Mr Hassan Ali Radhi, they were not able to participate in the interview process or to actively represent their client.

While Dr Abdul-Jalil Al-Singace was released on bail on 27 January 2009, subject to a travel ban, the other two men remained in solitary detention until, and following, the hearing of 24 March 2009.

¹⁶ Article 61, Decree No.(42) 2002, which states: “Every person who is arrested shall be informed of the reasons for his arrest.”

¹⁷ HAQ Movement is an unregistered grassroots organisation established in November 2005, which has been campaigning for democratic reforms and human rights.

All three defendants deny the charges.

The arrests of the three activists have been linked to those of a group of young men who were detained on 15 December 2008 as a result of their alleged involvement in the same “terror”-related plot. It has been reported that the plot included ambushing policemen, destroying public property and attacking shopping malls, markets and hotels with homemade explosives.

On 28 December 2008, a government-controlled television station broadcast a video-recording of what was said to be the “confessions” of thirteen of those detained on 15 December 2008, who claimed to have participated in the terrorism plot and to have received military training in 2006 in al-Hujaira, a district of the Syrian capital Damascus. It was reported that thirty-five in all were implicated in the “terror”-related plot, and that the young men had named the three activists arrested on 26 January 2009 as the instigators of the plot. The names and photographs of those accused, together with their alleged confessions, were also published in several Bahraini newspapers following the televised confessions.

The defendants strongly dispute the truthfulness of the confessions, claiming they were coerced after being subjected to torture by security officials while in detention. This physical abuse allegedly included the use of electrocution on the genitalia of the detainees, suspension by the wrists for long periods of time, beatings with water hoses, the removal of clothing and threats of sexual assault.¹⁸

The Charges

All thirty-five co-defendants have been accused of:

- “taking part in establishing an illegal association which opposes Bahrain’s constitution and which uses terrorism as a means to achieve its goals”, pursuant to Article 6 of Bahrain’s anti-terrorism law (*Protecting Society from Terrorists Act no. 58 (2006)*), punishable up to life imprisonment; and
- “calling and propagating for the overthrow of the regime and the political system by force”, based on Article 160 of the Bahrain *Penal Code (1976)*, which is punishable of up to five years imprisonment;
- “propagating for hatred of the regime”, based on Article 165 of the Bahrain *Penal Code (1976)*, which is punishable of up to three years imprisonment.

International Human Rights Law Concerns

On the facts presented, BHRC are concerned that the following international human rights standards had been breached during the arrest, detention and trial stages of those accused:

- 1) The **right not to be tortured or subjected to cruel, inhuman and degrading treatment** as proscribed in the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the Kingdom of Bahrain is a State Party.
- 2) The **right to a fair trial** as proscribed by the International Covenant on Civil and Political Rights, to which the Kingdom of Bahrain is a State Party.

¹⁸ “Bahrain: Concerns about recent arrests and allegations of torture” (*Amnesty International*: 30 January 2009), <<http://www.amnestyusa.org/document.php?id=ENGMDE110012009&lang=e>>; and “Bahrain: Coerced Testimony Taints Trial” (*Human Rights Watch*: 23 March 2009), <<http://www.hrw.org/en/news/2009/03/23/bahrain-coerced-testimony-taints-trial>>.

The Preliminary Hearing on 23 February 2009

On 23 February 2009, the Grand Criminal Court in Manama, Bahrain, commenced the trial of all thirty-five co-defendants, including the three activists arrested on 26 January 2008.¹⁹ Thirteen of the defendants were tried in absentia.

During this initial hearing, a number of concerns were reported to BHRC:

- Defence counsel noted that defendants' statements were not being properly recorded by the court. The court clerk was requested by defence counsel to keep a written record of the statements, in line with the co-defendant's rights to a fair trial as outlined in the Bahrain Constitution.²⁰ However, the judge refused the request, stating that the court could not be forced to comply with such demands. Only on a second application to reconsider did the judge agree to allow Mr Mushaima to repeat his statement for it to be recorded.
- Defence counsel requested that prison officials remove the men from solitary confinement to prevent any further abuse, torture or ill-treatment. This request was refused.
- Defence counsel requested copies of each case file. This request was granted.
- Defence counsel requested all defendants be fully examined by an independent doctor. This request was granted.

