THE CRISIS OF HUMAN RIGHTS IN BAHRAIN:

THE RULE OF LAW UNDER THREAT.

A Report on the Practice and Procedure of the State Security Court in Bahrain

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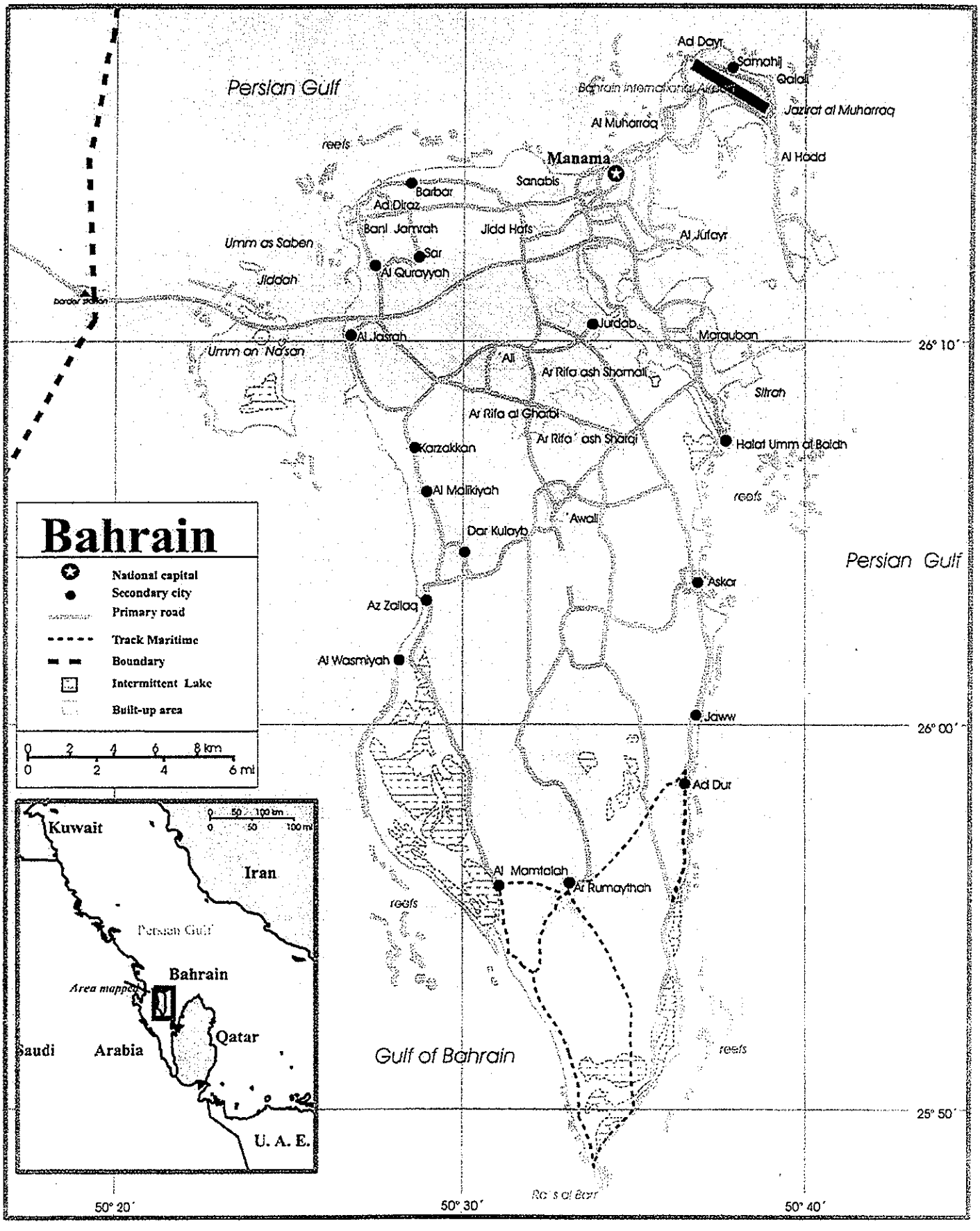
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The Bar Human Rights Committee is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards concerning the right to a fair trial.

The remit of the BHRC is to help judges or lawyers around the world who are being persecuted or prevented from carrying out their professional duties for political reasons and to maintain the rule of law in countries where it is under threat. The committee also seeks to promote the interest in and a knowledge of human rights, both inside and outside of the legal profession. Current work concentrates on research and trial observation in Turkey, Sierra Leone, Guatemala, Pakistan, Colombia, Kenya and death row in the USA.

THE PARLIAMENTARY HUMAN RIGHTS GROUP

House of Commons
London SW1

The All-Party Parliamentary Human Rights Group was founded in 1976 as an independent forum in the Houses of Parliament concerned with the defence of international human rights. It has around 150 members from all parties and both houses.

The group's main objectives are to increase awareness in Parliament of human rights abuses and to work for the implementation by all governments of the Universal Declaration of Human Rights and the of the UN Covenants on Civil and Political, and on Economic, Social and Cultural Rights.

The group meets regularly in Westminster, publishes short briefing papers and engages in dialogue both with the Foreign and Commonwealth Office and international bodies. Delegations from the group regularly visit areas of concern and talk to governments and their representative about human rights violations.

FOREWORD

Over the last thirty years, there has been a move towards popular participation in government almost everywhere in the world. Bahrain is unique in having had a partially elected legislative body under its constitution of 1972, and having then reverted to an absolute hereditary autocracy in 1975. The Amir rules by decree, having only a hand picked advisory council, the members of which he can appoint and dismiss at his pleasure. The Prime Minister, Foreign Minister, Ministers of the Interior, Transport, Justice, Housing and Industry are all members of the royal family. So are the head of the security service, the governor of the capital city, Manama, the governor of Muharraq, the head of the Amiri Court, and two of the three judges of the State Security Court.

In the 23 years since the constitution was torn up and the Parliament dismissed, there have been several popular initiatives for the return of partial democracy, culminating in the petition of 1994, which was signed by 25,000 people. When the organisers tried to present it to the Amir, and he declined to meet them, there were protests by religious leaders in the Mosques, and by ordinary people on the streets. It was a breach of Islamic tradition for the ruler not even to receive the petition, and the general feeling was that some dialogue on the constitutional future of the State was overdue. Even now, the response to outside critics who ask why Bahrain has no democratic institutions is that the Arab world has its own means of ensuring that every grievance is heard; they claim that the Amir's court is open to any citizen who wishes to approach the ruler, when evidently the viewpoint held by the majority of the people is denied a hearing.

The government's response to the petition and the demonstrations which erupted in December 1994 was, and continues to be, one of implacable resistance to any discussion of change. Excessive force was used on the streets and in widespread searches of private houses; thousands of people were detained without trial and many where exiled without any hearing.

In the middle of 1995, the authorities did offer a deal to the leaders of the petition: that all those detained without trial would be released, in three separate groups; that an amnesty for those already charged or convicted of public order offences connected with the petition would be discussed; that the petition itself could be presented to the Amir and discussed with him, and that every effort would be made to persuade demonstrators to call off their protests. This agreement, which was never publicly acknowledged by the authorities, began to fall apart in September when the British head of security, Mr Ian Henderson, told the 'Initiative Group' led by former MP and judge Sheikh Abdul Amir al-Jamri, which had negotiated the settlement, that he was not going to continue with the releases. Although there was still an interval of relative calm, widespread demonstrations resumed towards the end of the year when the people realised that no progress had been made.

In January 1996 Sheikh al-Jamri was taken into custody again, along with other leaders of the democratic movement. He has remained in administrative detention ever since, and was in solitary confinement for the first 10 months of his imprisonment. There are about 1,500 people detained without trial in the State, a situation which has attracted strong criticism from the US State Department, the UN Human Rights Sub-Commission, the European Parliament, Amnesty International, Human Rights Watch, and many other NGOs. Although the Red Cross has been allowed to monitor the conditions in the prisons since 1995, no independent human rights organisations have been allowed into Bahrain for this or any other purpose. The authorities have

said they are prepared to invite Amnesty International on several occasions, but the modalities of the visit have yet to be agreed.

The Bahrain government has signed the Convention Against Torture, but with a reservation on Article 20, effectively blocking investigations of allegations. The UN Rapporteur on Torture, Dr. Nigel Rodley, said in his report to this year's Human Rights Commission that he was still awaiting their response to his observations of the previous year on the use of torture to extract confessions, to force detainees to sign statements renouncing their political allegiance, to desist from anti-government activity, to coerce victims into reporting against others, and to inflict punishment and instill fear into political opponents. In the latest reported case, Mr Nooh Khalil Abdullah Al Nooh was arrested on July 19, 1998 and his tortured body was handed to the family for burial two days later. The Special Rapporteur on Extrajudicial Executions, M Bacre Waly Ndiaye says that he continues to be concerned about reports of violations of the right to life in Bahrain, and he notes the government's apparent unwillingness to cooperate with him in following up these reports.

There is no freedom of expression in Bahrain. All media are under the control of the ruling family, or of persons and companies loyal to the regime. All foreign correspondents have left the State, some of them under pressure. There are no indigenous human rights NGOs, and no free trade unions.

Religious discrimination against, and persecution of, the Shi'as who form 70% of the population has intensified. Mosques have been looted and desecrated, and imams have been forbidden to preach. The Mosque committees, which are traditional in the Shi-a community, have been disbanded, and their assets arbitrarily confiscated.

The police and security forces have been increased to a strength of 30,000 and in a country with no foreign enemies and comparatively little ordinary crime, their activities are almost entirely directed against the democratic movement. Of these, 8-10,000 are foreigners, including Syrians recently brought in to improve the regime's capacity for repression. Housing and other facilities have to be provided for the mercenaries, at the expense of the local population.

The Minister of the Interior, Sheikh Mohammed bin Khalifa al-Khalifa, 'is integrally involved in virtually every aspect of the judicial system and legal proceedings', according to Human Rights Watch . The judges are not independent, and recently the Prime Minister dissolved the elected executive of the Bar Society, replacing it with his nominees. The President of the State Security Court, Sheikh Abdul Rahman bin Jabir al-Khalifa, is another member of the royal family, as is another judge in that court.

The State Security Court and their operations have been looked at by Amnesty International and Human Rights Watch as part of their larger studies of human rights, but this is the first comprehensive treatment of the subject to be published. It has been suggested that lawyers from other countries might be able to offer advice to the authorities in Bahrain, on how to bring their judicial system into conformity with recognised international standards. Fair trials, including evidential procedures incorporating safeguards against abuse, would begin to undermine the apparatus of repression, and for that reason perhaps, there was no response from the ruling family. This report now provides the basis for different approaches, which might include an official

investigation of the State Security Court system by the UN Rapporteur on the Independence of Judges and Lawyers, Mr. Param Coomaraswamy. He had already formed the opinion that

"the trials before the State Security Court violate article 14 of the International Covenant on Civil and Political Rights owing to the apparent lack of due process in the Court".

States which have friendly relations with Bahrain, including the US and Britain in particular now have the basis on which to make detailed representations for reform, and the UN Human Rights Commission may also wish to pay attention to these findings. Lawyers and their organisations could take the opportunity of raising the matter in their contacts with the Bahraini authorities.

Bahrain is not threatened by external enemies, and the main domestic opposition has been restrained in its demands. Nobody calls for the overthrow of the ruler and the introduction of a republican system of government. There are no demands, even, for an entirely elected Assembly; the right of the ruler to nominate one third of the legislature is conceded. There is indeed some unrest, and occasional acts of violence against persons and property, but violent crime is not as common as in western countries. The state Security Court is nothing to do with the rule of law, but a component in the engine of repression. This report makes a significant contribution towards its ultimate abolition.

Eric Avebury
August 7, 1998

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1. INTRODUCTION

This report is published in response to the widespread concerns of various international and non-governmental organisations about the existence and official tolerance of systematic human rights violations within Bahrain since the Gulf War. The Report details those broad concerns and provides a brief historical background concerning recent political developments. Its main focus, however, is with the Bahrain State Security Court System which, for many international observers, has become one of the principal tools of repression used by the authorities to stifle legitimate political and legal dissent.

The Report therefore examines the nature, structure, practice and procedures of the Security Court System and considers whether the system incorporates and adheres to internationally recognised norms governing fair tribunals and trials. It goes on to identify a number of significant shortcomings with the system and concludes with a call for wholescale legal reform and adoption of democratic norms and values.

The Report provides a comprehensive analysis of a fundamental aspect of the Bahrain legal system which so far has not been open to legal, academic or political review within Bahrain. Certainly, the State Security Courts have not been accessible to international trial observers or western journalists. The importance of this Report then, lies in its dispassionate depiction of an ascribed public justice system hitherto shrouded in official silence and mystery.

2. BRIEF HISTORICAL AND POLITICAL BACKROUND

Bahrain is a small island near the eastern coast of Saudi Arabia, with a population of 575,000 inhabitants, covering an area of 694 square kilometers (268 square miles). The first reference to Bahrain in recorded history, was in the third millennium BC, when it was known as "Dilmun", the paradise described in the Epic of Gilgamesh. The abundance of fresh water springs and shallow wells made the island a natural stopping point for vessels trading between the ancient Iraqi civilization of Summer and the civilizations of the Indus Valley. Since that time, Bahrain has been an urban civil society. Its diversified economy was mainly built on pearl diving, trade, fishing, agriculture, weaving and pottery. Its relative size, limited defence abilities, resources and strategic location in the middle of the Gulf, made Bahrain an attractive target for many foreign powers.

As a result, over the last five centuries the rule of local Bahraini authorities was frequently interrupted by foreign invaders such as Persians, Omanis, Portuguese, and finally Arabs tribes who eventually succeeded in dominating it. In 1873, Al-Khalifa, a branch of the Bani Utbah Tribe known as "Autoob", began its rule of Bahrain when tribe leader Sheik Ahmed Mohammad Al-Khalifa conquered the islands. Since then the Arab dynasty of Al-Khalifa's rule of Bahrain has been based on their tribal traditions and values. After the 1861 Treaty of Perpetual Peace and Friendship between the Al-Khalifa ruler and Britain, Bahrain was virtually placed under British administration prior to gaining its independence in 1971.

Following independence, Bahrain established itself as a constitutional hereditary monarchy based upon the Rule of Law. The Constitution of 1973 entrenches the principle of separation of powers. Article 32 of the Constitution confined the legislative power to the partially elected National Assembly (NA), the executive power to the Cabinet, and the judicial power to the courts. Article 102(a) of the Constitution provided the legislative authority with the power to regulate courts; including the determination of their kind, degrees, functions, and jurisdiction bylaws. The 1970s witnessed the institution of many courts including the Juvenile Court by virtue of Decree Law No 17/1976, and the controversial State Security Court (SSC) by virtue of Decree Law No 15/1976.

The embryonic democratic and constitutional order was, however, shortlived. In October 1974 It came under severe pressure following tensions between the Amir -who was under considerable pressure from Riyadh to limit the growing radicalism of Bahraini politics- and the left (the Popular Bloc), with its powerful base amongst oil-industry workers, when the new law on state security was promulgated. The assembly, under Popular Bloc pressure, refused to endorse the law and, in August 1975, the assembly was dissolved, as thirty leaders of the Popular Bloc and the PFLOAG were arrested.

The result of this action was to drive political opposition in Bahrain underground until the Iranian revolution in early 1979 which galvanised the Bahraini Shi'i majority. On 15 May 1979 massive demonstrations were broken up by troops and over 900 were arrested. Shi'i leaders then issued a demand for Bahrain to be proclaimed an Islamic Republic, the state security law to be reviewed and the assembly reinstated which resulted in further political suppression. Tension

between the Amir and the Shi'i relegious leaders and radical secular left were further excerbated by the development of clear military links with the USA which used Bahrain as a major staging post during the US embassy hostage crisis of 1980.

The ensuing Iran-Iraq War resulted in a formal defence agreement with Saudi Arabia, membership of the Gulf Cooperation Council in 1981, and led to further economic and political developments with the West. The 1980's witnessed the creation of a modern diversified economy sustained by telecommunications, banking, construction, oil and a secondary processing industrial sector. Throughout this period the Bahraini authorities continued to suppress all calls for radical political change.

Hopes for a return to democracy and the rule of law within Bahrain were raised once more in the aftermath of the 1991 Gulf-War which witnessed the reinstatement of a parliamentary system in Kuwait and the adoption of certain democratic reforms in the Sultanate of Oman. Such reforms created high expectations that other Gulf States would follow suit. Since August 1976 the Amir had effectively ruled by royal decree through a hand picked advisory council who could be appointed or dismissed at his pleasure. Many in the Bahraini intellectual elite felt it was time for democratic reform.

