



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

REPORT ON BAR HUMAN RIGHTS COMMITTEE HEARING OBSERVATION: BAHRAIN

A report on hearings in:

(1) the Adary Park case, and

(2) the Ma'ameer case (No 4583/2009)

Criminal High Court – 4th - 5th July 2010

Acknowledgments

The trial observation was undertaken by Pete Weatherby on behalf of the Bar Human Rights Committee of England and Wales. The report was written by Pete Weatherby, Barrister at Garden Court North Chambers, Manchester and Garden Court Chambers, London. It was edited by Priscilla Dudhia and Sally Longworth.

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. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

The remit of 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 July 2010, BHRC undertook a mission to observe parts of the trials of two groups of individuals accused of offences connected to protests and tyre burnings. With the government refusing to issue permits for peaceful demonstrations, tyre burning has become a regular form of protest in Bahrain, particularly amongst young Shiite men.¹

On the facts presented, BHRC is concerned that during the arrest, detention and trial of the accused, the following human rights were breached:

- The right not to be tortured or subjected to cruel, inhuman or 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 party.
- The right to a fair trial as proscribed by the International Covenant on Civil and Political Rights, to which the Kingdom of Bahrain is party.

This report describes the background, charges and the results of the hearings. Although the purpose of this visit was to observe the trials, whilst in Bahrain BHRC had the opportunity to meet with a number of government and prosecution officials and various other individuals and groups. These opportunities were welcomed, as it enabled BHRC to discuss various issues raised by the hearings, as well as providing a balanced overview of the situation in Bahrain. The issues raised by these meetings are outlined below.

Since the visit there have been a large number of arrests of opposition and human rights activists and protestors, many of whom have now been charged under 'anti-terrorism' legislation. There are widespread reports of torture and mistreatment of these detainees, and they have been held for long periods without recourse to a lawyer. One of the current detainees is a dual British/Bahraini national. The Bahraini press has been banned from reporting all but official statements concerning the arrests, and many websites have been blocked.

The report concludes by outlining key recommendations for the Kingdom of Bahrain, based on the trial observations and the other meetings.

OVERVIEW OF THE HUMAN RIGHTS SITUATION IN BAHRAIN

Bahrain has signed and ratified numerous international human rights treaties and documents. Its constitution also contains many of the fundamental human rights principles, such as those relating to the right to a fair trial and the prohibition on torture. The National Human Rights Institution ("NHRI"), which seeks to promote and protect human rights in the Kingdom, was established in 2009 as a response to recommendations made by the UN Human Rights Council in its 2008 Universal Periodic Review ("UPR"). This year saw the appointment by Royal Order of 22 members to the Institution, a number of whom are high-ranking government officials, or members of the Shura, the appointed upper chamber of parliament. This raises questions over the impartiality of the body.

Despite some positive developments since 1999, there are excessive limitations on the freedoms of expression, association and assembly. These hinder the work of human rights groups, as well as the exercise of these rights by ordinary citizens. Decree No 18 of 1973 on Public Meetings, Processions

¹ Thanassis Cambanis, 'Crackdown in Bahrain Hints End of Reforms', New York Times, 26 August 2010 available at: <<http://www.nytimes.com/2010/08/27/world/middleeast/27bahrain.html?pagewanted=2>> (last accessed 27 September 2010) (hereinafter "Thanassis Cambanis").

and Gatherings requires prior notification of “every meeting held in a public or private place participated [in] by individuals who do not have [a] personal invitation”. It imposes disproportionate penalties, including imprisonment, for speech-related conduct, even in the absence of a threat or incitement to violence or hatred. Furthermore, it outlaws demonstrations for election purposes,² political rallies³ and generally limits the freedom of peaceful assembly. Human Rights groups must register with the authorities, but a number have been refused registration, putting them outside the law.

Legislation on national security and counter-terrorism also threatens the exercise of these freedoms. The recent detentions are seen by many as part of a government clampdown in the run up to the parliamentary elections in October. It has been reported that 159 individuals are presently in detention,⁴ although other sources indicate the figure may be higher. The government asserts that these individuals are suspected of having committed security-related offences, such as terrorism. As stated, there is currently a press ban on reporting the recent arrests and detention, other than from official statements.

BHRC is concerned about the excessively broad definitions of “terrorism” and “terrorist act” in the Protecting Society from Terrorists Act no.58 (2006), which undermine the principle of legality. Article 1 prohibits any act that would “damage national unity” or “obstruct public authorities from performing their duties”. The scope of the definitions increases the potential for the government to stifle dissident political views. The risk of ill-treatment, torture and arbitrary detention is also heightened by the Act, which allows for extended periods of detention without charge or judicial review. In 2006, the United Nations Special Rapporteur for Human Rights and Counter-Terrorism publicly urged Sheikh Hamad bin Isa Al Khalifa to make amendments before the legislation was brought into force.⁵ Unfortunately, these recommendations were ignored.