The case was adjourned until 24 March 2009 in order to review the case file and notify the other thirteen defendants of the charges brought against them.

The Hearing on 24 March 2009

Observed by representatives from -

- Bar Human Rights Committee of England and Wales;
- French Embassy;
- Amnesty International;
- Islamic Human Rights Commission; and
- other Bahraini human rights NGOs.

The case was heard in the High Criminal Court of Bahrain.

Judges -

- Sheikh Mohammed Bin Al-Khalifa (President);
- Talat Ebrahim Mohammed Abdalla;
- Mohammed Rashid Abdalla; and
- Ali Ahmed Juma Al-Kaabi.

Public Prosecutor -

- Mr. Haroon Al-Zayani

Defence Lawyers -

- Mr Hassan Ali Radhi;
- Mr. Mohammed Ahmed Abdulla;
- Ms Jalila Al- Sayed;
- Mr. Isa Ebrahim;

¹⁹ Indictment No. 1403/2008 (Issued: 10 February 2009).

²⁰ Article 20, Constitution of the Kingdom of Bahrain (2002).

- Mr Hafudh Ali Mohammed;
- Mr. Mohammed Al-Jishi; and
- Ms Nafeesa De'bel.

The courtroom was secured by riot police, with a large media presence both inside and outside the building. There were reported clashes between relatives and supporters of the defendants with security forces.

All thirty-five co-defendants were represented by seven lawyers, who were working on a *pro bono* basis. The President of the Court sat with three other judges. The Public Prosecutor was present to respond to the representations made by defence counsel. The defendants were not handcuffed and those who wished to make statements about their case were able to do so without restriction. A number of the defendants made representations that the prosecution was politically motivated and was an attempt to stifle free speech. The defendants denied being terrorists or advocating violence. The four judges appeared to be listening and were seen making notes on the submissions. A stenographer was also present. At times, the hearing lent itself to political speeches and it should be noted that the judges did not attempt to curb those statements. When the Bench retired BHRC was able to speak to one of the co-defendants, Mr. Mashaima. He confirmed that his dietary requirements and medical needs were being met by prison officials; he is a diabetic.

The main representations put to the judges by defence counsel can be summarised as follows:

Inadmissibility of “confession” evidence

Representations from defence counsel requested that previous proceedings should be set aside due to the televising of the “confession” evidence which implicated parties in the alleged torture plot. The defendants asserted that this was a criminal offence pursuant to Articles 245²¹, 246²² and 371²³ of the Penal Code 1976.

Allegation of torture

Defence counsel made representations that the defendants had been subjected to physical abuse by state officials while in detention. They urged the judiciary to set up a thorough, impartial and independent investigation into the torture allegations, pursuant to Bahrain’s Criminal Procedure Code.

While the co-defendants had undergone medical examinations pursuant to the court order issued at the 23 February 2009 hearing, these were not referred to in any detail. The Public Prosecutor concluded that the doctor had not found any evidence of torture. He resisted the application to remove him from the case and rejected attacks upon the doctor’s impartiality. The Public Prosecutor added that the co-defendants had not shown any signs of injury when produced before him.

²¹ Article 245 of the Penal Code criminalises those who publish, using any publication means, anything which could affect those entrusted to decide in any case brought before the judiciary or in charge of an investigation or experts duties, or to influence the witnesses who may be required to provide testimony in that case or investigation, or matters that would prevent the individual from disclosure of information to people of jurisdiction, or influence public opinion in favour of a party to the case or the investigation or against him.

²² Article 246 of the Penal Code criminalises those who publish the names or photographs of those accused, before the final verdict, and without permission from the Public Prosecution or the relevant court depending on the circumstances.

²³ The Public Prosecutors need to meet high integrity and professional standards, and are bound to confidentiality pursuant to Article 371 of the Bahrain Penal Code (1976), as are all law enforcement officials.

However, the defendants continued to reassert to BHRC that torture had been used, and one of the defendants, Mr. Almuqdad, stated that there were visible signs of torture on the defendants' bodies.