This view was further reinforced by the deterioration of Bahrain's fragile economy. The early 1990's witnessed the departure of many off-shore foreign banks, a general decrease in foreign investments, and an increase in unemployment. Indeed, the official unemployment figure climbed to 15%, as the number of jobs failed to keep pace with the growth in the labour force, which was in part due to "Free Visa" labour[1] which ensured that the growth in employment of non-Bahraini continued to exceed that of Bahrainis. This deterioration resulted in calls for greater political representation.

A large part of the Bahraini population saw reform of the administrative and political system through the reinstatement of the National Assembly as the principal solution to the economic and political problems facing the country. Consequently, more than three hundred prominent educated elite and professional Bahrainis submitted a petition to the Amir in 1992, in which they called for the reinstatement of a parliamentary system. The petition fell on deaf ears. The failure to institute reforms led to further political and economic stagnation. The summer of 1994 saw several large demonstrations of young Bahraini job-seekers at the Ministry of Labour. These demonstrations were invariably broken up by force with riot police using tear gas to disperse the demonstrators.[2]

In 1994 a second petition, known as the Popular Petition, sponsored by a national committee entitled "Committee for Popular Petition " (CPP) and made up of representatives of all political and ideological trends in Bahrain was drafted. Like the earlier petition it called for the enforcement of the Constitution and the restoration of the National Assembly. Unlike the earlier petition it was signed by more than 20,000 citizens.[3] But before the CPP submitted the petition to the Amir, a young pro-democratic cleric named Shaikh Ali Salman, who was one of the organisers of the Ministry of Labour demonstrations and an active promoter of the popular petition, was arrested by the authorities.[4]

His arrest on December 5, 1994 provoked widespread anger, triggering demonstrations in the streets by citizens demanding his immediate release.[5] Once more the security forces used excessive force to disperse the demonstrators resulting in many casualties.[6] The incidents led to a further spate of ever more violent confrontations this time resulting in the death of a number of demonstrators, foreign workers and a few policemen. Thousands of citizens were arrested and a number of private and public properties destroyed.[7] Hundreds of the persons arrested were tried before the SSC and some before the ordinary criminal courts. The trials before the SSC continue to this date.

From the outset, the Bahraini Government accused Iran of causing the disturbances in order to destabilize the security of the State of Bahrain. [8] On June 3, 1996, the Government announced in the local press that it had identified a previously unknown organization called the Hizballah/Bahrain - Military Wing as being responsible for fermenting the unrest. It alleged that it was part of a wider Iranian inspired conspiracy to overthrow the Government of Bahrain.[9] The press further cited that 44 persons who were said to have confessed to their involvement with the said organization.[10]

On March 1, 1997, the SSC commenced the trial of 59 accused for an alleged attempt to overthrow the Government.[11] On March 27 and 29, the SSC passed judgment convicting 36 defendants and acquitting 23. The sentences ranged between fifteen and one year of imprisonment, in additions to fines that ranged between $18,000 to $13,000.[12]

Many observers rejected the allegation of Iranian inspired conspiracy, instead blaming the unrest on the security forces' excessive use of force against peaceful demonstrators, which in their view was clearly deployed in order to forestall and thwart further development of a popular movement calling for legitimate political reform.[13]

Since the initial eruption of violence at the beginning of 1994, hundreds possibly thousands of ordinary citizens have been arrested. Indeed, according to the US Department of State Human Rights Country Report of 1995, the number estimated was 2,700 detainees.[14] In 1995, around 100 of these detainees were tried before the SSC on charges which varied between premeditated homicide for which punishment is the death penalty,[15] to destruction of public properties for which punishment, if it is accompanied by aggravating circumstances, may be 10 years imprisonment,[16] to possession of publications calling for the overthrow of the political regime by force for which punishment is 3 years.[17] The total number of detainees tried before the SSC in 1996, is believed to be around 150 and over 60 for 1997.[18]

Since its creation in 1976 until 1995, the SSC was composed of one Chamber which specifically sat at the Coast Guard Base in Muharraq City, which lies about 3 kilometers away from the Capital city, Manama. However, as a result of the events of 1995-97, and the significant increase in the number of persons tried before the SSC, two additional Chambers have been created which sit near Jaw Prison, located approximately 24 kilometers southward away from the capital city.[19]

But the most significant reform arising out of the events of 1995-97 lay not in the increased number of trials but in the enactment in 1996 of a new amendment to the SSC legislation which

expanded the exclusive jurisdiction of the SSC to include a sizable lot of the Ordinary Criminal Courts jurisdiction. Pursuant to the new legislation, all offenses relating to public properties or public employees, as well as those related to setting fire, or using explosives or arms, were brought under the jurisdiction of SSC.

The decision of the Bahraini cabinet (which has assumed the powers of legislature since 1975) to extend the jurisdiction of the SSC flew in the face of constitutional rights and international standards set for fair criminal trials.[20] This development coincided with the rise of international interest in human rights promotion which has prevailed in recent years. Over the past two and a half years the SSC has been the subject of much discussion both in Bahrain and abroad. Much of the arguments concerning its legitimacy, legality and verdicts have been based on political rather than legal grounds.

This Report, however, aims to examine the legal basis of the creation, practice and verdicts of the SSC and to consider whether the Bahraini SSC legislation and its subsequent implementation between 1995-1997 complies with the legal standards set by both the Bahraini Constitution and international law relating to human rights in the matter of criminal law. Such examination is of particular significance given that the SSC has presided over more cases between 1995-97 then during its previous 19 years of existence and that all the cases considered by the SSC since 1995 relate to the disturbing events which took place in Bahrain after November of 1994.

3. THE RESPONSE OF THE INTERNATIONAL HUMAN RIGHTS COMMUNITY

What is undoubtedly clear from the outset, however, is that any cursory glance at the recent Reports and Resolutions on Bahrain published by various governmental international organizations and non-governmental international human rights organizations, will confirm the apparent existence of widepread human rights violations within Bahrain and overwhelming agreement about the lack of due process within the Bahraini SSC. .

In its September 1995 report about Bahrain, Amnesty International testified that the Government of Bahrain has engaged in a consistent pattern of systematic human rights violations since the early 1980s. Amnesty International specified these violations to include: arbitrary arrest, prolonged administrative incommunicado detention without charge or trial of suspected political opponents, torture and ill-treatment of detainees particularly during pre-trial detention in order to extract "confessions", grossly unfair trials before the SSC, and forcible exile from the Country of Bahraini nationals. Amnesty indicated that its efforts to raise its concerns about human rights issues in Bahrain with the Bahraini Government have been met with an almost total silence.[21]

In 1996, the International Federation on Human Rights (FIDH) gave a clear statement at the UN Commission on Human Rights in Geneva, that unfair trials of political opponents and human rights defenders before the SSC continued to be carried out in flagrant violation of the right to a fair trial. The sentences involved were death and life imprisonment. The statement went on to criticize the extension of the SSC jurisdiction over additional crimes, which previously fell under the jurisdiction of the ordinary criminal courts.[22]

On May 7, 1996, the Organisation Mondiale Contre La Torture (OMCT) released an appeal, in which it urged the Bahraini authorities to

> "*Guarantee at all times the full respect for human rights and fundamental freedoms according to national law and international norms.*"[23]

In June, 1996, 25 members of the European Parliament sent a letter to the Amir, stating that the behaviour of the Government of Bahrain was in flagrant contradiction with accepted international standards on human rights and democracy...and that the situation continues to deteriorate.[24] While in its August 1996 report about Bahrain, the UK Parliamentary Human Rights Group stated that its findings regarding the Bahraini SSC violations of the internationally recognized standards of fair trial and detainees rights, are consistent with the research of other human rights organizations.[25]

The US Department of State Country Report for 1996 issued in early February 1997, alleged that the Bahraini Government's human rights record worsened in 1996. It further alleged that the Security Forces committed numerous serious human rights abuses during that year. The main human rights problems, as stated in the report, continued to include the denial of the right of citizens to change their government; political and other extra-judicial killings; torture; deteriorating prison conditions; arbitrary arrest and incommunicado detention; involuntary exile; limitation on or the denial of the right to a fair public trial, especially in the Security Court; infringement on

citizens' right to privacy; and restriction on freedom of speech, press, assembly, association.[26]

Human Rights Watch issued a major 109-page report on 24 July (ISBN 1-56432-218-1) describing human rights abuses in Bahrain as

> *"wide-ranging and falling into two basic categories. The first relates to law enforcement and administration of justice issues. These encompass the behavior of security forces toward those under arrest and detention, and when confronting civil disturbances; arbitrary detention; physical and psychological abuse of detainees; denial of access to legal counsel; and denial of the right to a swift and impartial judicial hearing.... The second area of human rights violations relates to the broad denial of fundamental political rights and civil liberties, including freedom of expression, freedom of association and assembly, and the right to participate in the conduct of public affairs. In terms of numbers of people affected, the situation has been particularly acute since the end of 1994, with the onset of a period of protracted civil unrest that has continued into the spring of 1997".*

On 18 September 1997 a European Parliament' Resolution was issued [Urgency Resolution Under Rule 47 of the Rules of Procedure (Ref: SEAN\RC-97\B4-077.97\en)] on Human Rights Abuses in Bahrain stating:

A. *Noting with profound alarm the Report published in June 1997 by Human Rights Watch/Middle East entitled 'Routine Abuse, Routine Denial: Civil Rights and the Political Crisis in Bahrain, which documents the continuing political crisis in Bahrain, with associated widespread political repression, torture and abuse of detainees, denial of legal representation and reliance for convictions on uncorroborated confessions; and the Amnesty International report of 16 July 1996, which expresses grave concern at continuing human rights abuses in Bahrain and the absence of the protection of due process, and the report by the UK Parliamentary Rights Group;*

B. *Recalling that the Bahraini parliament was disbanded in 1975 and that the ruling Al-Khalifa family has since resisted all calls for the restoration of democratic and constitutional rule;*

C. *Recalling that the current political crisis started in the second half of 1994 with widespread demonstrations and petitions calling for the return of constitutional rule, the release of political prisoners and permission to return for hundreds of Bahrainis forcibly exiled or prevented from returning because of their political activities;*

D. *Observing with deep regret that these moderate demands have been met with arrests, the torture of detainees and wider use of the State Security Court, the procedures of which fall far short of accepted international standards for a fair trial and from which there is no right of appeal, despite the imposition of death sentences;*

E. *Noting that helicopters and gas supplied from abroad have reportedly been used against civilians;*

1. *Calls upon the government of Bahrain to release political prisoners, to facilitate the return of exiles and institute due process of law, according to accepted international standards, and to open negotiations with opposition forces immediately, with a view to holding democratic elections, open to all sexes, at the earliest opportunity;*

2. *Calls upon European Union Member States to refrain from supplying arms or security support to the Government of Bahrain and requests the Council to take initiatives in order to obtain similar restraint at international level until democratic conditions have been restored;*

3. *Unequivocally condemns all use of unlawful violence, torture and terrorism, whether committed by the security forces or any other agents.*

4. *Calls upon the Bahraini authorities to admit internationally respected human rights organisations, such as Human Rights Watch and Amnesty International to the country and allow organisations with similar peaceful democratic concerns to operate in Bahrain.*

5. *Instructs its President to forward copies of this resolution to the Council and the Commission, to the governments of Member States, to the Secretary General of the United Nations and to the Bahraini Government".*

The European Parliament had issued an earlier resolution on 15 February 1995. Both resolutions were rejected by the Bahrain Government. The Associated Press reported on 20 September 1997 that

> *"Bahrain on Saturday rejected criticism in the European Parliament of its human rights record, saying foreign groups should check their facts before making accusations".*

The United Nation Human Rights Sub-Commission adopted a resolution on 21 August 1997 which stated:

> *"Reaffirming the obligation of states under the Charter of the United Nations to promote and encourage universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion;*
>
> *Reaffirming its conviction that racism and racial discrimination constitute a total negation of the purpose and principles of the Charter of the United Nations and the Universal Declaration of Human Rights;*
>
> *Noting that the elected National Assembly of Bahrain was dissolved in August 1975, that for 22 years Bahrain has been without an elected legislature and that there are no democratic institutions in Bahrain;*
>
> *Noting also that Bahrain is facing problems of internationally assisted terrorism, and condemning all acts of terrorism in that country;*
>
> *Noting further the information concerning a serious deterioration of the human rights situation in Bahrain, including discrimination against the indigenous Shi'a population, extra-judicial killings, persistent use of torture in Bahraini prisons on a large scale as well as the abuse of women and children who are detained, and arbitrary detention without trial or access by detainee to legal advice:*
>
> 1. *Expresses its deep concern about the alleged gross and systematic violations of human rights in Bahrain;*
>
> 2. *Urges the Government of Bahrain to comply with applicable international human rights standards and to ratify the International Covenants on Human Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*

3. *Requests the Commission on Human Rights at its next session to consider the situation of human rights in Bahrain under its agenda item entitled "Questions of violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories".*

However, when the UN Human Rights Commission met in the period between 16 March - 24 April 1998, several states, including Bahrain, escaped criticism, thus igniting an attack from the chairman of the UN session himself. The "Financial Times" reported on 24 April 1998

> *"The operation of the UN Commission for Human Rights came under attack yesterday from its own chairman as well as human rights groups for playing politics rather than making a genuine attempt to promote human rights and tackle abuses. Jacob Selebi, South Africa's ambassador to the UN in Geneva and current chairman of the commission, said it was essential to reform the block voting system which led "people to vote on the basis of group solidarity and not on the substance of human rights abuses". Mr. Selebi's outspoken attack on the workings of the commission coincided with the accusations by human rights groups that grave human rights violations in Algeria and China have been ignored. Before the six-week commission session, both the European Union and the US announced that they would not sponsor a resolution against China in recognition of progress made and continuing discussions on human rights".*

The PA News agency reported on 3 June 1997 that the

> *"[British] Government was urged tonight to denounce a British citizen described in the Commons as "the Butcher of Bahrain".*

The call came from Labour's George Galloway (Glasgow Kelvin) as he launched a short late-night debate on Britain's policy towards Bahrain. Mr Galloway, who attacked the human rights record of the ruling regime on the Gulf island group, said the figure "*at the very heart of the darkness was a Scotsman called Colonel Ian Henderson*". Replying to the debate, Foreign Office Minister Derek Fatchett said he believed that the opposition in Bahrain is "*moderate with a set of moderate demands*". Mr Fatchett said he had met the Bahrain ambassador recently and had raised the country's human rights record with him at that time.

> *"I stressed a number of issues, our discussion was frank and the atmosphere was one in which it was possible for me to engage in a constructive dialogue."*

The minister stressed the Labour Government was putting the emphasis on a "moral dimension" to foreign policy and would be pursuing human rights issues wherever possible.

4. THE STATE SECURITY COURT SYSTEM: ITS ESTABLISHMENT, PRACTICE AND PROCEDURE

4.1. Historical Legislative Background

On December 16, 1971, the Amir of the State of Bahrain, Shaikh Isa Bin Salman Al-Khalifa, issued a statement declaring the independence of the State of Bahrain. On June 20, 1972, the Amir promulgated Decree Law No. 12/1972 forming a Constituent Assembly to draw up the Constitution for the State of Bahrain which was said to have arisen "out of the Amir's willingness to establish the rule in the country, based on solid foundations of both democracy and justice, under a constitutional, parliamentary system of government that would consolidate consultative rule in conformity with the country's particularities and its Arab and Islamic heritage,"[27]

The Decree provided that the Constituent Assembly shall be comprised of 22 members, elected by the people through universal suffrage by secret ballot, with no more than 10 members appointed by Decree and the Ministers shall be members of the Assembly by virtue of their portfolios. On July 19, 1972, the Amir issued Decree Law No. 13/1972, with respect to the provisions of the election of the Constituent Assembly, whereby every Bahraini male citizen only was granted the right to vote.

After being drafted by the Constituent Assembly, the Amir ratified the Constitution on December 6, 1973. The Constitution defined citizens' fundamental rights, and the system of government, stating that it should be based on the separation of the three powers; legislative, executive and judicial. Elections of the 30 members of the the National Assembly (NA) took place on 7 December 1973. Some 14 ministers also became ex-officio members.

Then just before the end of 1974 National Assembly's session, the government submitted "*The State Security Measures Law*" in response to the looming political crisis. The draft law proposed to grant the Minister of the Interior the power to detain, for three years without trial or judicial review, anyone suspected of committing acts considered harmful to the security of the State. The draft law was unanimously rejected by all elected members of the National Assembly. The Amir's response was to issue by Decree the State Security Procedures Law on October 22, 1974 while the National Assembly was in recess, pursuant to the provisions of Article 38 of the Constitution.[28] . A crisis then ensued between the National Assembly and the Government, leading to the dissolution of the Assembly in August 1975 and the seizure of the legislative power by the Amir and the Government.

