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HUMAN RIGHTS COUNCIL  
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Agenda item 6

**UNIVERSAL PERIODIC REVIEW**

**Written statement\* submitted by the World Organization Against Torture,  
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 May 2008]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

**Consideration of the UPR Report – Bahrain:  
Continuing Concerns About Torture and Cruel, Inhuman and Degrading Treatment<sup>1</sup>**

**Introduction**

This submission focuses on the failure to ensure that allegations of torture and cruel inhuman and degrading treatment are fully investigated and prosecuted, and to afford survivors of torture and their families a remedy and reparation for the harm suffered.

Torture was a regular feature during the 1980's - 1990's. Despite the subsequent efforts of the Kingdom to usher in a new era of respect for the rule of law, there are continued allegations of torture and cruel, inhuman and degrading treatment, in particular against opposition activists and human rights defenders. Individuals have been detained at demonstrations and public gatherings and allegedly been subjected to torture thereafter.

Most recently on 17<sup>th</sup> December 2007 on the occasion of Martyrs' Day, aimed at paying tribute to past victims of torture, members of the Special Security Forces began a wave of arrests targeting more than 60, among them over ten activists. Some defendants alleged that they were prevented from sleeping, tied up for long periods and denied medical attention. Some declared that they had been subjected to sexual assault whilst in detention.

**Absence of criminal and civil remedies for torture**

The UN Committee against Torture, in its concluding observations on Bahrain at its 34<sup>th</sup> session, listed amongst its subjects of concern:

- “(f) The apparent failure to investigate promptly, impartially and fully the numerous allegations of torture and ill-treatment and to prosecute alleged offenders, and in particular the pattern of impunity for torture and other ill-treatment committed by law enforcement personnel in the past;
- (g) The blanket amnesty extended to all alleged perpetrators of torture or other crimes by Decree No. 56 of 2002 and the lack of redress available to victims of torture;
- (h) The inadequate availability in practice of civil compensation and rehabilitation for victims of torture prior to 2001.”<sup>2</sup>

The Committee recommended, *inter alia*, that Bahrain:

- “(d) Consider steps to amend Decree No. 56 of 2002 to ensure that there is no impunity for officials who have perpetrated or acquiesced in torture or other cruel, inhuman or degrading treatment;
- (e) Ensure that its legal system provides victims of past acts of torture with redress and an enforceable right to fair and adequate compensation”<sup>3</sup>

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<sup>1</sup> The Redress Trust (REDRESS) and the National Committee for Martyrs and Victims of Torture also share the views expressed in this statement.

<sup>2</sup> CAT/C/CR/34/BHR of 21/06/2005.

<sup>3</sup> Ibid.

Despite these recommendations, no steps have been taken to amend Decree 56. The Decree grants a blanket amnesty for any case (criminal or civil) to alleged perpetrators of “offences that endangered or pose a threat to state/national security” under Decree 10 of 2001 and which fell within the jurisdiction of the State Security Court. It extends Decree 10/2001, the general amnesty of February 2001, to cover human rights violations committed by Government and security officials as well as offences by political opponents of the Government.<sup>4</sup> It contravenes article 89 of the Penal Code that only allows amnesty laws which do “not affect third party rights,” and counters the prohibition of torture in the National Charter.

During the period in which the State Security Act 1974 was in force, torture was endemic in Bahrain. The State Security Act contained measures permitting arrest and imprisonment of individuals without trial for up to three years for crimes relating to state security. Other measures, such as the establishment of State Security Courts added to conditions conducive to torture. Torture appears to have been most prevalent between 1994 and 1997 when civilians sought the return of a liberal Constitution and their Parliament by presenting two public petitions to the Emir. Individuals connected to this petition were deemed to be acting against the regime and were subsequently detained under State Security Laws, subjected to torture and a number were forced into exile.<sup>5</sup>

The impact of the decree is that no alleged perpetrator has been tried for torture or ill treatment even though the practice of torture in Bahrain during the 1980s and 1990s has been well documented. On 11 December 2002, the Bahraini Public Prosecution (PP) refused to consider torture allegations made by 8 victims against a former member of the security service and 15 of his colleagues. The PP’s response was that the case was void, due to the general and particular amnesty introduced by decrees nos. 10 and 56.<sup>6</sup> On 11 September 2003, the PP refused another claim of torture initiated by three Bahrainis (two men and a woman), introduced against former members of the security service.<sup>7</sup>

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<sup>4</sup> Decree 56 provides that: “No lawsuit related to or result from crimes that were subject to general clemency will be heard in front of any judicial panel irrespective of the plaintiff’s person or position and the accused person, whether he was civilian, a civil employee, or a military officer who was directly involved in the crime or was a partner to the crime that occurred during the period the preceded the issuance of this decree.”