Dr Abdul-Jalil Al-Singace, a leader of the opposition *Haq Movement for Civil Liberties and Democracy* was charged under this act in January 2009, together with thirty-four others.⁶ Shortly after, a royal pardon was issued and the accused were released. However, Dr Al-Singace was arrested again on 13th August this year. He was detained at Bahrain International Airport having arrived back from London where he had taken part in a seminar hosted by Baroness Falkner at the House of Lords, in which he criticised human rights violations in Bahrain. His detention was followed by the arrests of several other senior activists. Dr Al-Singace remains in detention and has reportedly made confessions after being subjected to torture including severe beatings, electric shocks, and being made to stand for long periods (particularly cruel as he has had Polio in childhood, and is severely disabled). Two other attendees at the seminar, Abdulghani Al Khanjar and Jaafar Hisabi (who has dual nationality), are also detained. The three have now been charged with a variety of offences including trying to overthrow the government, and “Contacting and working with international organisations”. According to the Bahraini media the government is to ask Britain to expel two other opposition figures who appeared at the same seminar, to face similar charges.

² Article 10(b).

³ Article 10(a).

⁴ Thanassis Cambanis, *supra* n. 1.

⁵ Office of the High Commissioner for Human Rights Press Release, ‘UN Special Rapporteur calls for further amendments to counter-terrorism legislation in Bahrain’ 25 July 2006, available at: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=7236&LangID=E>> (last accessed 27 September 2010).

⁶ See Report on Bar Human Rights Committee Hearing Observation: Human Rights Defenders in Bahrain, 2009 available at: <http://www.barhumanrights.org.uk/docs/reports/2009/Bahrain_Report_F.doc> (last accessed 27 September 2010).

Persistent allegations of torture against political opponents, protestors and human rights defenders in Bahrain remain, notwithstanding efforts between 2001-2002 to usher in a new age of respect for the rule of law. A 2010 Human Rights Watch report based on interviews with former detainees and forensic medical reports concluded that security officials have repeatedly used torture as a means of obtaining confessions from suspects of national security offences.⁷ Common practices include electric shock treatment, suspension in painful positions particularly by handcuffs, beating the soles of feet (known as *falaka*) and beating the head, torso and limbs. Officials have continued to deny allegations of torture, most notably in 2008 during Bahrain's UPR.

BAHRAIN'S LEGISLATIVE FRAMEWORK

The legislative framework of Bahraini law incorporates most central human rights principles. In the current context these include fair trial provisions, respect for detainees, a prohibition on torture, and access to legal advice and representation from an early stage. Unfortunately, there remain concerns about the implementation of these laws and very serious concerns regarding the treatment of detainees. Furthermore, the very wide scope of anti-terrorist provisions raises issues of legality in cases with a political or protest element. The report from the last Bar Human Rights Committee visit to Bahrain (Kirsty Brimelow, 30 June 2009) sets out in full the relevant human rights legislation and the situation at that time.

Constitution of the Kingdom of Bahrain⁸

The Constitution of the Kingdom of Bahrain contains many of the fundamental international human rights principles. Those relevant to the hearings are listed below:

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.”

BAHRAIN'S REGIONAL OBLIGATIONS

The relevant provisions of the Arab Charter on Human Rights⁹ are set out below:

⁷ Human Rights Watch, *Torture Redux: The Revival of Physical Coercion during Interrogations in Bahrain*, 8 February 2010, available at: <<http://www.hrw.org/en/node/88200/section/1>> (last accessed 27 September 2010) (hereinafter “HRW Torture Redux”).

⁸ Kingdom of Bahrain, *Constitution of the Kingdom of Bahrain*, 14 February 2002 available at: <<http://www.bahrain-embassy.or.jp/en/constitution.pdf>> (last accessed on 27 September 2010).

Article 7

“The accused is presumed innocent until proven guilty in a lawful trial where defence rights are guaranteed.”

Article 13

“A. The State parties shall protect every person in their territory from physical or psychological torture, or from cruel, inhuman or degrading treatment. [The State parties] shall take effective measures to prevent such acts; performing or participating in them shall be considered a crime punished by law.

B. No medical or scientific experimentation shall be carried out on a person without his free consent.”

Article 15

“Those punished with deprivation of liberty must be treated with humanely.”