On August 24, 1975, the Prime Minister (the Amir's younger brother) tendered the resignation of the Cabinet to the Amir because of what he described as the unwillingness of the Assembly to cooperate with the Cabinet to pass necessary legislation. The Prime Minister indicated that the Assembly's lack of cooperation reflected its alienation from the traditional values of Bahraini society.[29] The Amir promptly accepted the resignation of the Cabinet and issued Amiri Decree

No. 3/1975, requiring the former Prime Minister to form a new Cabinet. The commissioning letter stated:

> *"[W]e were disturbed by the contents of your letter regarding the resignation of the previous Cabinet, in which you indicated that cooperation between the Cabinet and the National Assembly was virtually impossible. Although it is natural for practical life to reveal the loopholes in the Constitution, yet plugging these loopholes and overcoming these deficiencies to make the National Assembly a more truthful representative of the entire nation with all its classes and entities, become an imperative dictated by the Country's supreme interest. The history of parliamentary life in many countries reveals that such amendments, which are made in a spirit of total tranquillity while maintaining the fundamental constituents of the Constitution, are commonplace. Therefore, we hope that the Cabinet will propose to us some alternatives towards accomplishing this objective."*[30]

In a letter sent to the Amir on August 25, 1975, the Prime Minister accepted his reappointment indicating how imperative it was to dissolve the NA and amend the Constitution in order to deal with the Assembly's "lack of cooperation".[31] On that same day, the Amir issued Amiri Decree No. 13/1975, thereby forming the new Cabinet which continued in office until June 1995.[32] The day after, the Amir issued Amiri Decree No. 14/1975 dissolving the Assembly, and Amiri Order No. 4/1975 which deferred the election of the Assembly until after the enactment of new election law, and suspended Article (65) of the Constitution which conflicted with the deferment of elections. The Amiri Decree stated that the Amir and the Cabinet would take over the legislative power during the period of deferment until the new election law is promulgated.[33]

4.2. The Establishment of the State Security Court:

It was within this legislative framework that the Bahrain Penal Code was promulgated on March 20, 1976. Article 185 of the Penal Code states:

> *"Persons committing crimes provided for in Articles 112 to 184 shall be tried by a court to be formed, and the procedures of which will be laid down by an Amiri Decree."*[34]

Less than three months after promulgating the Penal Code, on June 2, 1976, the Amir issued Decree Law No. 7/1976 which created the "State Security Court" (SSC) and laid down its procedures for the Court.

By virtue of Decree Law No. 4/1982, [35] the jurisdiction of the SSC was extended by amendment to include all crimes inseparably related or linked to the crimes falling under the SSC jurisdiction. The amendment permitted the referral to the SSC of accomplices who committed any related crime to a crime falling under the SSC jurisdiction, provided that the perpetrators of the original crime have been referred thereto.[36]

In March 1996, a significant additional amendment was passed by the Cabinet and ratified by the Amir, extending the SSC jurisdiction to include the following crimes:

1. Crimes provided for in Articles 277 to 281 of the Penal Code, related to death, injuries or damages caused to persons and properties by fire and explosives.

2. Crimes provided for in Articles 220, 221,333 and 336 to 340 of the Penal Code, related to the use of force or violence, or perpetration of any assault against civil servants including murder.

3. Crimes provided for in Article 18 of Legislative Decree No. 16/1976, with respect to Explosives, Arms and Ammunitions.

4. Crimes linked to the preceding crimes.[37]

4.3. The General Procedures Before the State Security Court

The SSC Law provides for procedures at odds with those applied by ordinary criminal courts. For example, any case filed before the SSC is on an indictment prepared by the Public Prosecution, which is an administrative division of the Ministry of the Interior, and not an independent judicial body as required under Article 101(c) of the Constitution.[38]

In addition to the indictment, the case file prepared by the Public Prosecution may contain reports and investigations conducted by the Police and the Public Prosecution, the statement made by the suspect before the Investigation Judge, and any other evidence deemed necessary by the Public Prosecution.[39]. The SSC Law states that SSC trials must be held in public unless the court decides to held the hearings *in camera*, in observance of public order and security of the State, although the verdict must be pronounced in open court.[40]

The SSC Law also authorizes the SSC to base its judgment on the defendants' confession only. Such confession shall be subject to Court's discretionary evaluation irrespective of whether it is made by the defendant against himself, or against another co-defendant, or whether it is made before the SSC, the Investigation Judge, during the Public Prosecution investigation, or before the Police. However, in dealing with crimes punishable by death, the Court may not base its judgment solely on the defendant's confession unless it is made directly to the Court or before the Investigation Judge.[41]

Save for the crimes punishable by death, the Court may rely, in its verdict, on any witness testimony, or any other proof including statements made before the Police or before the Public Prosecution.[42] The SSC Law provides that SSC judgments are final and not subject to challenged or appeal.[43]

These procedures differ from those applied by the ordinary criminal courts and set forth in the Code of Criminal Procedures of 1966 (CCP). They deprive the defendant of many guarantees provided for under the CCP. The main SSC Law derogation from the CCP can be summarized as follows:

1) The SSC law provides that the SSC consist of three judges of the High Court of Appeal, therefore the SSC is a circuit of the High Court of Appeal.[44] Hence, immediate trial before the SSC deprives the defendant from being tried initially before a court of first instance, whereas the defendant which stands before the

ordinary criminal court receives a three stage trial: first instance, appeal and cassation.

2) While the Law allows the SSC to rely on the defendant confession in crimes punishable by death when such a confession is made before the Court or before the Investigation judge, this is not allowed before the ordinary criminal courts. Even in a case where the defendant has made a confession before the trial court, of committing a crime punishable by death, the court must record, in the minutes of the hearing, that he denied the charge.[45]

3) With regard to crimes that are not punishable by death, the law allows the SSC to base its verdict on the defendant statements or confession whether he has made them before the Investigation Judge or before the Police. This is not permissible before the ordinary criminal courts as no confession made by the defendant to a police officer, while in police custody, is accepted as an evidence against him/her unless such confession was made in the presence of a judge.[46]

4) The law allows the SSC to rely on witnesses' statements made to the Police or before the Public Prosecution without the need for the court to hear them. This is contrary to the procedures before the ordinary criminal courts which require that testimony must be made before the court in order to allow the defense lawyer, the Public Prosecution and the Court to cross-examine the witness concurrently.

5) The SSC Law allows the SSC judges to rely entirely on written testimonies, whereas correspondence testimony is not admitted before the ordinary criminal courts, except in certain cases, such as in the case of the witness' death, in the event he is the person against whom the crime was committed, and he died before being able to give his testimony before the criminal court.[47]

6) The SSC Law makes it permissible for the Court to rely on the defendant confession against himself, or against a co-defendant, while the procedures followed by the ordinary criminal courts do not allow the use of a crime accomplice's testimony against the defendant unless this testimony is corroborated by independent evidence.[48]

7) Unlike the procedures followed by the ordinary criminal courts, judgments issued by the SSC are final, and not susceptible to appeal in any manner,[49] while the CCP provides for the case before the ordinary criminal courts to be tried by three levels of courts, which are:

[1] Courts of First Instance:-

The Junior Court which hears misdemeanors and offenses, i.e. crimes punishable by imprisonment not exceeding three years.[50]

The High Court which hears felonies punishable by imprisonment for a period exceeding three years or death.[51]

[2] Courts of Second Instance:-

The High Court which hears appeals filed against judgments passed by the Junior Court.

The High Court of Appeal which hears appeals against judgments passed by the High Court.[52]

[3] Court of Third Instance:-

The Court of Cassation which hears appeals submitted to it against judgments passed to it by the Appellate High Court, and the High Court of Appeal.[53]

Quite apart from these derogations from constitutional and statutory procedural guarantees offered to the defendant before the ordinary criminal courts, the manner in which the State Security legislation is systematically implemented also gives cause for concern. Indeed, the manner of implementation constitutes a violation of the defendant constitutional and statutory rights during all phases of his trial namely; arrest, investigation, trial, and execution of the judgment.[54] An examination of these phases is crucial to a proper understanding of the function of the SSC.

4.4. The State Security Court Pre-trial Procedures:

A. The Arrest Phase:

Defendants tried before the SSC are usually arrested by virtue of a "Ministerial Order", passed by the Minister of Interior pursuant to Article (1) of the State Security Measures Law of 1974 (SSML.) Typically, the arrest of many individuals is ordered by one Ministerial Order.[55] The bases for the arrest are repeated in all the Ministerial Orders as being

> *"the availability of serious indications showing that the individuals subject matter of the arrest Order have committed acts of sabotage, actions and activities considered as threat to the internal security of the State."* [56]

Pursuant to Article 1 of the SSML, after a lapse of three months from the date of arrest, the detainee may submit a complaint to the High Court of Appeal, challenging the arrest Order issued against him/her. In the event the complaint is accepted, the Court may order the release of that person with or without bail. It may also order the restriction of the complainant's right to travel. In the event the complaint is rejected, the detainee remains in detention. The complaint is renewable after the lapse of six months from the date of the Court decision, and for a period of three years after the arresting date. At the end of the three year period, the detainee must be released, unless another arrest Order is issued against him.

The complaint is subject to special proceedings fixed by the SSML. The hearings are always held *in camera*, attended only by Public Prosecution representatives, the complainant, and his lawyer.[57] The Court does not follow the procedures of the criminal trials stated in the Code of Criminal Procedure as the SSML grants the High Court of Appeal the authority to fix its own procedures according to the following limits:

1. Its decision should be based solely on papers and documents presented by both parties.

2. Pleading must be submitted in writing.

3. The Court may request the Prosecutor to submit additional reports made by those who gathered evidence against the complainant, unless the interest of the State requires the non-discovery of their identities.

4. The testimony of the witnesses of the complainant is to be submitted in writing, and the trial is not to be adjourned due to the non-submission of the witnesses' testimonies.

5. After having heard the complaint the documents and papers are to be returned to the Public Prosecution.

6. Minutes of the meeting are to be drawn up in one original and all papers of the complaint file are deemed confidential.[58]

Besides the discretionary power given by the SSML to the Minister of Interior to order the arrest of any citizen suspected of committing an offence related to the security of the State for three years, a further amendment to Article 79 of the Code of Criminal Procedure granted the Investigation Judge the authority to order the arrest of any person suspected of committing a crime related to the security of the State for an indefinite period.

The said amendment gave the detainee the right to complain against his/her arrest to the same judge who issued the arrest order following a lapse of one month from the actual date of the arrest. Where a judge rejects a complaint such complaint would be renewable each month thereafter for an indefinite period of time.

In most cases the complaint challenging the Investigation Judge's arrest order remains pending without a hearing date being fixed until the Investigation Judge's jurisdiction expires when the substantive case is filed against the complainant before the SSC. In the rare cases when the Investigation Judge actually heard complaints, he always rejected them. To date, no arrest order issued by an Investigation Judge has ever been repealed by him. In many cases the Investigation Judge hears the complaints in the absence of the complainants.

B. The Investigation Phase:

Investigation into crimes related to the security of the State, are conducted by two Directorates of the Ministry of Interior:

[i] The General Directorate of the State Security Investigations:

This Directorate is staffed by British officers who have been headed until February 1998 by Major General Ian Henderson, a British national who served in the British Police in Kenya from 1940s through 1960s, fighting the Mau Mau revolutionists in Kenya. The state administration (then under the control of the British) brought Henderson to Bahrain in 1966 following the labour uprising of the Bahrain Petroleum Company (BAPCO) workers in March 1965 in order to reorganize the Police and Intelligence Department. Ever since then he has headed the State Security Investigation Directorate including the Security and Intelligence Service (SIS), and has become "The Powerful Man" in the Ministry of Interior for 31 years.

Following his retirement in February 1998, one of his positions was filled by a member of the ruling Al-Khalifa family, Sheikh Khalid bin Mohammed Al-Khalifa. However, Mr. Henderson retained his position as a senior security advisor while the remaining British staff retained their positions. A new British person, Mr. David Jump was recruited to advise the security service on legal matters. This new recruit has come from a firm of solicitors operating in London, Trowers & Hamlin which has been advising the government of Bahrain for a considerable time.

[ii] The General Directorate of Criminal Investigations and Information:

This Directorate operates under the close supervision of and in co-operation with the SIS. Prior to its reorganization in 1996, it was known as the Criminal Investigations Directorate (CID).[59]

During the investigation phase, evidence needed for the indictment of the detainees is gathered and prepared including: detainee statements made before the Police, or the so-called detainee's confession made before the Investigation Judge, forensic reports, medical reports, autopsies, witnesses' statements made either before the Police or the Investigation Judge, fire brigade reports, damage assessment reports, loss evaluation in the case of damages caused to public properties, as well as any other evidence.

All the defendants involved in the State security cases relating to the 1995-1997 events (over 250 were tried before the SSC during that period) have stated that they were subject to torture and at least two people were killed while in detention.[60]

Typically, confessions made by defendants before the Police and the Investigation Judge are quite similar. Article 76 of the Code of Criminal Procedures of 1966 (CCP) establishes the requirements of giving a statement by the suspect before the Investigation Judge. The Article states that if a person, in the course of the investigation of a crime, makes a confession at any time before the trial, he may be referred to a judge to record his admission in writing. The same Article prohibits the Judge from recording the confession unless he is convinced, following a

thorough investigation that such confession was made of the suspect's own volition.[61]

With respect to the 1995-1997 events, the great majority of confessions were made before Investigation Judge "Sa'ad Al Shamlan", who used to hear confessions at his office in the Ministry of Justice. However, many of the defendants indicated that starting from March 1995, they were forced to sign their pre-written "confessions" in his presence in Al Qala'a prison. Due to the large number of individuals tried in relation to the 1995-1997 events, it is absolutely astonishing that one person could actually record almost all those confessions and determine in accordance with the law i.e. after discussing the contents of the confession with the suspect that no confession was taken by force .[62]

Most of the defendants indicated that that Judge asked them just one question about whether or not their statements before the Police were true or not. They also indicated that they were forced to admit to the crimes they were accused of because they were threatened with torture by the Police before appearing before the Judge. Most of the defendants said that torture ceased after they signed the pre-written "confessions" before the Investigation Judge.[63]

C. The Prosecution Phase:

When the Investigation Directorates of the Ministry of Interior decide that the investigation phase has ended they refer the case and its evidence to the Public Prosecution.[64] Based on the evidence submitted by the Investigation Directorates, the preparation of the indictment by the Public prosecution ensues, but further evidence may also be obtained during this phase in the event that the submitted evidence is inadequate or insufficient. After the completion of the indictment, and the preparation of all required evidence, the case file is referred to the Courts Directorate in the Ministry of Justice.

During the pre-trial phase, which usually lasts for any period from between several months to more than a year (except in rare cases such as the killing of one of the Ministry of Interior's employees), the detainees are not permitted to contact their families or their lawyers until the first day of their trial.

In a few cases some detainees were permitted to contact their families but they were never permitted to contact their lawyers.[65] Detainees for crimes related to the security of the State are not immediately given the reasons for their arrest, the nature of the crime they are accused of, or the nature of the warrants by virtue of which they were arrested. Usually the arrest is coupled with the search of the detainees' home and workplace and is carried out by foreign non-Arabic speaking policemen, under instruction of a Bahraini CID or SIS officer.[66] For months the reasons for their arrest remain unknown to both their family and their lawyers.

Some of the Investigation Judges require lawyers to produce official power of attorney in order to allow them to obtain the limited information which the Ministry of Justice may have about the detainees, namely, the nature of the Order by virtue of which the detainees were arrested (i.e. a Ministerial Order) or an order from the Investigation Judge, along with a brief description about the nature of the offences allegedly committed by the detainee.

In reality, obtaining power of attorney is impossible, as the Ministry of Interior does not allow detainees to contact the Notary Public who is the only authority permitted by law to authenticate official powers of attorney. By 1995 the requirement for official power of attorney was reduced to an unofficial statement issued by a close member of the detainee's family empowering the lawyer to act on behalf of the detainee. This change apparently occurred pursuant to the instructions issued by some of the Ministry of Justice high officials to the Judges after receiving many complaints from lawyers. Some lawyers complained directly to the Minister of Justice, others lodged their complaints through a special committee established by the Bahrain Bar Society for that purpose.[67]

With regard to detention facilities, individuals under arrest were usually detained in "Al Qala'a Prison" in the Capital City Manama. It is an old prison, built in the first half of the 18th Century. Later it became the headquarters of the British Advisor, Charles Belegrave, to the rulers of Bahrain (1926-57). After Independence Al Qala'a became the headquarters of the Ministry of Interior. Although l Qala'a prison has been restored many times, the poor conditions of this old prison remain unhealthy. Constant overcrowding of cells has worsened due to the large number of prisoners detained since the beginning of the 1995-1997 events. A number of detainees are kept in "Jaw Prison No. 2," located on the south-eastern coast of the island, others are detained in "Al Kurain Prison", built in July 1996, located in the southern part of the island, nearly 30 km from the Capital in a military area, or in "Al Houd Al Jaaf Prison" (Dry Dock) located at "Al Hed" area approximately 15 km, east of the Capital, while other detainees remain locked up in poorly equipped Police stations for months.