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

<sup>6</sup> Scanned images of the case (in Arabic) Case by Attorneys: Mr Ahmed Jasim Abdulla, Mr Abdulla Al-Shamlawi, Mr Mohammed Ahmed Abdulla. Mr Essa Ebrahim, Mr Mohammed Redha Bu-Hussien Against Adel Fleifel and 15 members of the security service:

<http://media5.dropshots.com/photos/372092/20070904/160325.jpg>,

<http://media3.dropshots.com/photos/372092/20070904/160326.jpg>

<sup>7</sup> This case was put forward by Attorneys Dr Hassan Radhi and Mrs Jaleela Al-Sayyed:

<http://media3.dropshots.com/photos/372092/20070904/160329.jpg>,

<http://media4.dropshots.com/photos/372092/20070904/160330.jpg>,

<http://media5.dropshots.com/photos/372092/20070904/160331.jpg>

## The Legality of Amnesties under International Law

The obligation to prosecute (or extradite) torture suspects precludes amnesties as these would be an unlawful interference with that duty. General amnesties constitute a breach of the Convention against Torture which Bahrain ratified.

The International Criminal Tribunal for the former Yugoslavia noted in the Celibici and Furundzija cases that torture is prohibited by an absolute non-derogable general rule of international law.<sup>8</sup> It held that amnesties for torture were null and void and cannot be afforded international recognition. The Committee Against Torture has stressed that '*In order to ensure that the perpetrators of torture and ill-treatment do not enjoy impunity, the State party shall ensure the investigation and, where appropriate, the prosecution of all those accused of having committed such acts.*'<sup>9</sup> The Inter-American Court of Human Rights, in the Barrios Altos Case (14 March 2001) held that amnesties are prohibited as contravening human rights of a non-derogable nature and that self-amnesty laws lead to victims being defenceless and to the perpetuation of impunity, and, for this reason, were manifestly incompatible with the letter and spirit of the Convention.

Under Article 14 of the Convention against Torture, "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation".

The Human Rights Committee dealt with the issue as early as 1978 in relation to Chile's amnesty law and has since made similar observations in regard to amnesty laws passed by several countries. In General Comment 20, the Human Rights Committee stated that 'Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.'<sup>10</sup> The Committee has also consistently criticised states that have sought to impose amnesties for serious breaches.<sup>11</sup>

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<sup>8</sup> 25 Celebici Judgment, IT-95-17/1-T (10 December 1998), 165-167, paras. 452-59; Furundzija Judgment, Case No. IT-95-17/1-T, T. CH. II, 10 Dec. 1998, 55-64, paras 143-162.

<sup>9</sup> Conclusions and recommendations of the Committee against Torture, Kyrgyzstan, A/55/44, paras.70-75, 18 November 1999.

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

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

The Vienna Declaration and Programme of Action called on states "to abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law".<sup>12</sup> Amnesties are also incompatible with the *Basic principles and guidelines on the right to a remedy and reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law*<sup>13</sup> and the *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (Impunity Principles)*.<sup>14</sup>

Decree 56 violates the obligation of the Bahraini Government to investigate and bring to justice those responsible for gross human rights violations and abrogates the right to a fair trial, as it makes it impossible to individualise or identify those responsible. Decree 56 is contrary to the right to judicial and effective redress, the right to effective recourse against acts that violated victims' fundamental rights and renders the crimes without juridical effect. In passing Decree 56 Bahrain violated its obligation to afford every person subject to its jurisdiction the right to a fair and effective remedy as well as the right of non-discrimination in the application of rights.

Accordingly, we call upon the Human Rights Council to:

- *Condemn the continued practice of torture and other cruel, inhuman and degrading treatment in Bahrain.*
- *Urge the Bahraini authorities to guarantee the prohibition against torture and other cruel, inhuman and degrading treatment and punishment in all circumstances, and to conduct thorough and impartial investigations into all credible allegations of torture and related unlawful conduct, and to bring the perpetrators to justice and enable victims and their families to access civil redress.*
- *Urge the Bahraini authorities to respect the rights of human rights defenders, opposition activists and others to free assembly, association and speech, and to guarantee that unlawful exactions against such groups are put to an end.*
- *Encourage the Kingdom of Bahrain to implement the recommendations of the United Nations Committee against Torture in particular by, considering steps to amend Decree No. 56 to ensure that there is no impunity for officials who have perpetrated or acquiesced in torture or other cruel, inhuman or degrading treatment, and ensuring that its legal system provides victims of past acts of torture with redress and an enforceable right to fair and adequate compensation.*

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<sup>12</sup> See The Vienna Declaration and Programme of Action, Section II, para. 60, at [www.unhchr.ch/huridocda/huridoca.nsf/Sym.../A..CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/Sym.../A..CONF.157.23.En?OpenDocument).

<sup>13</sup> Adopted on 16 December 2005 by the United Nation's General Assembly at its 60<sup>th</sup> session, through Resolution 147 (A/Res/60/147).

<sup>14</sup> E/CN.4/2005/102/Add.1.