BAHRAIN’S INTERNATIONAL OBLIGATIONS

Of particular significance to the rights allegedly violated in the cases under consideration are the International Covenant on Civil and Political Rights 1977 (“ICCPR”) ¹⁰ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”). ¹¹ It is of note, however, that Bahrain has not signed the First Optional Protocol to the ICCPR. The First Optional Protocol enables those who claim that their rights enshrined in the ICCPR have been breached 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 relevant provisions of the ICCPR are;

Article 7 – Prohibition against Torture

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

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,

⁹ League of Arab States, *Arab Charter on Human Rights*, 15 September 1994, available at: <<http://www.unhcr.org/refworld/docid/3ae6b38540.html>> (last accessed 27 September 2010).

¹⁰ Adopted by General Assembly resolution 220A (XXI) of 16 December 1966. Date of accession by Kingdom of Bahrain 20 September 2006. Available at: <<http://www2.ohchr.org/english/law/ccpr.htm>> (last accessed 27 September 2010).

¹¹ Adopted by General Assembly resolution 39/46 of 10 December 1984. Date of accession by Kingdom of Bahrain 6 March 1998. Available at: <<http://www2.ohchr.org/english/law/pdf/cat.pdf>> (last accessed 27 September 2010).

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."

The relevant provisions of the CAT are:

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.”

Other applicable international human rights standards include:

- UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment;¹²
- Basic Principles for the Independence of the Judiciary;¹³
- Guidelines on the Roles of Prosecutors;¹⁴
- UN Code of Conduct for Law Enforcement Officials.¹⁵

¹² A/RES/43/173 adopted by during General Assembly 76th plenary meeting, 9 December 1988, available at: <<http://www.un.org/documents/ga/res/43/a43r173.htm>> (last accessed 27 September 2010).

¹³ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at: <<http://www2.ohchr.org/english/law/indjudiciary.htm>> (last accessed 27 September 2010).

¹⁴ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: <<http://www2.ohchr.org/english/law/prosecutors.htm>> (last accessed 27 September 2010).

¹⁵ Adopted by General Assembly resolution 34/169 of 17 December 1979, available at: <<http://www2.ohchr.org/english/law/codeofconduct.htm>> (last accessed 27 September 2010).

THE HEARINGS

The Adary Park case

Background

The *Adary Park* case involves five youths charged in relation to a large fire which resulted from tyre protests around the time of the 2010 Bahrain F1 Grand Prix. One of the defendants was under 18 at the time of the commission of the alleged crime. They were brought before a new division of the Criminal High Court set up to deal with protest and security cases - so-called 'special' cases.

Charges

Four of the five defendants are accused of setting fires and taking part in the illegal protest. The fifth defendant has been charged with falsification (perverting the course of justice).

Arrest

The prosecution case is largely based on disputed confessions of three of the accused men, and no doubt, evidence of the burns. BHRC spoke to the sister of one of the defendants with burns; she had pertinent information (including alibi) which should be investigated.

Three of the defendants had made confessions; all alleged to have been made under torture. The defendants claim that the confessions were made after having been subjected to beatings. They claim also to have been sprayed in the face with an unknown chemical. The defendants assert that they were denied access to a lawyer for a period between three weeks and a month and a half.

Prison conditions

Defence counsel complained to the court regarding the lack of proper medical care in the defendants' current prison and asked the judge to order their transfer. One defendant continues to suffer from the serious burns he has and another has a sickle cell illness.

Hearing - DATE: 4 July 2010

The hearing took place in the Criminal High Court.

Observed by representatives from:

- Bar Human Rights Committee of England and Wales
- Islamic Human Rights Commission
- *Defence Counsel:* Mohamed Al Tajer

Main submissions made by Defence Counsel

1) Defence counsel asked for the case to be adjourned as the prosecution papers had not been served until a few days before the hearing, and the prosecution still had to serve video footage which was said to be relevant to their case.

2) Defence counsel asked the judge to require prosecution witnesses to appear before the court in person.

3) Defence counsel requested the court to order the transfer of defendants to another prison due to problems with medical care mentioned above.

The hearing was in public and the judge listened to the submissions.

The Prosecutor did not respond and the court retired without making a ruling. BHRC was informed by defence lawyers that the Public Prosecutor would make submissions in private, after which the court would deliver its ruling.

The Ruling

The court agreed to the further disclosure and to the adjournment, but only for approximately a week. The judge declined to order the transfer of the defendants.

Defence counsel was unhappy with the short time allowed to prepare a case which involved disputed confessions.