4.5. The Trial Phase

After receiving the case file from the Public Prosecution, the Courts Directorate of the Ministry of Justice determines the SSC Chamber before which the case will be examined. Later a Court clerk fixes the date of the first hearing under instruction of the President of the Court after ascertaining that all detainees have appointed their own lawyers. Otherwise, the Court appoints them.

The case file is turned over to each lawyer a few days before the hearing. This is the first time that the lawyer and the defendant family learn of the exact charges brought against the defendant.

In light of the information contained in the case file, in addition to any information provided by the defendant family, each lawyer prepares for his client's defence. The lawyers cannot meet with the defendant except on the day of the initial hearing. Thereafter, the trial begins in spite of the defence's lack of adequate preparation and readiness. Yet the Public Prosecutor representative, who had initially prepared the case, is completely aware of each and every word written in the indictment as well as the evidence the case file contains.

Before the initial hearing, lawyers usually advise their clients to plead "not guilty" as a precautionary measure. The reason for this is clear: the defendants' lawyers have not had enough time to study the case, nor discuss the charges with their clients in a manner that would permit the lawyers to reach an opinion about the case. Accordingly, at the initial hearing, lawyers usually

request that the court adjourn the case either for submission of witnesses or oral pleadings. Adjournments are granted for a brief period, generally 3-5 days. During this time lawyers are supposed to gather defence evidence, meet defence witnesses - if any - and prepare their final pleadings. In the event of there being large number of defendants and therefore a large number of witnesses the witnesses will be heard in two or three hearings, granting lawyers more time to prepare their defence.

Generally, the Public Prosecutor representative does not submit further submissions or call witnesses before the Court if witness statements are already included in the case file, except in the case where the defence lawyer proves contradictions among witnesses statements, medical or forensic reports submitted by the Prosecution. In this case, the Prosecution calls the witness or the expert who drafted the reports to rectify any mistake or loophole. After having heard the witnesses, the Court allows both the Prosecution and the Defense to submit their final pleadings, either in writing or orally, after which the Court adjourns the case to another hearing for judgment.

The SSC hearings take place in one of its two venues; on the Coast Guard Base in Muharraq Island, or in a villa in Jaw[68] close to Jaw Prison. Under heavy surveillance by Security Forces, hearings are held *in camera* and attended only by the defendants, their lawyers, Public Prosecutor representatives and some of the Court Directorate officers. This is the rule. An exception was made when the defendants families were permitted to attend one hearing for the purpose of taking photos which were later published in local newspapers and another government publication.[69]

4.6. Judgment and Execution Procedures

Based on the provisions of Article 7 of the SSC law a verdict passed by the SSC is not susceptible to appeal in any manner. Therefore, in the case of conviction, the Ministry of Interior carries out the execution of the sentence immediately by transferring the convicted person from the detention center to prison. However, in the case of acquittal, the verdict is not usually executed so readily. The acquitted individual remains in custody for any period from between several days to a period exceeding several months until such time that the Ministry of Interior allows for his release. On the other hand, the death penalty must be approved by the Amir before its execution.[70] The SSC issued its first death sentence in connection with the 1995-1997 events, on July 1st 1996, against three citizens it had convicted for setting a restaurant on fire which resulted in the death of seven foreign workers. The judgment has not yet been executed as it has not been approved by the Amir.

On March 26,1996, the first death penalty related to the events of 1995-1997 was conducted by firing-squad following a judgment issued by the Criminal Court and later confirmed by Court of Appeal and the Court of Cassation. In the absence of any outside witnesses, the convicted was secretly executed without informing his lawyer or his family in advance. The lawyer and family learned of the execution like everyone else upon reading the news published in local newspapers.[71]

For some observers, the acquittal of a minority of the defendants tried before the SSC is

conceived to create a false impression about the fairness of the Court proceedings.[72] Given that SSC verdicts are final and not subject to any form of judicial review, the concurrent failure to allow litigants to obtain copies of the SSC judgments makes it even more difficult for lawyers and interested parties to verify the reasoning of the SSC judgments. All requests for obtaining copies of these judgments have been ignored by the courts' administration, thereby depriving lawyers of an important means to help support their defence despite the fact that the prohibition is not based on any statutory provision.

5. THE STATE SECURITY COURTS IN PRACTICE

5.1. The Complaint Remedy under the State Security Measures Law of 1974

As Article 1 of SSML makes clear a person arrested by virtue of a Ministerial Order may file a complaint against the lawfulness of his detention after a lapse of three months from the date of his arrest to the High Court of Appeal. The Court holds its hearings *in camera* and renders its decision based upon written evidence and pleadings submitted by the parties.

In reality, however, the complaint is rarely heard by the Court. Usually it remains in the Court Clerks' drawer for months before a hearing date is finally fixed. Typically, the complaint ends when the Public Prosecution files the substantive case against the defendant before the SSC. Consequently, the Court of Appeal ceases to have jurisdiction over the defendant, whose case is entirely turned over to the SSC. In the rare event, when a complaint is heard by the Court of Appeal, the Court issues its decision either rejecting the complaint or ordering the release of the detainee with or without bail. Occasionally, the Court may order the seizure of the complainant's passport to prevent him from travelling abroad.

Yet Court decisions ordering the release of complainants are not necessarily executed by the Ministry of Interior, which often continues to keep the complainants under arrest for a long period of time until it finally decides to release them or refer them to the SSC for trial. The Court of Appeal reticence to hear these complaints, reflected in part by its systematic delay in scheduling hearings, is believed to be the result of the Ministry of Interior's wilful non compliance with Court decisions. The following case illustrates how the procedure typically works in practice.

[i] **Case Study:**

Based on Article 79 of the Code of Criminal Procedures which empowers the Investigation Judge to issue an arrest order against a suspect for seven days, Judicial Arrest Order No. 4966/1994 was issued against an individual suspected of participating in demonstrations and riots on November 28,1994.[73] The Judge kept renewing the arrest order for further periods of seven days upon the request of the investigation authorities of the Ministry of Interior. On December 13, 1994, the Minister of Interior issued Ministerial Order No. 258/94, ordering the arrest of this individual pursuant to Article 1 of the State Security Measures Law.

One day after the lapse of the three month period required by law, on March 14, 1995, the detainee's lawyer filed a complaint to the High Court of Appeal challenging the lawfulness of the arrest and requesting the immediate release of the detainee. One and a half months from the date the complaint was lodged, on April 29, 1995, the court examined the complaint and issued its decision ordering the immediate release of the complainant on 1000 Bahraini Dinars ($2645) bail, and the seizure of the complainant's passport. The bail was paid directly after the decision was issued, evidenced by the

Courts Directorate Receipt No 124383. The complainant's traveling documents were already in the possession of the Criminal Investigation Directorate.

Despite the Court's order to release the complainant, the Ministry of Interior kept him in custody without any legal grounds or justification for over seven and a half months. Hewas finally released on December 15,1995,[74] having served one year and 17 days. No charges were ever filed against him and he has never been tried. Despite his lawyer's attempt to address both the President of the Court and the Ministerof Justice regarding the Ministry of Interior non-compliance with the Court order noinvestigation into this matter was ever initiated. In some other cases, Court release orders have been executed in reasonable time.

5.2. The extension of Jurisdiction under the State Security Court Law of 1996

As noted above, the SSC was set up in 1976 under Article 185 of the Penal Code to hear crimes related to the internal and external security of the State in addition to crimes related to demonstrations and riots. The jurisdiction was further extended in 1982 to include crimes linked to those falling under its jurisdiction. In 1996 the SSC ambit was widened to include crimes committed against public servants, those related to public properties, and all crimes involving fires and explosives.

Three landmark cases related to the 1995-1997 events underscore the importance and nature of the 1996 amendment. The first relates to the murder of an employee of the Ministry of Interior. The case was tried prior to the adoption of the 1996 amendment and it is believed to be an important reason behind the adoption of the said amendment. The second relates to the trial of 29 individuals accused of setting fires on public properties. This last case represents the highest percentage of cases tried by the SSC in relation to the events of 1995-1997. The third case is by far the most tragic and important case ever tried before the SSC. It involves the death of the seven foreign workers resulting from an act of arson. The outcome of the case resulted in the conviction of eight individuals, of which three were sentenced to death, four received life imprisonment sentences, and the last was sentenced to 15 years of imprisonment.

[i] Case Study One: The Alleged Murder of an Employee of the Ministry of Interior

On March 28, 1995, six days after the murder of one of the Ministry of Interior employees, the Ministry announced in the local press the arrest of 11 individuals accused of the murder. The suspects' photos appeared on the front page of the two local newspapers with a Ministry of Interior press statement confirming that the case had been referred to the Public Prosecution in order to prepare the indictment for submission to the Court without delay.

On April 2, 1995, Case No. 6/State Security/95 was filed against the 11 suspects alleging that on March 22, 1995, they had murdered Mr. Al-Sai'idy, an employee of the Ministry of Interior because of his job.

This case was filed before the SSC before the 1996 amendment extending the SSC

jurisdiction to crimes committed against public servants. The Public Prosecutor decided to file the case before the SSC, nonetheless, on the ground that the murder was linked to demonstrations and riots which fell under the jurisdiction of the SSC in accordance with the 1982 amendment.

In the indictment the Public Prosecution maintained that the defendants had planned to kill Mr. Al-Sai'idy as an act of revenge because they believed that Mr. Al-Sai'idy, who lived nearby in the same village as the defendants, was in reality working as an informer for the Police and the Security & Intelligence Services (SIS). Therefore, he was responsible for the arrest of many of their friends and relatives each time a protest march or a demonstration took place in their village.[75]

Before dealing with the substantive issue of the case, the defendants' lawyers pleaded for non-jurisdiction of the Court, on the basis that there was no link between the murder and the demonstrations and riots that had been described in the indictment. The Court accepted the plea, and ruled on May 17, 1995, that it had no jurisdiction to hear the murder case.

Subsequently, the Public Prosecution filed another case (No. 973/1995), against the same 11 defendants before the ordinary criminal court. The first hearing was held on May 23, 1995. Having been heard on three instances, the Court of Cassation rendered its final judgment on the case on March 17, 1996. Five defendants were acquitted, six were found guilty. The first defendant Mr. Isa Qamber, was sentenced to death, and was executed on March 26, 1996 by firing-squad. The second defendant was sentenced to life imprisonment, which is an indefinite sentence under Article 52 of the Penal Code. The remaining four convicted defendants were each sentenced to 5 years imprisonment.

All the defendants in this case indicated to their lawyers prior to the start of their trial before the SSC that they had been tortured in order to force them to confess; some even shared that they were tortured by a series of electric shocks. The defendants were never permitted to meet with their family, or their lawyers, except on the first day of the trial before the SSC.

Witnesses related to the first defendant were arrested early on in the investigation. They were subject to torture and kept in custody during the entire trial, before both the SSC and the criminal court, as evidenced in their statements made before the criminal court. Several still remain in custody, without any specific charge in what some describe as collective punishment to the "Nowaidrat" village.[76]

This case had a great effect as it is believed to be one of the key factors which led to the SSC Law 1996 amendment.[77]

[ii] Case Study Two: The Case of Setting Fire to Public Properties

Cases of arson and the destruction of public properties represent the greatest majority of cases, and comprise the largest number of persons tried before the SSC in relation to the

political and social unrest that led to 1995-1997 events. Many of these cases were coupled with protest marches and demonstrations which were generally peaceful at the outset.

This case, which relates to the aftermath of one of the demonstrations was filed against 29 defendants who lived in the same village.[78] The charges filed against them include:

a) The destruction of public properties.
b) Setting fire to a public building.
c) The use of violence against public employees.
d) Using violence during a demonstration.

The 29 men were accused of destroying a Police Guard Residence in A'ali Village by setting it on fire and using violence against policemen in order to prevent them from taking some arrested persons to the police station on January 28, 1995. The evidence submitted by the Public Prosecutor against the defendants included:

a) The "confessions" of each defendant before the Investigation Judge.
b) The "statement" of each defendant made before the Police.
c) The written statements of 3 policemen (one Bahraini and two foreigners) against whom the defendants allegedly used violence.
d) A fire report issued by the Civil Defense Directorate of the Ministry of Interior.
e) The crime "reconstruction" report.[79]
f) The Ministry of Interior Criminal Forensic Laboratory Report about the fire.
g) The estimated value of the damaged properties issued by the Ministry of Interior.

The first hearing took place on June 5,1995, just two days after the defendants' lawyers were notified of the hearing by giving them a copy of the indictment. In fact, each lawyer received a copy of the evidence specifically related to his client, including his client's "confession" but other defendants' "confessions" were not provided by the court, despite the fact that defendants were forced, as they had indicated, to "confess" against each other.

Prior to the first hearing, all defendants told their lawyers that they were subjected to torture and severe beatings, some still bore signs of healing wounds on their feet and around their wrists and ankles. The defendants' lawyers submitted requests to the SSC demanding that their clients be referred to the Forensic Medical Officer for examination. The Court ordered the examination of the defendants but the reports subsequently issued by the Forensic Medical Officer indicated that none of the defendants had suffered any injuries.[80]

Forty days after the first hearing, the Court rendered its judgment convicting all but two defendants. The sentencing ranged anywhere between 5 years and six months imprisonment. In addition, some of the defendants were obliged to pay compensation

totaling 19,500 Bahraini Dinars (approximately US$ 52,650) towards damages pursuant to Article 155 of the Penal Code, which states that the convicted individual may be held liable for the value of any damage caused to public buildings and properties.

The SSC always declares defendants liable for whatever monetary sum the affected Ministry submits as damage. However, the non submission of adequate estimations is performed in order to assess the actual value of the alleged damage caused by the defendants leading to disproportionate sentencing.

In this trial, many of the defendants told their lawyers that they were not at the crime scene during the time it was committed. One of the defendants even submitted a certificate issued by the Secretary of the Football Club for which he was playing, along with the Football League game schedule, providing evidence that it was impossible for him to be at the crime scene during the time it took place as he was in the Football Club at that time. The defendant coach and another player also provided testimony in favour of the defendant before the Court. Interestingly enough, during the next hearing, the Public Prosecutor submitted a certificate issued by the General Youth and Sports Organization, a government establishment, which contained an amendment made by the Secretary of the football club regarding his earlier statement. The certificate stated:

> "*The Club Administration cannot ascertain or deny the accused's attendance or absence to the training on January 28, 1995 due to the lack of evidence.*"

This defendant was later sentenced by the SSC to six months imprisonment.

One of the most unusual events that happened in this case was that the defendants' relatives were allowed to attend the first hearing in spite of the established practice that hearings of SSC are to be held *in camera*, where attendance is limited to the defendants' Lawyers, Pubic Prosecutor's representatives, and some officials from the Courts Directorate.

Generally, relatives are allowed to visit the detainees before the beginning of the first hearing of their trial. But in this case relatives of the defendants were instructed to stay in the Court hall during the first hearing. When the trial ensued, a photographer took pictures of the trial and those in attendance. A few weeks later local newspapers published the photographs soliciting comments below each photo indicating that the SSC hearings are attended not only by the defendants and their lawyers but their families as well.[81] Those same photographs reappeared later in a publication of the Ministry of Information surrounding the events of 1995-1997, entitled "The Illusion and the Truth."[82]

Moreover, after obtaining the suspects "confessions", it is common practice for the Ministry of Interior to publish the names and photos of the suspects in local newspapers before filing any charges against them. This happened in this case as well.[83]

[iii] **Case Study Three: The Case of Setting Fire in a Restaurant Resulting in the Death of Seven Foreign Workers**

The importance of this case stems from the number of victims allegedly killed in the arson and the subsequent judgment passed by the SSC which sentenced three people to death, four to life imprisonment, and one to 15 years imprisonment. This case also demonstrates the degree of violence to which some foreign workers[84] were subjected as a result of the State labour policy. In order to benefit a slim number of persons through the "Free Visa" system, [85] the State labour policy consists of opening the Country's borders to cheap and competitive foreign labour while the rate of unemployment among citizens is officially estimated to be over 15%.[86] This situation triggered a feeling of discontent among Bahraini job-seekers, especially youth, against the presence of foreign workers which led to some acts of violence against those foreign workers.