Prison conditions

Following the 23 February hearing, an investigation into the defendants' prison conditions was carried out by the Public Prosecutor's office. During the investigation, the Prosecutor stated that he received no complaints from the detainees.

Solitary confinement

All of the detainees claimed that they were being held in solitary confinement and so, for the second time, defence counsel called for their release from such conditions.

The Public Prosecutor stated that the defendants were placed in solitary confinement for their own safety but then went on to say it was not the responsibility of the prosecution.

Record of proceedings

Finally, defence counsel submitted that the court had not kept a full record of the defendants' representations made at the 23 February hearing.

The Ruling

The four judges retired for approximately thirty minutes. They refused to invalidate previous proceedings including the "confession" evidence obtained thus far. The judges ruled in favour of the defence on two important issues:

- 1) A court investigation was granted into the allegations of torture, evidence of which is to be given at the next hearing on 28 April 2009. However, the prosecutor's previous investigation would not be disregarded;
- 2) The release of the prisoners from solitary confinement was ordered.

Release of defendants

Subsequent to the 24 March hearing, on 11 April 2009, the King of Bahrain, Shaikh Hamad bin `Isa al-Khalifa, issued a Royal Pardon for one hundred and seventy-eight detainees "sentenced and accused of security issues"²⁴. Those pardoned included the thirty-five co-defendants who were the subject of the above hearing. The pardon became effective as of 12 April 2009.

The statement from the Interior Minister, Lieutenant Sheikh Rashid bin Abdullah bin Ahmad al Khalifa, described the pardons as an effort to "open a new page". The Minister stated that those released should seek "to protect the security of the community instead of harming it" and it was their duty to those who have mediated their release to abide by the law. However, information received suggests that pardons were only temporary and that the case remained open. Furthermore, it appears that a travel ban remains in place over the movements of Dr. Abdul-Jalil Al-Singace.

²⁴ See statement by the Minister of Interior, Lieutenant Sheikh Rashid bin Abdullah bin Ahmad al Khaifa, as reported in "King issues amnesty for 178 detainees", by Mazen Mahdi (*The National*: 13 April 2009), <<http://www.thenational.ae/article/20090413/FOREIGN/402075424/1107/OPINION>>.

CONCLUSION AND RECOMMENDATIONS

The Bar Human Rights Committee welcomes the royal pardon issued on 11 April 2009 releasing all thirty-five defendants in this case. However, the lawfulness of the arrests, detention, conduct during the trial, and the allegations of torture remain unresolved.

While recognising that Bahrain has demonstrated a willingness to listen to the international community, it is clear that human rights activists in Bahrain are subjected to systematic harassment and repression by the state authorities in order to prevent them from criticising the government.

The three main defendants, Mr Hassan Mashaima, Dr Abdul-Jalil Al-Singace and Mr Mohammed Habib Amuqdad, appear to have been targeted as a result of their legitimate work within the field of human rights. As human rights activists, they have the right to “promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”, as provided under Article 1 of the UN Declaration of Human Rights Defenders. As such, Bahrain has an obligation not to harass or discriminate against them.

It is the view of BHRC that this hearing and the circumstances surrounding them demonstrate violations of the right to freedom of expression, the freedom of association, the right to a fair trial and the inalienable prohibition on the use of torture and cruel, inhuman or degrading treatment or punishment by state officials.

The hearing of 24 March 2009 was conducted in an open manner. Defence counsel was given considerable latitude in making representations and submissions on behalf of the thirty-five co-defendants. The court’s rulings reflected an observance of those submissions. However, BHRC was disappointed to observe that little consideration was given to the evidence in relation to each defendant.

It appeared as though the “confession” evidence was the only form of evidence against the accused. Under Article 15 of the CAT, the Kingdom of Bahrain is prohibited from using evidence or statements in any proceedings which were extracted through the use of torture. A similar obligation is provided under Article 19 of the Constitution of the Kingdom of Bahrain. As such, in the absence of a full and independent investigation of the torture allegations the “confession” evidence should not have been admissible..

Furthermore, the publication of the “confession” evidence on government-controlled television and in several Bahraini newspapers may also undermine the general right to a fair trial as guaranteed by Article 14 of the ICCPR by influencing public opinion and/or the judiciary in their conduct of the case.