The Ma'ameer case

Background

This case related to the death of a Pakistani worker, alleged by the prosecution to have been caused by a molotov cocktail being thrown at his vehicle during a protest, but the alternative defence hypothesis was that he had driven through a burning barricade of tyres in the Ma'ameer area and the vehicle had caught fire. The victim had five children and was the sole earner for his family.

The ten defendants were all young men from the Ma'ameer area: Kumail Hussain, Mohamed Hasan, Jassim Hasan, Issa Ali Sarhan, Hussain Hamza, Sadeq Jaffar Madi, Ahmed Ali Ahmed, Mohamed Ahmed, Ali Ahmed and Ebrahim Jaffer.

The prosecution's case was based almost entirely on confessions by seven of the defendants. The confessions were challenged on the basis that they had been obtained by torture. Previously during the proceedings, doctors provided by the police/Public Prosecutor had rejected the assertion by the defendants that their injuries were caused by torture, and concluded that the injuries were self-inflicted, caused by resisting arrest, or by natural causes. The defence lawyers indicated that they had applied to the court for the detainees to be examined by independent doctors, but this had been denied. They were also denied access to the burnt vehicle, examination of which may have determined the cause of the fire. No evidence was presented as to how the vehicle had caught fire. The defendants assert that they were denied legal access for a period between three and six weeks.

BHRC had met with a senior Public Prosecutor on 4 July 2010 to discuss judicial independence and aspects of the court procedures, but were unable to ask about these allegations of torture, as he did not respond to our request for a further meeting.

Charges

The defendants were charged with murder. One of the defendants was being tried *in absentia*, as he had not been apprehended.

Arrest

According to first-hand accounts of relatives the defendants were beaten on arrest and dragged from their homes. They were kept for long periods without access to their lawyers or families. It was during this time that the disputed confessions were made.

Hearing - 5th July 2010

The final hearing took place in the Criminal High Court of Bahrain.

Observed by representatives from:

- Bar Human Rights Committee of England and Wales
- Islamic Human Rights Commission
- *Defence Counsel*: The defendants were represented by a team of lawyers headed by Mohammed Al Tajer.

The defendants sat handcuffed on one side of the courtroom, surrounded by a large number of police and security personnel. The families of the defendants were present and sat on the opposite side, together with journalists and observers. Before the judges entered, Mr Al Tajer informed the BHRC that the escorting officers had informed him that the defendants were to be transferred to a new prison after the hearing, which indicated that they already knew the outcome of the hearing.

The three judges entered the courtroom, accompanied by the Public Prosecutor. The Presiding Judge delivered a very short verdict, convicting the seven defendants who had made confessions and sentencing them to life imprisonment with a minimum of 25 years, under the 2006 Anti-Terror law, and acquitting the other three. Written reasons were handed down later in the day. In the written judgment, the judges rejected the defence submissions concerning ill-treatment of the detainees and based the convictions on the confessions.

The judges left to uproar in the court. There were clashes between defendants and their relatives and the security forces, and batons were used. Outside the court teargas was fired at protestors, and the father of one of the detainees was beaten to the ground. BHRC observed the security forces' approach to be very heavy-handed.

Defence lawyers have lodged an appeal and the first stage will be heard in September or October 2010.

It is of note that the same judge acquitted a group of defendants in an earlier case due to ill-treatment and coerced confessions. In that case he had allowed the defence to instruct independent doctors. However, the appeal court overturned his decision and imprisoned the defendants.¹⁶

¹⁶ See HRW Torture Redux *supra*. n.7 pg. 18.

MEETINGS

Meeting with Head of Prosecutions – 4th July 2010

BHRC was able to meet with Nawaf Hamza, Head of Prosecutions. The meeting lasted for approximately 40 minutes after which Mr Hamza brought the interview to an end, stating that his grasp of the English language was not strong enough to deal with the questions asked. BHRC sent a written request for a further meeting, to which no reply was received.

Mr Hamza was very articulate in English and answered many of the questions about court procedure, the independence of the judiciary and the public prosecution system. The meeting ended before BHRC could inquire about the alleged mistreatment of detainees. With regard to the independence of the judiciary, Mr Hamza explained that judges did not necessarily have to be lawyers and that they were appointed by a committee, the Judicial High Council, which makes recommendations to the King. The Judicial High Council also recommends applicants for the post of Attorney-General. Judges have normally worked as Public Prosecutors first, though this is not a prerequisite to the post.

Mr Hamza asserted that the prosecution is forbidden from privately discussing the case with the judiciary. He was unable to explain why the Public Prosecutor did not respond to the submissions made by the defence in the *Adary Park* case.