The Public Prosecution filed the case [87] before the SSC against 8 Bahrainis accusing them of deliberately setting a fire on March 14, 1996, in a restaurant in Sitra Village, which allegedly resulted in the death of seven foreign workers. The suspects were arrested by virtue of a Ministerial Order pursuant to the provisions of the SSML.

All the defendants alleged they had been subjected to severe torture in order to extract the confessions submitted against them before the SSC and that that they had been "hanged." [88] Some of the defendants indicated that they had their toenails pulled out, others stated that they had bottles inserted in their anus.

Upon requests submitted to the SSC by the defense lawyers, some of the defendants were referred to the Forensic Medical Officer of the Criminal Investigation Directorate of the Ministry of Interior for examination. Some of the reports indicated that the defendants bore signs of healing wounds around their wrists, their instep, and their upper arms which are typical injuries resulting from systematic torture using the "hanging" method.

Despite the inadequate medical findings, and their failure to report on all the injuries that were still visible at the time the reports were issued, the reports constituted indisputable evidence tendered to the SSC proving that the defendants were tortured. Nevertheless, the SSC passed its judgment convicting all 8 defendants of the crime, sentencing three to death, four to life imprisonment, and one to 15 years imprisonment.

Pursuant to Article 1 of Decree Law No 8/1989 establishing the Court of Cassation, any litigant against whom final judgment was issued by the High Court of Appeal may challenge the judgment by filing an appeal with the Court of Cassation. Furthermore, Article 40 of this same Decree mandates that all death sentences be automatically appealed by force of law before the Court of Cassation regardless of the fact the sentence was been appealed by the person against whom it was passed. Therefore, the three individuals sentenced to death by the SSC, appealed against their conviction and death sentence before the Court of Cassation.

On October 27, 1996, in the absence of the appellants, the Court of Cassation delivered its judgment rejecting all three appeals, most probably on the grounds that the SSC judgment was not susceptible to appeal pursuant to Article 7 of the SSC law. Requests submitted to the Court of Cassation by the appellants' lawyers in an attempt to obtain a copy of the judgment were ignored by the Court leaving those concerned to ruminate the reasoning on which the Court of Cassation based its judgment.

The statutory provisions of the 1976 SSC Law which state that SSC judgments are non Appealable [89] should have been considered by the Court of Cassation as being preempted by subsequent statutory provisions of the 1989 Court of Cassation Decree Law. This former law mandates that all death sentences be automatically appealed before the Court of Cassation.[90] Moreover, the general principle which governs criminal court proceedings, requires that when conflict exists between statutory provisions, they must be construed in the manner most beneficial to the defendant. Obviously, it was in the benefits of the appellants that their death sentence be subject to a judicial review by higher court. However, the Bahraini Court of Cassation chose not to adhere to that principle when it decided to reject the appeal.

6. THE CONSTITUTIONALITY OF THE BAHRAIN STATE SECURITY LEGISLATION

6.1. The State Security Measures Law of 1974 and the Constitutional Provisions Concerning the Amir's Authority to Legislate by Decree

As noted above, despite the unanimous opposition by all elected members of the National Assembly, on October 22, 1976, the Amir issued the SSML by Decree, pursuant to Article 38 Of the Constitution, while the Assembly was in recess.[91] Article 38 grants the Amir the right when necessity arises for urgent measures to be taken while the Assembly is not in session to issue Decrees having the force of law to deal with that necessity. This same Article determines the conditions for the validity of such Decrees as follows:

a) The existence of an urgent situation requiring the Amir to act by Decree in matters otherwise falling within the constitutional jurisdiction of the NA.

b) The Decrees so issued should not violate the Constitution provisions.

c) After they are issued, such Decrees should be referred to the NA during the first meeting of its next session, otherwise the Decrees would retroactively cease to have any force of law, without the necessity of any decision to that effect.[92]

In reality none of the three conditions were fulfilled with regard to the SSML Decree. First, there was no mention in the Decree itself or anywhere else when the Decree was issued that it was issued due to the existence of an urgent situation requiring the Amir to issue by Decree legislation that had just been rejected by the NA. Secondly, many of the Decree's provisions violate the Constitution. Thirdly, the Decree has never been referred to the NA during the entire period following its issuance in October of 1974 through the dissolution of the NA in August of 1975. Whereupon the Decree is deprived of any force of law starting from the date of its issue, as provided by Article 38 of the Constitution on which the Decree was based.

6.2. The Constitutionality of the State Security Court Law of 1976

The SSC law was issued pursuant to Article 185 of the Penal Code. The Penal Code itself was issued pursuant to the unconstitutional Amiri Order No 4/1975, by virtue of which the Amir ordered the postponement of the NA elections, suspended the Constitution, and vested himself and the Cabinet with the legislative power after seizing it from the NA. Therefore, all three legislation (Amiri Order No 4/1975, the Penal Code, and the SSC law) were unconstitutional from inception.

With regard to Amiri Order No 4/1975, its provisions violate the Constitution in the following respects:

[a] **The Violation of the Constitutional Provision Prohibiting the Suspension of the Constitution**:

By suspending Article 65 and all other constitutional provisions relating to the elections of the NA, Amiri Order No 4/1975 clearly violates the provisions of Article 108 of the Constitution, which prohibits suspending its provisions, except in the event when Martial law is in effect and within the limits specified by the Martial law statute.

[b] **The Violation of the Constitutional Provision Prohibiting the Suspension of the Meetings of the NA:**

By ordering the postponement of the elections of the NA until a new election law is to be passed, the Amir ordered the suspension of the NA meetings, which constitutes a direct violation of the provisions of Article 108 of the Constitution, which absolutely prohibits the suspension of the meetings of the NA regardless of any circumstances including during the time Martial law is in effect.[93]

[c] **Violation of the Constitutional Principle of Separation of Powers**:

By seizing the legislative power from the NA and vesting it in the Amir and the Cabinet, in addition to the executive power which they exercise by virtue of the Constitution, Amiri Order No 4/1975 clearly violates the principle of separation of power which is the cornerstone of the Country's government system as provided by Article 32 of the Constitution.[94]

Moreover, by giving the Amir and the Cabinet the authority to legislate by Decree, the Order also violates Article 42 of the Constitution, which states that no law may be promulgated unless it has been passed by the NA. Accordingly, the so-called Amiri Order should not be recognized as having any effect whatsoever; especially with regard to the role given to the NA by the Constitution as being the only legitimate legislative body of the Country. Especially that Article 65 of the Constitution provides that in the event of the dissolution of the NA, the dissolved Assembly shall be restored to its full constitutional authority as though dissolution had never taken place, in the event the election of the new Assembly was not held within two months from the date of the dissolution.

[d] **Violation of the Constitutional Provisions Regarding the Procedural Requirements for Amending the Constitution:**

The radical "amendment" of the Constitution effected by Amiri Order No 4/1975, occurred less than two years after the adoption of the Constitution. This "amendment" violates the constitutional provision prohibiting any amendment to the Constitution before the expiry of five years from the effective date of its commencement.[95] It also violates the constitutional provision which stipulates that any amendment to the Constitution must be passed by a majority vote of two

thirds of the members of the NA followed by its ratification by the Amir.[96]

Therefore, based on the inherent unconstitutionality of the provisions of Amiri Order No 4/1975, all laws issued by Decree pursuant to that Order; such as the Penal Code, and the SSC law, should also be declared unconstitutional.

Certainly, objections may be raised against any attempt to question the validity of the laws issued by Decrees pursuant to Amiri Decree No 4/1975. These objections would primarily be based upon the fear of destabilizing the entire legal system, which would automatically affect the vested rights and established relationships between the different parties and constituents of the current legal system. Moreover, objections may also contest that the invalidity of the Decree is baseless, because the alleged invalidity has never been declared by a competent judicial or constitutional authority. Nevertheless, despite the apparent legitimacy and the legal logic of these said objections, they seem to ignore one fundamental and universally recognized legal principle, which states that void title creates no valid rights. In other words, Amiri Order No 4/1974, fails the test of legitimacy when compared with the Constitution which was adopted by the people of Bahrain through their representatives.

Therefore, even if we accept the view that categorical denial of the validity of all Decree Laws issued pursuant to Amiri Order No 4/1975, is not practical nor reasonable due to their destabilizing implications and relatively unfair consequences, the contents of their provisions should at least pass the constitutionality test. Stated otherwise, all Decree Laws issued pursuant to Amiri Order No 4/1975, are valid only to the extent that their contents do not contradict the Constitution.

In fact, this reasoning/approach was the underlying premise of the 1975 events which led to the seizure of the legislative power from the NA by the executive branch. In the Cabinet resignation letter issued by the Prime Minister to the Amir on August 24, 1975, the Prime Minister stated that the crisis between his Cabinet and the NA was caused by the reluctance of the NA to cooperate with the Cabinet and the domination of certain alien ideas over the NA discussions.[97]

The Amir accepted the resignation and re-appointed the Prime Minister. In the re-appointment letter, the Amir indicated that " while maintaining the fundamental constituents of the Constitution," an amendment to the election law or eventually the Constitution may be envisaged as a solution to deal with the problem of lack of co-operation existing between the Cabinet and the NA. The Prime Minister wrote to the Amir accepting his reappointment and suggesting that two measures should be taken in order to resolve the political crisis; first the dissolution of the NA, and second the postponement of the election of the new NA until a new election law is passed.

Indeed, back in 1975, the political crisis between the NA and the Cabinet was

perceived by the Cabinet, as entirely caused by the election law which led to the election of a NA that was unwilling to cooperate with the Cabinet. The Amir's desire expressed in his letter above, and the Prime Minister suggested measures to deal with the crisis, proved that the preservation of the essence of the Constitution, i.e. the separation between the executive and the legislative power, was not subject to compromise, neither was the principle that the legislative power should remain within an elected body i.e. the NA. This proves that even back in 1975, the Constitution was held in importance over and above any other then existing or future legislation or any amendments thereto.

[e] The Denial of Litigants Constitutional Right to Challenge the Constitutionality of Laws

The Constitution provides for the creation of a judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations.[98] In fact, such a judicial body has never been established because there has been no law issued to that effect. Consequently, litigants have no other alternative but to submit their challenge pertaining to the constitutionality of laws and regulations to ordinary courts, pursuant to their constitutional right to litigate.[99] However, Courts maintained their traditional unjustified attitude choosing not to address in their judgments any challenge to the constitutionality of laws.

Finally, the Court of Cassation rendered on October 30, 1994, its judgment in Appeal No 98/1994,[100] stating that Courts have no authority to pass judgments regarding the constitutionality of laws, because this authority is vested in the judicial body described and provided for by Article 103 of the Constitution. In reality, by declaring the Courts incompetent in the matter of addressing the constitutionality of laws, the Court of Cassation not only rendered the constitutional right of litigants to challenge the constitutionality of laws inoperative, it also rewarded the executive power for illegally seizing of the legislative power from the NA, by exonerating it from any kind of judicial review.

[f] The Absence of the Supreme Council of the Judiciary:

Based on the fundamental constitutional principle of the independence of the Judiciary,[101] the Constitution provided for the establishment of the Supreme Council of the Judiciary (SCJ) to supervise the function of the Courts and the functional affairs of both the Judiciary and the Public Prosecution.[102] Moreover, Article 101(c) of the Constitution provides that the law shall specify the rules governing the function of the Public Prosecution. Despite the fact that these constitutional texts provide for the institution of the SCJ and state that the Public Prosecution be under no supervision other than by the SCJ, the SCJ has never been instituted. The Public Prosecution remains as it was prior to the adoption of the Constitution, an administrative division of the Ministry of Interior, subject to the direct supervision of the Minister himself.[103] The Courts thus remain under the administration of the Ministry of Justice, with judges reporting through the Courts Directorate to the Minister of Justice as provided by the Judiciary Act of

1971, still in effect despite its obvious contradiction with the Constitution.

In fact, the absence of the SCJ is a logical consequence of the unique system of government operating in Bahrain since 1975, where the executive power acts simultaneously as the Legislature, adopting whatever legislation it chooses to strengthen its position and extend its power while refraining from adopting any legislation which limits or monitors its acts and decisions, regardless of the fact that these acts and decisions violate the Constitution and clearly contradict the notion of the "State of Law".

The fact that the Public Prosecution operates under the supervision of the Ministry of Interior establishes an impregnable shield for the executive power. Thereby preventing the judicial review of any criminal action committed by the Administration or its dependents, because judicial review in criminal matters has to be always - in practice - instituted by the Public Prosecution. This may explain why none of the continuously raised allegations of torture and killing while under police custody were ever investigated and why no action has been taken thus far against the individuals said to be responsible for committing these acts.[104]

The actual situation appears to be quite distant from the original promise made by the Government after the dissolution of the NA, as revealed in the letter addressed to the Amir on August 25, 1975, in which the Prime Minister accepted his reappointment and described the Cabinet's future plan by stating:

> *" [E]very good citizen under my Government will be granted full protection of his security, freedom and properties. My Government will deal sternly with anyone who contemplates committing an act of assault on a citizens' freedom, irrespective of his status or rank. The Judiciary will receive the consideration it deserves, once the Judiciary Law is promulgated, providing for the establishment of a Judiciary Supreme Council to administer its affairs. This will protect the integrity of the Judiciary, and guarantee its independence."* [105]

Furthermore, the Bahraini State Security unconstitutional legislation and their illegal implementations not only violate Bahrain national laws, but as demonstrated below, they also violate Bahrain international obligations as a member of the United Nations bound by international law in the matter of criminal justice and human rights.

7. BAHRAIN'S INTERNATIONAL OBLIGATIONS CONCERNING CRIMINAL JUSTICE AND HUMAN RIGHTS

International law setting the standards for fair trials, detention conditions, and prohibition of torture springs principally from two sources: positive texts which derive their authority from treaties and covenants which establish binding human rights norms, and customary international law.

7.1. Positive International Instruments and Texts:

After its independence in 1971, Bahrain ratified the UN Charter[106] and became a member of The UN, pledging itself thereupon, to respect and observe all universally recognized human rights and fundamental freedoms, and to take all necessary actions in order to fulfill this international obligation which derives from both the Charter as well as the Universal Declaration of Human Rights (UDHR).[107]

In the preamble of the UN Charter the people of the UN have reaffirmed *"faith in fundamental human rights, in the dignity and worth of the human person."* The first Article of the Charter records that amongst the main goals of the UN's is the achievement of international co-operation *"in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."*

Similarly, pursuant to Article 55 of the Charter, the UN has the duty to promote *"universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."* In addition, in Article 56 of the Charter, all Members of the UN *"pledge themselves to take joint and separate action in co-operation with the [UN] for the achievement of the purposes set forth in Article 55."*

These provisions clearly define the obligations of all state members of the UN as well as the role of the UN in the field of human rights. While the provisions are general they, nonetheless have the force of positive international law and create basic duties which all members of the UN must fulfil in good faith.

It should be noted that the various bodies of the UN have never, over the last few years, been prevented from taking action against a member state by virtue of generality or vagueness of the provisions of the Charter, provided that there was a majority within the UN supporting such action.[108]

In addition to its non compliance with the principles set by the UN Charter as a positive text, the established practices of the Bahraini SSC in respect of pre-trial and trial procedures fall short of the international judicial standards defined by other UN instruments such as the Universal Declaration of Human Rights (UDHR),[109] the International Covenant on Civil and Political Rights (ICCPR),[110] the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (Convention Against Torture),[111] as well as a number of intentional soft laws [112]

which set these standards, such as the UN Basic Principles on the Independence of the Judiciary,[113] the UN Basic Principles on the Role of Lawyers,[114] the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[115] the UN Basic Principles for the Treatment of Prisoners,[116] and the Standard Minimum Rules for the Treatment of Prisoners.[117]

Though they do not constitute positive texts and therefore do not create direct legal obligations on States, the UN soft laws determine the internationally accepted minimum standards for fair trials. Their adoption by most national legislatures of UN State members effectively renders these standards a part of the Customary International Law. Thus, Bahrain's non-ratification of most of the international law positive texts relating to fair criminal trials and detention conditions, does not remove its obligation to comply with the UN soft laws since they are an integral part of Customary International Law.

7.2. Customary International Law:

To qualify as international law a practice must meet two requirements: generality and opinio juris. This means that customary international law must result from: (1) a general and consistent practice of states and; (2) this practice must be followed by the states out of a sense of legal obligation.[118] These two requirements are perfectly satisfied with regard to Bahrain's international obligations concerning the prohibition of torture and the international principles governing fair trials and detention conditions.