In respect of the torture allegations, it was unclear whether the court or defence counsel had a copy of the medical report to which the Public Prosecutor referred to in his submissions. However, as the defendants resolutely contradicted the Public Prosecutor’s report, stating that torture had been used, BHRC is concerned that the Public Prosecutor’s report was not thorough, impartial or independent. Under Article 12 of the CAT, Bahrain is under a positive duty to undertake a prompt and impartial investigation into allegations of torture. Article 13 of the same Convention ensures that any individual who alleges he has been subjected to torture has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.

According to Article 9 of the ICCPR, there is a general presumption against individuals being detained in custody while awaiting their trial. As such BHRC was disappointed that the option of bail was not meaningfully considered, given that some of the detainees have been held for over four months,

some in solitary confinement. No reference was made to whether any detainees had previous convictions or reasons as to why it was not appropriate to release them on bail, under suitable conditions. Further, if the televised confessions were not to be relied upon by the court upon what evidence were the three first defendants remanded in custody?

BHRC also raises concerns regarding the preliminary hearing on 23 February 2009. While international observers were not present at this hearing, it was reported to BHRC that the defendants were prevented from making full submissions and that those which were made were not recorded by the court's stenographer. Defence counsel had to repeatedly request the court to make a note of the defendants' submissions. As a party to the ICCPR, Bahrain is obliged to provide a "fair and public hearing by a competent, independent and impartial tribunal" pursuant to Article 14. In addition, section 3(d) of the same Article obliges Bahrain to try defendants in their presence. Hence the hearing of the thirteen co-defendants in absentia violates this duty. It is unclear whether adequate consideration had been given to this issue.

Interview techniques and procedures used by government authorities when the three activists were arrested on 26 January 2009 highlight an obvious concern. During the interview, it was alleged that the state interrogator made inaccurate recordings of the answers of one of the co-defendants, and that lawyers were prevented from participating in the interview process or to actively represent their client. Article 20 of the Constitution of the Kingdom of Bahrain provides assurances that individuals are guaranteed the right to a defence at all stages of the investigation and trial. Article 14 of the ICCPR provides the right to adequate time and facilities for the preparation of a defence and to communicate with counsel of their own choosing. It also entitles the accused to "defend himself in person or through legal assistance of his choice".

Recommendations

With reference to the case observed, the Bar Human Rights Committee of England and Wales strongly urges the Kingdom of Bahrain to:

- Conduct an objective, detailed and transparent investigation into the torture allegations with a view to bringing criminal charges if sufficient evidence is revealed as required by their obligations as set out in the UN Convention against Torture.
- If allegations are proved, provide appropriate redress as required by their obligations as set out in the UN Convention against Torture.²⁵
- Consider holding an independent, open public inquiry into the torture allegations
- Ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
- Ensure that all legitimate prosecutions are instituted in accordance with the law and are brought before fair, independent and impartial tribunals prescribed by law and that the conduct of such proceedings be in accordance with internationally recognised standards governing fair trials, including the United Nations Basic Principles on the Independence of the Judiciary.

²⁵ Article 14(1), UN Convention Against Torture.

- Ensure that a full record is kept of all proceedings in order to enable defendants to be confident that they are being heard and to challenge rulings by way of appeal.
- Amend national legislation which arbitrarily restricts the right to freedom of association and freedom of expression.
- Immediately and unconditionally put an end to all acts of harassment and imprisonment of human rights defenders in Bahrain where they are exercising their right to free speech and provide legal protection to those who are legitimately exercising their human rights and fundamental freedoms as recognised by the UN Declaration on Human Rights Defenders.
- Endorse the recommendations of the Special Rapporteur on Human Rights and Counterterrorism proposing amendments to the Counter Terrorism Law (*Protecting Society from Terrorists Act no. 58 (2006)*) - this will prevent the improper use of national laws to infringe on protected rights of peaceful dissent; and to bring the period allowed for detention without charge or judicial review into line with international standards.
- Restate their commitment to all other regional and international human rights instruments ratified by the Kingdom of Bahrain, including the International Covenant against Torture, the International Covenant on Civil and Political Rights, and to sign and ratify without delay the Optional Protocol to the ICCPR.