In respect to entitlement to legal representation, Mr Hamza indicated that in a case where the sentence is less than 3 years' imprisonment a defendant can choose whether to be represented, at his own cost. If however the punishment is 3 years or more, he is entitled to a lawyer, appointed and paid for by the court, if required.

Meeting with senior defence lawyer – 4th July 2010

In view of the current wave of arrests BHRC will refer to the lawyer as Mr A. Mr A holds a position within the Bahrain Bar Society, and is also involved with the defence committees of lawyers in the 'special' cases. Mr A indicated that Mr Hamza was one of a number of Head Prosecutors.

Mr A stated that the Public Prosecutor maintained a close relationship with the judiciary; it is normal for private discussions to take place between them. He said that Mr Hamza had been correct regarding the provision of lawyers in court, save that the payment to lawyers appointed by the court is so low that many lawyers do not consider it worthwhile taking the case. The payment is 100 dinars for conducting the entire case (approximately £200), which can take between 2-4 years to receive due to administrative processes. As a result, it is common for lawyers to excuse themselves, leaving defendants unrepresented.

Mr A noted that there had been ongoing controversy regarding the appointment of judges. BHRC was informed that the successful judges are usually members of families connected to the Al Khalifa family. A few years ago there had been a successful challenge to the appointment of a number of judges who had performed less well in judicial examinations than other applicants who had not been appointed. The ruling had been overturned in the Appeal Court. According to Mr A, the procedure now ensures that judges are public prosecutors first. Mr A also stated that there had been concern from the business community about the quality of judgments in commercial cases, as well as corruption. As a result, a court of arbitration has been established.

Mr A then outlined the problems in the *Ma'ameer Case*. He stated that photographs clearly showed the effects of the mistreatment, the court had declined to allow evidence from independent doctors, and that witnesses were reluctant to come forward for fear of arrest. The BHRC was provided with copies of the photographs.

Having received this information BHRC tried to meet with senior officials in the Ministry of the Interior and a meeting was arranged for the following day.

Meeting with the families of the Ma'ameer defendants – 4th July 2010

BHRC met with families of the accused men in the *Ma'ameer* case, who recounted their claims of mistreatment and torture. There were direct accounts of beatings upon arrest and hearsay accounts of forced confessions. Some of the allegations were evidenced by photographs, which depicted a variety of injuries to the head, torso, limbs and feet. There was no means of verifying the claims made by the families, but the accounts were given individually rather than in a group and the themes were consistent. The allegations included different types of beating, including *falaka*, attempted rape, whipping with a hose, hanging by handcuffs, electric shock treatment, the use of chemical spray, and threats to family members, particularly of rape of mothers and sisters. According to the families, the accused men were denied access to legal counsel until after the confessions were extracted (this was confirmed by the lawyers). Moreover, they claimed that many of the men were interrogated by the Public Prosecutor in the early hours of the morning; the defendant's told their families that if they denied commission of the crime they were threatened or sent back for further ill-treatment.

The BHRC met with one of the defence witnesses who provided testimony that he had seen the victim's vehicle burning and had assisted him. According to the individual, the man's hair was on fire and he helped extinguish it. This individual did not see how the vehicle caught fire, but the incident happened as the police were leaving the village, and he directed the man towards where the police were. The victim was apparently able to walk and returned to the burning vehicle to remove his bags. The vehicle had come from the same direction as the burning barricade of tyres and the witness speculated that it may have driven through and caught fire. Three days later, at 2am the police broke into the house of the man who had assisted the victim, and arrested him. He was beaten and sprayed with a chemical. The suspect was not told why he was under arrest and he was not given access to a lawyer or his family. Despite the beatings which left bruising to his arms, back, neck, fingers and nails, he did not make any confession. The suspect worked for a government department and was not charged.

BHRC also met with other community and political leaders in *Ma'ameer* which gave interesting context and background, albeit from one side of the community divide. These included Al Wafaq and the Bahraini Human Rights Society. Elsewhere BHRC also met with representatives of the Bahrain Centre for Human Rights ("BCHR"), the Bahrain Transparency Society, Al Wefa, and the Bahrain Youth Society for Human Rights ("BYSHR"). These individuals provided valuable context and spoke about the harassment of human rights groups, referring to the closure of BCHR and the seizure of its assets by the government, the censorship of websites, and the imposition of a large fine against a leading member of the BYSHR for running an unregistered group, after the government refused registration. They also noted their concern at "GONGOs" (Government-supported non-governmental bodies) which claim to uphold and monitor human rights in the Kingdom but in reality lack independence from the government.