Indeed, by recognizing its responsibility to uphold the human rights declared by the UDHR, [119] Bahrain has committed itself to observe these same rights as international obligations. Furthermore, these rights and principles that are also contained in the 1966 ICCPR which has been ratified by at least 138 countries,[120]. As such, the recognition and adherence to these rights constitute a general and consistent practice by the majority of these states who followed them out of a sense of legal obligation. Consequently, Bahrain is obliged to abide by these principles as they form an integral part of customary international law.

This is especially so given that the UDHR principles prohibiting torture and governing a minimum standard for fair trials and detention [121] are themselves contained in Bahrain's national legislation, namely its Constitution,[122] which imposes on Bahrain not only an international obligation, but also a domestic one to abide by these principles and observe these standards.

8. THE INCOMPATIBILITY OF THE STATE SECURITY COURT SYSTEM WITH DOMESTIC CONSTITUTIONAL AND INTERNATIONAL LAW

8.1. The Unjustified Creation of the SSC as a Special Criminal Court

International law recognizes the right of every State to take adequate measures against persons responsible for actions threatening the State security, integrity and public order. However, any such measure must be taken in accordance with the national law and in conformity with internationally recognized standards. Article 4 of the ICCPR [123] permits any State, only in time of the official proclamation of public emergency threatening the life of the nation, to take measures derogating from its usual human rights obligations. These derogating measures must be limited to the extent strictly required by the exigency of the situation and they should not be inconsistent with that State's other obligations under the international law.

Nonetheless, this provision is not applicable with regard to the most basic and core human rights, from which no derogation is permitted even in time of emergency. These core human rights include, among others, the right to life, and the right to be free from torture, cruel, inhuman and degrading treatment. In this regard, Bahrain has never declared a public emergency requiring either:

(1) the establishment of a special criminal court such as the SSC, whose special proceedings derogate from the ordinary criminal proceedings, depriving therefore defendants from many statutory guarantees; or

(2) the adoption of legislation such as the State Security Measures Law which empowers the Minister of Interior to order the administrative detention of any person for a period of three months without judicial review regarding the lawfulness of such an order; nor

(3) the systematic use of torture against detainees and prisoners which is not permissible by the international law under all circumstances.

Indeed, the creation of the SSC as a special criminal court with exceptional provisions governing its proceedings, denying defendants the right to a fair trial, and the guarantees provided by law for defendants before ordinary criminal courts, violates the UDHR,[124] the ICCPR,[125] and Principle 5 of the UN Basic Principles on the Independence of the Judiciary which states that:

> *"Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use established procedures of the legal process shall not be created to displace the jurisdiction belonging to ordinary courts or judicial tribunals."* [126]

8.2. Incommunicado Detention

With a few exceptions, the vast majority of detainees arrested since 1994 have been held

incommunicado, denied access to their families or lawyers in clear violation of internationally recognized standards which require that all persons who are deprived of their liberty, shall have prompt access to their families, lawyers, and doctors. Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners states that:

> " *them a detainee shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends and for receiving visits from.*"[127]

In addition, Principles 15 and 16 (4) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, make clear that even in exceptional circumstances communication with one's family may not be denied for more than a matter of days.[128] Prompt access to lawyers [129] and relatives is an important safeguard against torture. In the long-term it also contributes to the defendant's ability to have a fair trial by enabling the detainee's family and friends to help prepare the defence by locating a lawyer and witnesses.

8.3. Absence of Prompt Judicial Review of Arrest Orders

Article 19(b) of the Bahraini Constitution prohibits the arrest, detention, imprisonment of any person "*except in accordance of the law and under the supervision of the judicial authorities.*" [130] Based on this constitutional provision, an arrest that fails to adhere to the conditions mentioned therein, namely, being in accordance with the law, and under the supervision of the judicial authorities, would violate the Constitution. Accordingly, any statute that would permit the arrest of a person without observing these two conditions is unconstitutional.

Since Article 1 of the SSML permits the arrest of anyone suspected of committing an act detrimental to the security of the State without judicial review for three months, this statutory provision is unconstitutional as it clearly violates the second condition stated in Article 19(b) of the Constitution. Consequently, all arrest orders issued under the SSML are null and void. Moreover, subjecting such arrest orders to judicial review three months after they are issued has no legal effect in eliminating the defect of unconstitutionality.

In addition to its violation of the Constitution, Article 1 of 1974 SSML,[131] violates also Article 9(4) of the ICCPR, which provides that any detainee shall be entitled to take proceedings before the court in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.[132] Although Bahrain is not a party to the ICCPR, Articles 9 and 14 of that treaty [133] reflect generally accepted standards concerning the prohibition of arbitrary detention and the right to a fair trial. The UN Working Group on Arbitrary Detention uses these standards to determine whether detention is arbitrary.[134] Similar guarantees are also contained in the UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment.[135]

8.4. Use of Torture

As provided in the UDHR,[136] the ICCPR [137] and the UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment,[138] torture and cruel, inhuman

or degrading treatment are strictly prohibited under all circumstances. Furthermore, the Bahraini Constitution views torture as a crime, since Article 19(d) states that:

> *" No person shall be subjected to physical or mental torture, enticement or degrading treatment, and the law shall provide the penalties for these acts. Any statement or confession shall be null and void if it is proved to have been made under duress or enticement or degrading treatment or threat thereof."*

Article 20(d) of the Constitution states that no physical or moral injury shall be inflicted on a defendant. Accordingly, while prohibiting torture, the penal Code provides penalties for a number of offences: first with regard to acts of torture committed by public officials,[139] and second in the event torture was committed by non public officials.[140] The Code of Criminal Procedure of 1966 (CCP) prohibits torture as well and declares inadmissible all confessions extracted from the defendant under torture.[141]

Despite the absolute prohibition of torture by both national and international laws, it has been reported by many sources that, in Bahrain, the use of torture in State security related cases is systematic and commonplace especially during the pre-trial phase in order to extract confessions from the suspects.

In his report submitted to the 52nd session of the UN Economic and Social Council, Mr. Nigel S. Rodley, the Special Rapporteur of the Council Commission on Human Rights stated that:

> *"[H]e had received information according to which, persons arrested by the security forces for political reasons since December 1994 had been tortured, in order to extract information or "confessions". The forms of torture reported include; severe beatings, suspension from the limbs for prolonged periods of time and sexual abuse... With respect to those allegations, the Government replied that from December 1994 to April 1995, Bahrain had been subjected to a foreign-backed campaign of terror, aimed at destabilizing the country with the objective of creating a fundamentalist regime under foreign control.... The detainees were typically held incommunicado for prolonged periods, without charge or trial, in al-Qal'a and Jaw prisons. A large number of persons, including many women, were also allegedly beaten or otherwise ill-treated, during house-to-house searches and peaceful protests."* [142]

In similar tone the U.S. Department of State in its Country Report on Human Rights Practices for 1994, submitted to the Senate Committee on Foreign Relations and the House of Representatives Committee on International Relations, stated that:

> *"Little is known about the treatment of prisoners and detainees because the authorities restrict prison visits. During interrogations, the police reportedly have beaten detainees on the soles of their feet. Credible evidence exists that the authorities at Al-Jaw Security Prison used excessive force to restrain or punish a small number of prisoners who staged a 10-day hunger strike in April. ...The Government denies that torture take place. However, it has not implemented minimal procedural safeguards, nor allowed inspection of detention facilities by impartial international organizations. The Government has difficulty in rebutting allegations of torture, because it permits incomminicado detention and detention without trial. The Government is not known to have punished any official in 1994 for human rights abuses committed either in 1994, or in previous years."* [143]

The same contents of this 1994 report is found in 1995 and 1996 reports with more explanation regarding the methods used in torturing detainees. The 1995 report indicates that there are credible reports that prisoners are routinely beaten both on the soles of their feet and about the

face and head, burned with cigarettes, forced to endure long period without sleep, and subjected to electric shock.[144] Whereas the 1996 report indicates that at least one death probably occurred as a result of torture during detention.[145]

In its report about Bahrain, issued in September 1995, Amnesty International indicated that torture and ill-treatment of detainees has been widespread and systematic, resulting in the death of at least two detainees while in custody. Amnesty International confirmed that it has obtained testimonies from victims of torture and ill-treatment, and that some of the allegations of torture are supported by medical evidence.[146] Amnesty International further stated that:

> *"The torture and ill-treatment of detainees remains one of Amnesty International's long-standing and serious concerns in Bahrain. Over the years, the organization has documented numerous cases of torture, which have been raised to the Government and placed on the public record. The Government denies the use of torture in its prisons, and yet continues to deny independent international human rights bodies access to the Country to investigate such claims. To Amnesty International's knowledge, the Government has failed to carry out a single independent investigation of its own into allegations of torture. No one has been brought to justice, or convicted for such crime to date.*
>
> *Torture remains rife in Bahrain's prisons, and it is most frequently inflicted during the initial period of detention, when suspects are undergoing interrogation. While in many cases the aim is to extract "confessions," which may subsequently be used as the basis for conviction in court, torture is also used to force detainees to sign statements, undertaking to renounce their political affiliation, to desist from anti-governmental activity in the future, or to force them to cooperate with the authorities by reporting on the activities of others. In other cases, torture or ill-treatment is inflicted simply as punishment, or to instill in both the detainees and government opponents generally."* [147]

With regard to the category of detainees subjected to torture, Amnesty International report indicated that:

> *"While torture or ill-treatment is most frequently inflicted on political detainees during pretrial detention, convicted prisoners have also been subjected to similar treatment.... Amnesty International raised the cases with the Minister of Interior and called for a prompt and impartial investigation into the reports of torture. No response was received.*
>
> *Since December 1994, Amnesty International has received numerous reports of torture and ill-treatment of detainees arrested with connection with the protest. The victims reported that they were tortured under interrogation at CID (Criminal Investigation Directorate) headquarters in Al-Adliyya, at the hand of the SIS (Security and Intelligence Service) personnel in the Al-Qala' compound or while held in Police stations.... Some of the victim also reported continuing torture or ill-treatment after interrogation. Many were able to identify by name the officers in the CID or SIS who reportedly ordered, or were involved in, acts of torture."*

In its 1997 World Report, Human Rights Watch (HRW) reported defence lawyers and former detainees stating that beating and other forms of physical abuse were commonly used to secure confessions and information. They also indicated that over the past year the confessions on which defendants were convicted became increasingly formulaic, using the same wording and phrasing, however, there were no known instances of officials being held accountable for human rights abuses.[148]

Use of torture is systematically asserted as a defence by the defence lawyers to challenge their clients' "confessions" submitted by the Public Prosecutor before the SSC. In order to prove that

their clients have been subjected to torture to extract their so called confessions, lawyers always request the court to appoint an independent medical expert to examine the defendants.[149] The court however, in case it orders the medical examination, usually appoints the Forensic Medical Officer of the Criminal Investigation Department (CID) of the Ministry of Interior;[150] the same person who prepares the autopsies and medical reports the Public Prosecutor needs for the indictment. In other words, the person who has previously prepared the evidence proving the case against the defendants deals with the same case a second time, but from an opposite angle. Therefore any chance that the Medical Officer will change his mind or contradict his previous statement is practically nil.

In most cases, reports issued by the Forensic Medical Officer are inaccurate, insufficiently detailed, and inconsistent with the apparent physical condition of the defendants. The reports sometimes contain descriptions that are not only irrelevant, but also misleading. For example, in one of these medical reports, the defendant was described as being a *" nationalist with a beard"*. Such statements are meant to bias the court, by creating a false impression about the defendant's political opinions and religious beliefs. The defendant in question was ultimately sentenced to death.[151]

In one of the extremely rare cases, where the medical report was accurate in describing the physical condition of the defendant, the SSC disregarded the indisputable evidence, and passed its judgment against the tortured defendant, apparently convicting him based on his "confession." The said defendant was sentenced to life imprisonment for the death of a foreign policeman, after a Molotov cocktail was thrown into his vehicle during a demonstration. The Forensic Medical Officer's report ascertained that it was highly probable that the defendant's fractured ribs were caused by a severe beating, and that they were inflicted upon him around the same time of the said defendant's deposition before both the Police and the Investigation Judge.[152]

The reliance by the SSC on defendants' confessions which were claimed to be extracted under torture is, without further investigation of such claims in most cases, inconsistent with the obligation of the authorities to investigate complaints and reports of torture or ill-treatment provided by Articles 8 and 9 as well as Article 12 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Declaration Against Torture) which clearly prohibits the use of any statement as evidence against anyone which has been established to have been made as a result of torture or ill-treatment.[153] As stated By Amnesty International, "[t]he impunity with which such practices are carried out, and the absence of any official accountability, has resulted in torture being regarded as an apparently legitimate method of interrogation" in Bahrain.[154]

The Government of Bahrain signed the Convention Against Torture in February 1998 with a reservation on Article 20, effectively blocking any investigation of the reports by Amnesty International and others. The UN Rapporteur on Torture has in 1997 reminded Bahrain that he is still awaiting their reaction to the observations he made a year earlier, when he said that apart from being used to extract confessions, torture was allegedly used to force detainees to sign statements renouncing their political affiliation, to desist from anti-government activity, to coerce victims into reporting on the activities of others, to inflict punishment and to instil fear in political opponents.

8.5. Non Compliance with the Principle of Presumption of Innocence

The Bahrain local media, which is controlled by the State especially with regard to all news related to the State Security matters, frequently publishes the names of defendants as guilty before their trial begins, violating the ICCPR, which provides that anyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.[155] A similar provision is also stated by the UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment,[156] and by Article 20(c) of the Constitution.[157]

8.6. Denial of the Right to Legal Counsel

Principle 17 of the UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment provides that any detained person is entitled to have the assistance of a legal counsel, to be informed of that right by the competent authority promptly after his arrest and to be provided with reasonable facilities for exercising such a right. Further, Principle 18 provides that any prisoner or detained person is entitled to adequately communicate and consult with his legal counsel.[158]

As provided in its preamble, the UN Basic Principles on the Role of Lawyers (formulated to assist member States of the UN in their task of promoting and ensuring the proper role of lawyers) should be respected and taken into account by Governments within the framework of their national legislation. These Basic Principles provides that every detainee must be informed about his/her right to be assisted by a lawyer of his choice upon arrest,[159] have access to his lawyer within 48 hours after his arrest,[160] and be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality, within sight but not within the hearing, of law enforcement officials.[161]

In addition, Article 20(c) of the Constitution guarantees the suspect the right to fair trial wherein the requisite guarantees for the exercise of his right of defence in all stages of investigation and trial are assured. Further, Subsection (e) of the same Article, provides that any person accused of a felony, shall be represented by a counsel that the suspect approves.[162]

Still, despite these clear provisions, all detainees in crimes related to the security of the State were denied their constitutional right to counsel during the entire pre-trial phase. Such denial is an established fact ascertained not only by the defendants and their lawyers, and confirmed by several foreign governmental and non-governmental sources,[163] but further proved by the verbatim records containing the "confessions" of the defendants before the Investigating Judge, as well as their statements before the Police, which do not contain any mention of the presence of the defendants' lawyers during the deposition of their alleged confessions or statements.

The validity of the such confessions and statements were constantly contested before the SSC, by the defendants and their lawyers. However, such defence has always been rejected by the SSC as well as by the ordinary criminal courts. The Courts rejection is based on their interpretation of Article 20(e) of the Constitution, which they construe as instituting the defendants right to

legal counsel during the trial phase solely, provided that the defendants are accused of committing a felony.[164]

8.7. Inadequate Defence

Although the SSC appoints lawyers for those defendants unable to secure legal representation of their own, lawyers are always given inadequate time for the preparation of the defence, regardless of the fact they were appointed beforehand by the families of the defendants or appointed by the court one or two days before the start of the trial. Consequently, lawyers cannot adequately familiarize themselves with the facts of the case prior to meeting their clients for the first time before the first hearing in court.

This practice violates the ICCPR,[165] and the UN Body of Principles,[166] which provide that every person charged with a criminal offense is entitled to have adequate time and proper facilities for the preparation of his defense. The practice applied by the SSC to provide each lawyer with those documents directly relating to his client, and not a complete copy of the entire case file, also violates the provisions of the UN Basic Principles on the Role of Lawyers, which requires the competent authorities to insure lawyers access to appropriate information, files and documents in their possession or control.[167]

8.8. Holding Courts Hearings *In Camera*

Article 5 of the SSC Law provides that the SSC should hold its hearings in public unless the Court views that the supreme interest of the State requires that the hearings be held *in camera*. However, in reality, the SSC are always held *in camera*; attended by the defendants, their lawyers, the Public Prosecution representatives, and some officials from the Ministry of Justice.[168] Nevertheless, on one occasion defendants' relatives were permitted to attend a hearing.[169] This incident constitutes an admission by the authorities of the importance of having a transparent judicial process. Article 5(4) of the SSC Law stipulates that the SSC hearings shall be public, unless it is deemed necessary to hold them in camera out of consideration for public order, public security, or higher interests of the State. Moreover, the Article stipulates that sentences shall be pronounced in a public hearing.

In practice, all hearings are held *in camera*, attended only by the defendants, their lawyers, the Public Prosecution representatives, and a few officials of the Courts Directorate. Relatives of the defendants, independent observers and media, are all barred from attending. Sentencing always take place in closed hearings. Such *in camera* proceedings are inconsistent with the right to a public trial, as guaranteed by the UDHR and the ICCPR.[170] Bahraini authorities has constantly denied repeated requests by many impartial international human rights organizations to conduct formal investigation missions in this regard, and have continued to refuse to release any detailed information about the number of detainees, persons tried before the SSC, convicted by the SSC prisoners, or make any information regarding the prison conditions available to outside observers.[171]

8.9. The denial of the Right to Appeal

Article 102(a) of the Bahraini Constitution recognizes the right of litigant parties to appeal against judicial decisions or judgments affecting them by stating that the law shall regulate the various kinds and degrees of courts, and specify their functions and jurisdictions.[172] In accordance with this provision, the right to appeal is recognized in ordinary criminal court [173] as well as in civil courts.[174] While the SSML gives the detainee the right to challenge the arrest Order issued against him by the Minister of Interior after three months of its issue before the court, the SSML denies the detainee the right to appeal the court decision passed with regard to his complaint. The decision issued by the High Court of Appeal is not susceptible to appeal due to the mere the fact that this particular Court at the time the SSML was issued in 1974, was the Highest court in the Bahraini judicial system, which was functioning then with just two instances.[175] Thus, the SSML in this respect is unconstitutional because it deprives the detainee of his constitutional right to appeal.

Similarly, the denial of the convicted right to appeal against the SSC judgment passed against him,[176] is inconsistent with Article 14(5) of the ICCPR, which provides that:

> *"Everyone convicted of a crime shall have the right to his conviction or sentence being reviewed by a higher tribunal, according to the law."*[177]

The denial of the right to appeal is particularly damaging in death penalty cases. The UN Economic and Social Council (ECOSOC) Safeguards guaranteeing protection of the rights of those facing the death penalty, provide that anyone sentenced to death, shall have the right to appeal to a court of higher jurisdiction (Safeguard 6).[178]

8.10. The Non Compliance of the Ministry of Interior with Court Decisions

The SSC acquittal decisions, as well as release orders issued by the High Court of Appeal, in complaints filed by detainees arrested by virtue of Ministerial Orders, are not immediately executed by the Ministry of Interior.[179] Amnesty International indicated in its 1995 report about Bahrain, that since March 1995, the authorities had failed to release some 15 defendants acquitted by the SSC, who continued to be held without further charges being brought against them, and in the absence of any legal basis justifying their continued detention.[180] This illegal practice is not limited to the SSC, or the High Court of Appeal judgments, but also applies with regard to decisions passed by the ordinary criminal courts in crimes relating to the events of 1995-1997.[181]

For instance, two persons accused of setting fire in a scrap car, were arrested by virtue of a Ministerial Order issued by the Minister of Interior on January 16,1995. They remained in detention for over one year, until their trial started before the Criminal Court in February 1996.[182] On February 26, 1996, the Court ordered their temporary release until judgment was given. However, the Ministry of Interior refrained from executing that decision. On July 7, 1996, the Criminal Court finally issued their judgment, sentencing each of them to one year imprisonment, while they had already been detained for a year and a half.

The Ministry of Interior continued their detention without any legal grounds for further seven

and a half months until it released them on December 15,1996, the day before Independence Day. Though sentenced to one year imprisonment these two persons have effectively spent two years in prison. It is a tradition that the Government releases and grants amnesty to a number of prisoners on major holidays such as Eids (Muslims holidays) and Independence Day. Therefore, many prisoners and detainees are kept in detention until the next major holiday regardless of their judicial release orders.[183]

No official in the Ministry of Interior has ever been questioned about this illegal practice, and no investigation was ever made with regards to any of the complaints filed to the Ministry of Justice officials in this matter.

8.11. The Inadequacy of the Detention Facilities

Article 19(c) of the Constitution provides that detention or imprisonment could not be imposed in places other than those specified in prison law. Such detention centers and prisons, where health and social welfare must be observed, should be subject to the supervision of the judicial authorities.[184] A similar provision is stated in Principle 29(1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which imposes places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.[185]

Still, all detainees and former prisoners complain about the poor conditions of all detention centers and prisons in Bahrain. Since the emergence of the 1995-1997 events, in addition to the prisons already in existence, Police stations are used as temporary detention centers, in which detainees may be kept for a period varying between several months to more than a year in very poor and unhealthy conditions. Such stations were not initially designed to be used for long term detention.

The most commonly expressed complaints surrounding the prisons are: overcrowding, lack of adequate sanitation, unavailability of adequate medical services, inadequate diet, beatings and rough treatment by the prisons detention centers guards and officials.[186] Visits to detainees and prisoners convicted of security offences are severely restricted.[187] No public record appears to contain any reference to any sort of judicial supervision being exercised over of the Ministry of Interior acts or practices with regard to prisons detention centers administration. Attempts by international human rights organizations to inspect Bahraini prisons and detention centers, have always been rejected by the Ministry of Interior.[188]

While in custody, medical treatment in most places of detention is reported to be rudimentary, and is said to be denied to detainees except in the case of dire emergencies. This practice is inconsistent with Rule 25 of the UN Standard Minimum Rules for the Treatment of Prisoners,[189] and Principle 24 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[190]

9. CONCLUSION AND RECOMMENDATIONS

There can be little doubt about the existence of widespread systematic human rights violations within Bahrain today. For the last 25 years the Bahraini authorities have systematically violated rights to freedom of expression, association and movement in an effort to stifle all political and cultural dissent. The principal tool of repression used by the authorities has been the State Security Court System.

This Court System far from providing a modicum of justice has, instead, violated all known international legal norms concerning the right to a fair trial before an independence and impartial tribunal. Indeed it has entrenched within its practice and procedures the ethos of repression which exists within Bahraini society at large. In this sense it has become a symbol of the crisis of human rights in Bahrain today.

Its creation effectively led to the dissolution of the National Assembly and the abolition of democratic and constitutional government. The promulgation of its establishment, structure and procedures were unconstitutional and usurped fundamental civil rights granted to its citizens by the Constitution. The subsequent practice adopted by the State Security Court in respect of arrest orders, pre-trial investigations, trial, and judgment, manifestly violates all relevant United Nation Human Rights Instruments governing the same.

Defendants are subject to arbitrary arrest, incommunicado detention and inadequate prison conditions. They are denied access to lawyers and medics, given little or no time to prepare their defence, and are unable to call witnesses or test prosecution evidence. They are unable to appear in open court, appeal against convictions or review remands in custody nor can they enforce such reviews against the Executive. Furthermore, they are routinely subjected to torture, and inhuman and degrading treatment by investigating authorities who thereafter openly rely on illegally extracted "confessions" which are neither excluded or examined by the Court.

The legal entrenchment of such gross violations within the public justice system operated by judicial officials amounts to not simply a policy of impunity but a co-ordinated policy of abject repression between the Judiciary and the Executive. The roots of this repression are political. The aim is to stop any movement towards the restoration of democratic and constitutional government.

But however much the present Regime censors, and restricts international reporting it is extremely unlikely that such a policy will finally achieve its aim. The aspiration towards legal and political reform is widespread and engulfs all sections of Bahraini society. Internationally, the dominant movement is towards the adoption of democratic and constitutional norms. Ultimately, no society in Bahrain's present condition has ever been able to resist the historical winds of progressive change.

It is within this Spirit that the Bar Human Rights Committee of England and Wales and the UK Parliamentary Human Rights Group call upon the Bahraini Government to guarantee its society's long-term stability and peace by implementing the following recommendations:

1) Restore the parliamentary system in accordance with the Constitution.

2) Implement the Constitution in its entirety, including the institution of the Supreme Council of the Judiciary, and the Constitutional Court.

3) Amend the State Security Legislation and the provisions related thereto in the Penal Code by eliminating all provisions contained therein which violate citizens' constitutional civil rights.

4) Re-try all persons convicted by the SSC before the ordinary criminal courts or before any other tribunal that might be instituted by the National Assembly for that purpose.

5) Investigate all claims of torture and extra-judicial killings through impartial investigators and under international observation.

6) Issue legislation instituting the right of individuals subjected to these human rights violations to receive fair and adequate compensation.

7) Conduct impartial investigations on prison conditions under international observation.

8) Release the findings of the above investigations to the public.

9) Bring to justice all persons responsible for committing human rights violations, in relation to the events of 1995-1997, as well as before or after that period.

10) Ratify the international human rights treaties such as the ICCPR including its related protocol.

11) Observe all international legal and customary obligations concerning Human Rights.

APPENDIX

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ENDNOTES

1 The Free Visa labor is a condition where an influential important person would use his position or contacts to obtain hundreds or in some cases thousands of foreign workers entry visas and sometimes working permits. Once the foreign workers entered the country, their sponsor would not provide them with jobs himself, but would let them work on their own or for other people against a predetermined sum of money to be paid monthly or periodically to their sponsor. The unfair competition resulting from this kind of illegal labor where foreign workers would work in any conditions and accept very low pay constitutes one of the main problems facing Bahrainis looking for jobs.

2 Human Rights Watch Report on Bahrain of May 1997.

3 The U.S. Department of state, Country Reports on Human Rights Practices for 1994, page 1059.

4 Ultimately he was forcibly exiled from the Country without trial on January 15, 1995, as indicated in: The U.S. Department of State, Country Reports on Human Rights Practices for 1994 page 1058; The U.S. Department of State, Country Reports on Human Rights Practices for 1995; Human Rights Watch, World Report 1997, page 272-274.

5 On December 17,1994, in a press statement to Reuters, the Ministry of Interior justified the arrest of Shaikh Ali by stating that "investigations had established that Shaikh Ali was the mastermind and organizer of a demonstration organized against a marathon relay race for raising funds for charities involving Bahrainis and Western expatriates. During the marathon, the demonstrators attacked the runners with stones causing injuries to one of the runners." In fact, the route of the race ran through several conservative villages that consider the participation of women in running attire to be an affront to local mores, therefore, a protest demonstration was organized by some youths against the marathon. See HRW report of May 1997 for details about the marathon events.

6 Amnesty International, Bahrain: A Human Rights Crisis, September 1995, AI Index: MDE 11/16/95. Distr: SC/CO/GR, page 7.

7 Id; The U.S. Department of State, Country Reports on Human Rights Practices for 1995; Human Rights Watch, World Report 1997, page 273. In its extended report about Bahrain of May 1997, HRW indicated that:

> "*Public advocacy of restoring Bahrain's partially elected NA, in accordance with the Constitution of 1973, is considered by the Government to be a hostile act and grounds for detention without charge or trial under the SSML of 1974. It is the Government violations of these fundamental freedoms and political rights that had generated the conditions of confrontation in Bahrain since 1994.*"

8 The communiqué de press of the Minister of Interior published in Al Ayam and Akhbar Al Khaleej local newspapers on December 18, 1994 (in Arabic); The Bahraini Crown Prince's statement to the press published in Akhbar Al Khaleej local newspaper on January 27, 1995 (in Arabic); the declaration of the Bahraini Minister of Interior published in Al Ayam local newspaper on January 28, 1995 (in Arabic).

9 Human Rights Watch, World Report 1997, page 273.

10 Al Ayam local newspaper of June 4, 1996 (in Arabic).

11 Al Ayam local newspaper of March 2, 1997 (in Arabic).

12 See for details of the sentences HRW report of May 1997.

13 Human Rights Watch, World Report 1997, at 272-73; Amnesty International Report, supra note 10; The U.S. Department of State, Country Reports on Human Rights Practices for 1995.

14 The U.S. Department of State, Country Reports on Human Rights Practices for 1995.

15 Article 33 of the Penal Code of 1976.

16 Id at 155.

17 Id at 161.

18 Unofficial estimation.

19 See supra note 10 page 28.

20 Such as the right to legal counsel during the investigation phase and the right to appeal.

21 See supra note 10 page 2-3.

22 FIDH, Statement made at the 2d session of the UN Commission on Human Rights, Ge-neva, March 18 - April 26, item 10, 1996.

23 See supra note 188.

24 Id.

25 See supra note 188

26 See supra note 152.

27 Preamble of the Decree Law No. 12/1972, pursuant to which the Constituent Assembly was elected to draw up the Bahraini Constitution (Informal translation of the original text in Arabic, see infra note 27).

28 Article 38 of the Constitution.

29 The Cabinet letter of resignation stated in part:

"*The Cabinet had undertaken to complete the necessary legislation for the phase of independence, and to strengthen the sense of national unity, in order to make the people of the Country as one edifice that strengthens itself. However, despite its sincere efforts over a two year period, the Cabinet did not receive any cooperation from the National Assembly, during which the National Assembly deliberations were dominated by ideas alien to our society and its values. These ideas disparaged the State status, spreading sensationalism, demagoguery, instigation and one-upmanship, and sowing seeds of dissension, discord and hatred, regardless of the damage this practice would inflict on national unity. This practice of the NA diverted the parliamentary life from its sound course, and the influence of one-upmanship prevented moderate opinions and ideas from playing their instrumental role. As a result, the government was unable to complete the legislation and projects it had planned for, in order to benefit the citizens. Some people who do not espouse our principles and champion our values have exploited what has happened, by working furtively to achieve their own aims.*"

This is an informal translation of the original text in Arabic, published in the Official Gazette, issue No 1138 dated August 28, 1975. Due to the lack of official translation of this and of many other authorities cited within this thesis, I tried to translate them to the best of my abilities, frequently using the same terms and vocabulary found in the original Arabic text. I adopted this method of translation in order to preserve the authenticity of the contents of each authority, sacrificing at times the effortless readability of their English translation.

30 Id.

31 In his letter addressed to Amir the Prime Minister designate stated that:

"*I deliberated with my colleagues whom I have chosen to join the new Cabinet. They unanimously concurred that it is imperative to dissolve the National Assembly, and make constitutional amendments. Therefore, once your Highness' order is issued forming the Cabinet, it will be honored to submit to Your Highness a draft Decree to dissolve the National Assembly and to suggest that Your Highness issue an Amiri Order postponing the NA elections, until such time that a committee of wise and judicious dignitaries of the Country draft the ideal election law.*" (Informal translation of the original text in Arabic published in Official Gazette issue No 1138, dated August 28, 1975,See supra note 27.)

32 The Amir entrusted the resigning Prime Minister the task of forming a new government, in which four ministers were replaced with newcomers. See Official Gazette No. 2170 (in Arabic).

33 See supra note 27; supra note 4 page 21.

34 The crimes set forth in Articles 112 to 184 include all crimes undermining the State

internal and external security, in addition to all crimes related to demonstrations and riots.

35 Published in Official Gazette No 1477 issued on February 1, 1982.

36 See supra note 7 page 1056; supra note 10 page 2.

37 Decree Law No. 10/1996 published in Official Gazette No. 2208 on March 20, 1996 (in Arabic).

38 Article 101(c) of the 1973 Constitution.

39 Article 5/Third of the Decree law No 7/1976 establishing the SSC.

40 Id at 5/Fourth.

41 Id at 5/Fifth.

42 Id at 5/Sixth.

43 Id at 7.

44 Id at 1.

45 Article 90 of the Code of Criminal Procedures of 1966.

46 Id at 128(3) & (4).

47 Id at 127.

48 Id at 125(4) , 126.

49 Article 7 of Decree law No 7/1976 establishing the SSC.

50 Article 50 of the Penal Code of 1976.

51 Id at 5I, 52.

52 Article 8 of the Code of Criminal Procedures of 1966.

53 Article 27 of the Cassation Court Law of 1989.

54 See supra note 10 page 2.

55 For instance, 10 individuals were arrested by virtue of Ministerial Order No. 22/96, dated January 17, 1996, and 8 individuals were arrested by virtue of another Ministerial Order, Bearing no serial number, dated March 14, 1996. It has been construed by observers, that the

Authorities chose not to pursue the numbering of arrest Orders, in order to prevent concerned parties, especially human rights organizations, from knowing the actual number of detainees.