Meeting with Under Secretary of Ministry of Interior – 5th July 2010

Following the *Ma'ameer* case hearing, BHRC met with the Under Secretary of the Ministry of Interior, Brigadier Tariq Bin Daina (subsequent to the meeting he was promoted to Major General and made Chief of Public Security). Mr Bin Daina was accompanied by Brigadier Mohammed Bu Hammoud, Deputy Under Secretary for Legal Affairs, Colonel Naji Al Hashel, a director responsible for the Central Governorate, and Major Isa Al Qattan, a director responsible for security in Manama. The meeting lasted two hours and BHRC was impressed at the willingness of these senior officials to discuss the issues raised. The meeting was conducted in English, without an interpreter, and all present were fluent or nearly so.

Mr Bin Daina explained that the public prosecutor system had derived from the French judicial system. The police can only arrest suspects without a warrant in narrow circumstances such as when they see the commission of a crime. In all other cases, they must seek a warrant from the public prosecutor. The police must inform the arrestee of the reason for the arrest and escort him to a police station immediately. The suspect has the right to see a lawyer from the outset. The police invite a suspect to make a statement, but otherwise the suspect is not questioned by them. This is left to the Public Prosecutor.

Mr Bin Daina and Mr Bu Hammoud rejected claims of private meetings between the judiciary and the Public Prosecutor; the fact that the Public Prosecutor had entered the court with the judges in the *Ma'ameer* hearing did not indicate otherwise. Mr Bu Hammoud stated that the Public Prosecutor is located on the floor above and uses a stairway which leads to the same entrance as that used by the judges.

Neither Mr Bin Daina nor Mr Bu Hammoud were sure how judicial appointments are made, though they thought there were various routes such as being a secretary to a judge, a Public Prosecutor or a lawyer.

BHRC inquired about the mistreatment of detainees, stating that all seven of the convicted men in the *Ma'ameer* case had alleged that their confessions were obtained through torture and that the same issue had arisen in the *Adary Park* case, as well as other 'special' cases. All four officials strongly denied that mistreatment of detainees occurred in Bahrain. They claimed that defence lawyers were making false allegations. They also stated that doctors instructed for the defence in such cases merely accepted the word of detainees. There was particular concern regarding the *Human Rights Watch* report into mistreatment of detainees, which the officials felt was unfair. As regards the photographs of the injuries sustained by the *Ma'ameer* detainees, the officials reacted with some amusement and confusion. Mr Bu Hammoud questioned the authenticity of the photographs, stating that cameras were not permitted into police stations. Major Al-Qattan asserted that detainees were not mistreated, but were he to torture a suspect it would be done in a manner that would not leave an injury. There was a suggestion that the photographs had been tampered with.

BHRC highlighted the similar accounts that it received regarding the methods of mistreatment alleged and the persistence of these claims in addition to the fact that confessions were almost always obtained before lawyers had access to the detainees. Mr Bin Daina replied by stating that "99%" of defendants claimed mistreatment and the only answer to the lack of legal assistance in the police station or before the Public Prosecutor was that detainees had either not requested a lawyer or there had been "problems" in obtaining a power of attorney.

A rather confusing discussion then ensued regarding tape recording and CCTV in police stations. At first BHRC was informed that taping suspects would be illegal, after which it was suggested that on occasion there was some taping of suspects. It was ultimately claimed that some police stations were in the process of addressing this issue. The officials indicated that tape recording is soon to be introduced in the main Manama police station. They felt that these measures would be useful to prevent false allegations from being made against police officers.

Mr Bu Hammoud indicated that he was responsible for the internal investigation of complaints against police and other law enforcement personnel and that he took his job very seriously. He claimed to be responsible for a significant number of officers being court-martialled each year. He was not sure whether the courts martial were public, but in fact journalists did not attend. He was unaware of any publicity around these cases and he did not appear to be against the proceedings being open to the public or conducted in the presence of journalists.

BHRC raised the issue of the *Human Rights Committee* of which Mr Bin Daina was the chair. Mr Bu Hammoud explained that this was a policy body, rather than one which provides an individual complaints mechanism. BHRC suggested that an independent human rights commission should be established to investigate complaints of torture and mistreatment of detainees. Initially Mr Bu Hammoud was against this, indicating that his department adequately dealt with such issues. He also stated that some individuals would contest the independence of the commission and refuse to accept its decisions. Mr Bu Hammoud eventually accepted the principle of an independent body, but stated that this was not the right time.

Various websites are blocked within Bahrain, including those of human rights groups such as the BCHR. BHRC raised the issue of censorship with Mr Bu Hammoud, who acknowledged that it does occur in respect of explicit sex sites, but that this was an area outside of the Ministry of Interior's remit. (It is noted that since the recent crackdown and arrests a large number of websites have been blocked and the press have been ordered not to publish any reference to the arrests apart from official statements).

Finally, Mr Bu Hammoud referred to double standards from certain countries regarding respect for human rights, and he referred expressly to Guantanamo Bay. He had travelled to Guantanamo to repatriate the Bahraini detainees. BHRC noted agreement with Mr Bu Hammoud's views on Guantanamo, but indicated that alleged human rights abuses in Bahrain were not improved by the position in other countries.

Meeting with detainees from previous cases – 5th and 6th July 2010

BHRC met with three men who had been detained in a previous 'special' case who were also convicted on coerced confessions, allegedly extracted through torture.¹⁷ Following the meeting with the *Ma'ameer* detainees, BHRC had asked to meet other detainees who could shed light on the allegations of mistreatment, based on first-hand experience. Once again BHRC cannot verify what was claimed in each particular case, but the allegations are of the same nature as those claimed in the present cases. One of these detainees named Mr Nawaf Hamza as being complicit in his torture. It was said that where detainees appeared in front of Public Prosecutors but refused to make or sign confessions they would be returned to detention for further mistreatment.

¹⁷ HRW Torture Redux *supra* n. 7 pg. 18.

On the morning of 6 July, BHRC visited the home of a detainee in a previous 'special' case who had been released from his sentence.¹⁸ He graphically described the nature of the torture he had been subjected to prior to confessing in his case. This involved hanging from hand-cuffs in a stair well, beatings, and rape with a baton. He had resisted making a false confession until he was repeatedly subjected to electric shock treatment, with what he believed to be an anti-attack device, on his armpit, chest, nipples, thigh and genitalia. He was taken before the Public Prosecutor in the early hours of the morning, whom he informed of the mistreatment. He was then returned to police and beaten before being brought back before the Public Prosecutor, in whose presence he made a written confession. The accused had repeatedly asked for a lawyer, but this request was refused. At court he denied the charge and asserted that the confession had been extracted by torture. The judge however disbelieved him and he was convicted and imprisoned.

This man indicated that he had seen a doctor provided by the police on the second day of his detention. The doctor conducted routine checks, such as taking his blood pressure, but he had not been allowed to speak. The man suffered from a degenerative condition and he had subsequently been informed by his own doctor that his mistreatment had worsened the condition.

Finally, BHRC met with representatives from the British and American embassies, to whom the findings of this visit were reported.

¹⁸ *Ibid.*

CONCLUSIONS

BHRC welcomes the cooperation of the officials with whom it met, which demonstrated a willingness by the Bahraini authorities to address the issues raised during the visit. However, it is concerned by the persistent gap between Bahrain's legislative framework and the practical implementation of its human rights obligations.

It is disappointing that the issues raised by our Bahrain trial observation report of 2009 are of concern in the present hearings: admissibility of coerced confessions and alleged torture/cruel, inhuman or degrading treatment.

The allegations of mistreatment and torture of detainees are not simply persistent; they are pervasive. In virtually all the cases of convictions in 'special' cases investigated by BHRC, those convictions were founded on disputed confessions, all alleged to have been made under duress and torture. It is not credible to blame this on defence lawyers or the political situation. Moreover, despite clear provisions for legal advice and representation in Bahraini law, these confessions invariably occurred prior to any access to lawyers. It may be that there are some detainees who have declined legal assistance, and there may have been difficulties with availability of lawyers on some occasions, but it offends common sense to suppose that all of these detainees were afforded their proper rights under the law. If they were not, this alone must support their contentions of mistreatment. BHRC was repeatedly told that detainees were taken before the Public Prosecutor in the early hours of the morning when access to defence lawyers would be most difficult. In the *Ma'ameer* case all 7 convicted men confessed to the killing and then tried to retract their admissions. Seven separate disputed confessions in a murder case is an extremely irregular phenomenon yet is a pattern in cases of this type in Bahrain.

The recommendations made below should contribute to reducing or eradicating such serious human rights abuses. In addition, in any case where allegations against the police are exaggerated or indeed fabricated, the measures suggested would protect the security forces from allegations which must damage the reputation of the state domestically and internationally.