56 See Article 1 of the State Security Measures Law of 1974.

57 Id at 2.

58 Id at 3.

59 Since the distribution of sensitive posts among some of the Ministry of Interior high profile officials such as Major General Ian Henderson, and the administrative sub-divisions of the Ministry Directorates such as the so called Security and Intelligence Service (SIS) has never been officially publicly announced, this description of the Ministry's Administration is based on both the Ministry's reorganization plan published in local newspapers on December 12, 1996 and on public knowledge circulating in Bahrain about the Ministry administrative organization.

60 See supra note 10 pages 1- 4; HRW May 1997 report.

61 Article 76 of the Code of Criminal Procedures of 1966.

62 Id at 76(3).

63 See supra note 13 page 274.

64 The Public Prosecution is an administrative division of the Ministry of Interior not an independent judicial body as provided by Article 101(c) of the Constitution, see supra note 58, the Ministry of Interior reorganisation Decree of 1996.

65 See supra note 18; supra note 10 page 14; supra note 13 pages 273-274.

66 See supra note 10 page 10; supra note 13 page 275.

67 The Bahrain Bar Society is a professional association, instituted pursuant to the Clubs and Associations Law of 1989. Membership of the Bar Society is elective, and it has no Disciplinary power over its members' professional conduct.

68 This new venue was initially a residential villa reportedly belonging to a member of the ruling family had been leased by the Ministry of Justice to be the second venue of the SSC because of its location; close to Jaw Prison.

69 See supra note 10 page 28.

70 Article 51 of the Penal Code of 1976.

71 See infra (Criminal Case No 973/1995).

72 Amnesty International indicated that

> *"in some cases, intelligence officials arranged for certain defendants to be referred to SSC where it was obvious that their links with the offense in question were tenuous in the extreme.... This was done in the expectation that these defendants would be acquitted, thereby creating an impression that trials are fair and that those against whom there was insufficient evidence, would be acquitted."*

See supra note 10 page 31.

73 This arrest relates to the marathon incident, see supra note 9.

74 December 15 is the day before Independence Day. In keeping with tradition, the authorities usually release a number of prisoners and detainees on such major holidays; see supra note 7 page 1057.

75 All the 11 defendants came from "Nowaidrat" village known for its active role in the 1995-1997 events. The village participation in the "Popular Petition" was large because one of the main organizers of this petition as well as the "Elite Petition" named Abdul-Wahab Hussain, a high school teacher and administrator, came from this same village. He was arrested without formal charges or trial twice in relation to the 1995-1997 events; the first for six months from March until September 1995, and the second for almost one and a half years from January 1996 till date (May 1997). His village "Nowaidrat" witnessed many protest marches and demonstrations that turned out to be among the most severe and violent in term of casualties and destruction. The security forces placed the village under curfew several times. Hundreds of the village inhabitants were arrested after each demonstration. Many of the village houses were reportedly ransacked by the security forces during the search that accompanies each arrest. See for more details HRW 1997 report.

76 See supra note 79

77 See supra note 18.

78 Case No 9/State Security/95.

79 The defendants are usually taken to the scene of the crime to re-act their alleged roles in the crime. They are usually photographed while acting out their respective roles or while pointing out the place where the crime took place.

80 The Forensic Medicine Department is a division of the Criminal Investigations Directorate of the Ministry of Interior.

81 This same incident had been also cited in Amnesty International Report of 1995, See supra note 10 page 28.

82 To advocate the official point of view regarding the 1995-1997 events, the Ministry of Information issued this publication to denounce what it described in the publication as "acts of sabotage committed by individuals adhering to values alien to the Bahraini society."

83 Akhbar Al Khaleej and Al Ayam local newspapers of February 4, 1996 (in Arabic).

84 Only foreign workers from the Indian sub-continent were affected by the violence accompanying the 1995-1997 events. Other Arab, Asians and Westerners foreign workers were not subjected to that violence. Probably based on the fact that the semi-skilled jobs exercised by foreign workers from the Indian sub-continent are of the kind the Bahraini youth job-seekers could perform.

85 See supra note 5.

86 See supra note 6.

87 Case No 15/State Security/1996.

88 "Hanging" is a method of torture where a detainee is severely beaten for hours with his hands and legs bound with plastic ropes, and a long wooden bar inserted between them. Then the wooden bar would be placed between two chairs while the entire weight of the detainee's body is borne on their wrists and ankles.

89 Article 7 of Decree law No 7/1976 establishing the SSC.

90 Article 40 of the Cassation Court Law of 1989.

91 As stated in the preamble of the Decree.

92 See Article 38 of the Constitution.

93 Id at 108.

94 Article 32 of the Constitution states that:

> *"The system of government shall be based on the principle of separation of the legislative, executive and judicial powers, functioning in cooperation with each other in accordance with the provisions of this Constitution. None of the power may relinquish all or part of its competence prescribed in this Constitution. However, legislative authorization, limited for a certain period and in respect of a specified matters, may be made, and shall be practiced in accordance with the law of authorization and the condition thereof.*
>
> *Legislative power shall be vested in the Amir and the NA in accordance with the Constitution; and the executive power shall be vested in the Amir the Cabinet and the Ministers. Judicial decrees shall be passed in the name of the Amir, all in accordance with the provisions of the Constitution."*

95 Article 1(f) of the Constitution.

96 Article 104(a) of the Constitution.

97 Article 63(b) of the Constitution provides that the members of the NA are free to express their views and opinions in the NA.

98 Article 103 of the Constitution provides that:

> *"The law shall specify the judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations and shall determine its jurisdiction and procedures. The law shall ensure the right of the Government and interested parties to challenge the constitutionality of laws and regulations before the said body. If the said body decided that alaw or a regulation is unconstitutional it shall be considered null and void."*

99 Article 20 of the Constitution.

100 Published in the Cassation Court Precedents Book for 1994, issued by the Ministry of Justice (in Arabic).

101 Article 32(b) of the Constitution.

102 Article 102(d) of the Constitution states that:

> *"A Supreme Council of the Judiciary shall be formed by law to supervise the function of the Courts and the offices related thereto. The law shall specify the jurisdiction of the said Council over the functional affairs of both the Judiciary and the Public Prosecution."*

103 As per the reorganization plan of the Ministry of Interior effected in December 1996 (Published in the local press on December 12, 1996, in Arabic).

104 See supra note 7 page 1055; supra note 10 page 39.

105 See supra note 27.

106 Signed June 26, 1945, entered into force Oct. 24, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (1969).

107 See the letter of the Bahraini Ambassador to the United State addressed to Human Rights Watch, published as an appendix to HRW Report of 1997.

108 Schwelb, The International Court of Justice and the Human Rights Clauses in the Charter. 66
Am. J .Intl. L. 337, 341-350 (1972).

109 The Universal Declaration of Human Rights (UDHR) is not a treaty, but an authoritative interpretation of the UN Charter. UDHR, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948).

110 Adopted Dec.19, 1966, entered into force Mar. 23, 1976, 999 U.N.T.S. 171.

111 Adopted Dec. 10,1984, entered into force June 26, 1987, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 179, U.N. Doc A/39/51 (1984).

112 Soft laws are non-binding instruments adopted by the UN. They serve as both directives, and as a source of inspiration for State Members' national legislation and practice. Part of these laws are The Basic Principles; which are the product of the modern trend of articulating general human rights norms. They evolved from the 1948 UDHR statement: "[I]t is essential... that human rights should be protected by the Rule of law." See Reed Brody, Introduction: The Independence of Judges and Lawyers: A Compilation of International Standards, CENTER FOR THE INDEPENDENCE OF JUDGES & LAWYERS BULL, Apt-Oct, 1990, at 3, 3-13, cited in Martin Flaherty , "Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland," 7 Harvard Human Rights Law Journal 87 (1994).

113 Adopted by the 7th UN Conference on the Prevention of Crime and the Treatment of Offenders, Milan, August 26 - September 6, 1985, U.N. Doc. A/CONF. 121/22/Rev. 1 at 59 (1985).

114 Adopted by the 8th UN Conference on the Prevention of Crime and the Treatment of Offenders, Havana, in August 27 - September 7, 1990, U.N. Doc. A/CONF. 144/28/Rev. 1 At 118 (1990).

115 G. A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

116 G.A. Res. 45/11, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990).

117 Adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

118 Martin Flaherty, "Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland," 7 Harvard Human Rights Law Journal 87 (1994).

119 See supra note 114.

120 <http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_4.html>.

121 See UDHR Article 3: Right to life, Article 5: Prohibition of torture, Article 9: Prohibition of arbitrary arrest, Article 10: Right to fair and public trial, and Article 11: Right to be presumed innocent until proved guilty. (See supra note 116).

122 See Bahrain 1973 Constitution Article 19: Prohibition of torture, arbitrary arrest, Article 20: Right to be presumed innocent until proved guilty, and Article 102: Right to fair and public trial.

123 See supra note 117.

124 Article 10 of the UDHR states that:

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

125 Article 14 (1) of the ICCPR provides that:

"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..."

126 See supra note 120.

127 Adopted August 30, 1955, by the first UN E.S.C. Res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. Res. 2076, 62 U.N. ESCOR Supp. (No.1) at 35, U.N. Doc. E/5988 (1977).

128 See supra note 122, Principles 15 and 16(4). Further, Principle 19 states:

"A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world subject to reasonable conditions and restrictions as specified by law or lawful regulations."

129 Principle 7 of the UN Basic Principles on the Role of Lawyers states:

"Government shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case no later that 48 hours from the time of arrest or detention." See supra note 121.

130 Bahrain Constitution of 1973, Article 19(b).

131 The same reasoning apply to the arrest orders issued by the Investigation Judge by virtue of Article 79 of the CCP which prohibits challenging the lawfulness of the order before the lapse of one month after the issue of the arrest order, see supra.

132 See supra note 117 Article 9(4).

133 See Id Article 9 and 14.

134 UN Doc.E/CN.4/1992/20, Annex I.

135 Principle 4 of the UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment states:

"Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of a judicial or other authority."

Principle 11also states:

"...A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority...[which] shall be empowered to review as appropriate the continuance of detention."

Further Principle 32(1) states:

"A detained person or his counsel shall be entitled at any time to take proceedings according to domestic la w before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful."

Also Principle 37 states:

"A person detained on a criminal charge shall be brought before a judicial or other authority provided by the law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of the detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody."

See supra note 122.

136 Article 5 of the UDHR, See supra note 116.

137 See supra note 117, Article 7.

138 Principle 1 of UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment states:

"All persons under any form of detention or imprisonment shall be treated in a human manner and with respect for the inherent dignity of the human person."

Further Principle 6 states:

"No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."

Moreover Principle 21 states:

"1. *It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.*

2. *No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.*"

See supra note 122.

139 Article 208 of the 1976 Penal Code states that:

"*Imprisonment (Sajn*) shall be the penalty imposed on every public official who uses torture, force, or threat, either personally or through a third party, against a defendant, witness, or expert to force him to confess to having committed a crime, or to give a statement or information with respect thereof. The penalty shall be life imprisonment should the use of torture or force lead to death.*"

140 Article 232 of the Penal Code states that:

"*A prison sentence (Habs*) shall be the penalty for any person who uses torture, force or threatens to use them, either personally or through a third party, against a defendant, witness, or expert, to make him admit to committing a crime, or to give statements or information with respect thereof. The punishment shall be (Habs*) for at least six months if the torture or use of force results in harming the safety of the body. The punishment shall be imprisonment (Sajn*) if the use of force or torture leads to death.*"

*Under Article 52 of the Penal Code (Sajn) means imprisonment that exceeds three years, whereas (Habs) is defined by Article 54 as being imprisonment for three years or less. Because torture committed by public officials constitutes an abuse of office or authority, the Penal Code provided for more severe penalties than in case where torture was committed by non public officials.

141 Article 75(1) of the CCP provides that:

"*No policeman or any other person with authority, shall use threats or violence, or promise benefits to anyone during an investigation into the committing of an offense, in order to influence the statement he may gives.*"

Further, Article 128(1) provides that:

"*No confession made by a defendant shall be admitted as evidence if it appears to the court that the making of such a confession was caused by; inducement, threat, or promise related to the charge against the defendant proceeding, from a person in authority and sufficiently grounded in the opinion of the court to give the defendant reasonable grounds for supposing he would gain an advantage or avoid evil of a temporal nature in reference to the proceedings against him.*"

142 Economic and Social Distr. Council GENERAL E/CN.4/1996/35, 9 January 1996, Commission on Human Rights, 52nd Session., Report of the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution No. 1995/37.

143 See supra note 7 page 1055.

144 See supra note 18.

145 The U.S. Department of State, Country Reports on Human Rights Practices for 1996

146 See supra note 10 page 2.

147 With regard to the methods of torture used in Bahrain prisons and detention centers, Amnesty International indicates that according to testimonies it obtained from former political detainees over the years, the physical methods of torture most commonly used include: severe and sustained beatings all over the body, using hosepipe, electric cables, and other implements; Falaqa (beating on the soles of the feet); forcing detainees to beat each other; suspension from the limbs in contorted positions, with blows administered to the body at the same time; enforced standing for several hours or days; sleep deprivation; preventing detainees from relieving themselves; immersion in water to the point of near drowning; burning the skin with cigarettes; and piercing the skin with a drill. Amnesty International further states that over the years it has received reports of the sexual molestation of male detainees, particularly of youths; these include physical assault as well as other methods such as the insertion of objects into the penis or anus. Amnesty also indicated that the physical abuse of detainees is frequently accompanied by psychological methods of torture; including threats of execution or indefinite detention, threats of harm to detainees' wives or other female relatives, as well as insult and humiliation. See supra note 10 page 34-35.

148 See supra note 13 page 274.

149 Principle 33(1) of the UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment states:

"*A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.*" See supra note 122.

150 See supra note 10 page 30.

151 Case No 15/State Security/1996, regarding the arson in which 7 foreign workers died, and which resulted in sentencing 3 individuals to death, see supra.

152 Case No 8/State Security/1995, filed against 20 individuals, amongst whom 15 were convicted by the SSC. The first defendant was sentenced to life imprisonment.

152 Case No 8/State Security/1995, filed against 20 individuals, amongst whom 15 were convicted by the SSC. The first defendant was sentenced to life imprisonment.

153 G.A. res. 3452 (XXX), annex, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1975).

154 See supra note 10 page 34-35.

154 Id at 35-36.

155 See supra note 117, Article 14 (2).

156 Principle 36(1) of the UN Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment states:

"*A detained person suspected of or charged with a criminal offense shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.*" See supra note 122.

157 Article 20(c) of the Constitution states:

"*An accused person shall be presumed innocent until proved guilty in a legal trial in which the necessary guarantees for the exercise of the right of defense in all the stages of investigation and trial are insured in accordance with the law.*"

158 See supra note 122.

159 Principle 5 of the UN Basic Principles on the Role of Lawyers. See supra note 121.

160 Id Principle 7.

161 Id Principle 8.

162 Article 20(e) of the Constitution.

163 See supra note 7 page 1055; supra note 18, supra note 10 page 29.

164 Judgment passed in Criminal Case No 973/1995, see supra

165 See supra note 177, Article 14 (3) (b).

166 See supra note 122, Principle 18 (2).

167 See supra note 121, Principle 21.

168 See supra note 7 page 1056; supra note 10 page 28; supra note 18; supra note 152.

169 See supra page 22. Amnesty International had mentioned the same incident in its 1995 report about Bahrain, reporting that:

> *"There was one notable incident, however, which took place during the last week of May 1995, during a session of the trial of 29 defendants charged with destruction of public property, violence against the public and an illegal gathering. According to reliable accounts received by Amnesty International, the defendants were brought into the courtroom wearing neat clothes and clean shaven. Some of their relatives and other persons were also brought in to attend the session. Journalists were permitted to take photographs, some of which were published in the local press."*

See supra note 10 page 28-29.

170 See supra note 116 Article 10, and supra note 151 Article 14 (1).

171 See supra note 7 page 1057; supra note 16 page 4; supra note 19 page 274-75.

172 Article 102(a) of the Constitution.

173 By virtue of the provisions contained in the Code of Criminal Procedures of 1966 (CCP).

174 By virtue of the provisions of the Code of Civil and Commercial Procedures of 1971.

175 In 1989, the Court of Cassation was established, adding a third degree to the courts.

176 Article 7 of the SSC law of 1976.

177 See supra note 117 Article 14 (5).

178 E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84
(1984).

179 See supra

180 See supra note 10 page 30.

181 The British Parliament Human Rights Group's publication in August, 1996, titled "The State Security Court of Bahrain."

182 Criminal Case No 2097/1995.

183 See supra note 76.

184 Article 19 (c) of the Constitution.

186 See supra note 188.

187 See supra note 18.

188 See supra note 7 page 1055; supra note 188.

189 See supra note 124, Rule 24.

190 See supra note 122, Principle 24.