Confessions were the sole or main evidence against the accused in both cases observed on this visit. Under Article 15 of the CAT, the Kingdom of Bahrain is prohibited from admitting in proceedings any evidence or statements extracted through torture. A similar obligation can be found in Article 13 of the Arab Charter on Human Rights, Article 19 of the Constitution of the Kingdom of Bahrain as well as the Human Rights Committee's General Comments 13¹⁹ and 20.²⁰ The alleged mistreatment clearly reaches the threshold required for torture. In the absence of a thorough and impartial investigation of the evidence, the confessions should not have been made admissible.

In light of the allegations in these cases, BHRC encourages Bahrain to educate and train its police and security officials on its international human rights obligations pertaining to the prohibition on torture. This would be in line with UN Code of Conduct for Law Enforcement Officials,²¹ Article 5 of

¹⁹ Human Rights Committee, General Comment 13, Article 14 (Twenty-first session, 1984), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994) available at: <http://www1.umn.edu/humanrts/gencomm/hrcom13.htm> (last accessed 27 September 2010).

²⁰ Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994) available at: <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm> (last accessed 27 September 2010).

²¹ *Supra* n. 15.

which prohibits such an official from inflicting, instigating or tolerating an act of torture/cruel, inhuman or degrading treatment. Moreover, it is recommended that medical personnel are instructed on Bahrain's torture obligations, in order to encourage thorough and careful investigation of any such allegations.

It is not sufficient or credible for the Kingdom of Bahrain to claim that defence lawyers are making false accusations relating to torture/ill-treatment. Given the widespread reports of such claims, Bahrain should investigate all cases of alleged torture and prosecute those responsible, in compliance with its obligations under the CAT.

It is of concern that Bahrain has neither signed nor ratified the Optional Protocol to the CAT. This would allow independent experts to make regular visits to places of detention in Bahrain and thus monitor the treatment of detainees. No mechanism exists on the international or national level for victims to voice their abuses. It is therefore imperative that the Kingdom becomes a party to this Protocol. It is also recommended that Bahrain set up an independent body to receive individual complaints relating to torture, given that the present NHRI does not have a mandate to do so, and is unlikely to meet impartiality standards.

The defendants' right to legal access was violated in the above cases. Confessions were extracted before such access, contrary to Article 14 of the ICCPR and the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment, which provides for the defendant's right to prompt communication with his lawyer. Further, defence counsel in the *Adary Park* case were not served with the prosecution papers until shortly before the hearing and the video evidence had not made available at all. Article 14(3)(b) of the ICCPR states that the defendant must be given "adequate time and facilities to prepare his defence", and it is questionable whether the short adjournment allowed was compliant with that requirement.

Discussion with defence lawyers indicated that there are serious concerns about the potential influence of the Public Prosecutor in judicial decisions, and the number of judges connected to the Royal Family. BHRC suggests the Kingdom of Bahrain ensure the full implementation of the United Nations Basic Principles on the Independence of the Judiciary, in particular the following provisions:

2. "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

4. "There shall not be any inappropriate or unwarranted interference with the judicial process..."²²

The Guidelines on the Role of Prosecutors also states that "prosecutors should be strictly separated from judicial functions".²³

In response to the concerns raised by defence counsel about the selection and ability of judges, the principles on qualification, selection and training should be borne in mind:

10. "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection

²² *Supra* n. 13.

²³ *Supra* n. 14, Principle 10.

of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.”²⁴

²⁴ *Supra* n. 13.

RECOMMENDATIONS

With reference to the cases observed during this visit and the wider evidence gathered, the Bar Human Rights Committee of England and Wales strongly urges the Kingdom of Bahrain to:

- Set up a full, independent and prompt investigation into the allegations of torture, with a view to bringing criminal charges against those responsible, if sufficient evidence is revealed, as required by Article 2 of CAT.
- Hold a public inquiry into the torture allegations and if torture is established, provide redress to the victims in compliance with its obligations under Article 14 of CAT.
- Set up a truly independent and impartial commission to receive and deal with individual complaints of human rights violations within Bahrain.
- Ratify without delay the Option Protocol to the CAT.
- 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.
- Ensure that all persons arrested are taken to a police station and are able to seek legal advice as soon as practicable, in compliance with its obligations under ICCPR Article 14.
- Ensure that medical personnel appointed to examine detainees alleging torture or other mistreatment are independent and detainees have access to such medical examination as of right and in private.
- Restate its 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 ratify without delay the Optional Protocol to the ICCPR.
- Amend the Anti-Terror legislation in line with the recommendations of the UN Special Rapporteur to ensure that the definitions are not overly broad, that legitimate political or other legitimate activity is not criminalised or impeded, and to ensure speedy access to lawyers and review of detention by a court in such cases.