

Annex: (III): A summary of the shadow report to CAT

Shadow Report on Bahrain To the Committee Against Torture – March 2005

by: The National Committee for Martyrs and Victims of Torture (NCMVT) And The Bahrain Center for Human Rights (BCHR)

3-The “contravention” of the Convention Against Torture in Bahrain

3.1 –Immunities and Impunity

A general power to promulgate laws granting an amnesty is given under articles 89 and 90 of the Penal Code provided that the amnesty law does “not affect third parties’ rights”.¹ The Royal Decree 56 of 2002 which has recently been passed purports to grant a blanket amnesty to all officials who allegedly perpetrated crimes of torture or other crimes against victims who were granted an amnesty for “offences that endangered or pose a threat to state national security” under Decree 10 of 2001 and which fell within the jurisdiction of the unconstitutional State Security Court. The amnesty granted in Decree 56 of 2002 applies to both civil and criminal claims. Decree 56 appears to be in direct contravention with the provision in article 89 of the Penal Code that only allows amnesty laws, which do “not affect third party rights”. Moreover, decree 56 goes against the principles in relation to torture in the National Action Charter that states:

“No person shall in any way be subjected to any kind of physical or moral torture, inhumane, humiliating indignat treatment....Law ensures punishment of those who commit an offence of torture, a physically or psychologically harmful act”.²

More than 30,000 people were reported to have petitioned the King to repeal Decree No. 56. At the time of writing, no investigation has been opened in relation to these cases.

In any event, the blanket amnesty granted by Decree 56 is contrary to the UN Convention Against Torture and the provisions relating to the survivors’ right to an effective investigation and an effective and enforceable remedy.

Decree 56 not only violates the obligation of the Bahrain Government to investigate and bring to justice and punish those responsible for gross human rights violations, it abrogates the right to a fair trial, as it makes it impossible to individualize or identify those responsible.

3.2-Trials or Impartial Investigation

To date, no alleged perpetrator has been tried for torture or ill treatment even though the practice of torture during the 1980s and 1990s has been well documented.³ The situation has been further aggravated by the introduction of Decree 10 of 2002 that provides a blanket amnesty for any case (criminal or civil) whatsoever being brought by persons accused of or convicted of state security crimes. In November 2002, eight torture victims lodged complaints relating to their treatment with

¹ Article 89 states: "Total amnesty shall be decided by law and shall have the effect of discontinuing proceedings or nullifying the conviction judgment passed in respect thereof, but it shall have no effect on penalties previously executed. A total amnesty shall no affect third parties’ rights”. Article 90 states: “A special amnesty shall be decided by an Amiri decree providing for extinguishing all or part of the penalty or replacing it with a less severe penalty. A total amnesty shall not affect third parties' rights”.

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

³ US State Department Report 2001, supra.

the Directorate of Public Prosecutions for an effective investigation.⁴ At the time of writing, no investigation has been opened in relation to these eight cases or even other cases. Further, the Directorate of Public Prosecution had refused the cases. This is contrary to the UN Convention against Torture - Article 12&13. The US State Department's Human Rights Country Report (February 2005) stated that the impunity in Bahrain remains to be a big concern. The above-mentioned cases that were declined by the Court were cited in the above report.⁵

Several cases against torturers were filed in Bahraini courts, but all were rejected and blocked by Decree 56. The victims were threatened to be detained again if they continue their demand to bring torturers to justice. On the other hand, torturers are promoted to better positions, legally protected from prosecution and some are granted lands and given facilities and privileges to conduct businesses as in the case of the well known colonel Adel Falifel and Mahmood Akoori whom were accused of practising torture.

The Bahraini Royal Decree 56-2002 is unlawful and violates both national and international laws. On the National level, this Decree breaches Article 19 – D of the Constitution of Bahrain and the National Action Charter – Article 3 in Chapter 1 which states “Law ensures punishment of those who commit an offence of torture, a physically or psychologically harmful act.”

It also violates Article 4 and 13 of ‘Convention Against Torture. In addition, this law is not in compliance with the ‘Vienna Declaration’ that was adopted at the World Conference on Human Rights – 1993.

3.3-No Available Remedies or Rehabilitation

There are no specific statutory remedies for torture. However, article 158 of Decree Law No 19/2001 provides torture survivors with a legal basis for a civil claim for compensation for acts of torture and ill-treatment. Article 158 states that:

"Every unlawful act that has caused damage to others makes an obligation upon the person who committed it to pay compensation."

Even though article 169 of this law provides a defense to public officials where they were either acting in accordance with the law or on superior orders.⁶ Arguably this would not apply given that such a defense is in direct contravention to the obligations of the state of Bahrain under the Torture Convention- article 14.

The victims may file their claims for compensation before civil courts provided that torture can be proved and substantiated regardless of whether a criminal case has been brought against the alleged perpetrator. However a victim has a 3 year time limit either “from the date on which the victim knows of the damage and the person liable for it, or fifteen years from the date on which the unlawful act has occurred, whichever comes first”.⁷

⁴ Open letter to the Ambassador of Bahrain dated 17th December 2002 from REDRESS, OMCT, APT FiACAT and IRCT.

⁵ Annex no (2) Attached – Document for 8 victim's cases refused by the court.

⁶ Article 169 of Decree Law No 19/2001 states: “A public official shall not be liable for his act which has caused damage to others, if he was acting in accordance with the law, or upon an order received from his supervisor, when he had to obey such order or he thought he had to obey, and he proves that he had justifiable reasons that made him believe his act was lawful, and that he exercised due care and diligence.”

⁷ Article 169 of Decree Law No 19/2001 states: “A public official shall not be liable for his act which has caused damage to others, if he was acting in accordance with the law, or upon an order received from his supervisor, when he had to obey such order or he thought he had to obey, and he proves that he had justifiable reasons that made him believe his act was lawful, and that he exercised due care and diligence.”

The Government intends to ignore and forget those thousands of victims, which are still suffering and leading a very hard life carrying out a lot of physical and psychological scars.

3.4-No Compensation

No known compensation cases for acts of torture or ill treatment have so far been successfully pursued in the courts to date.

The lack of claims for compensation has been further aggravated by the introduction of the Amnesty Law The Royal Decree 56 of 2002 because this prevents a claimant who had been charged under the State Security Act from lodging a civil compensation claim on account of the treatment he/she received while in custody.

The obligation on the State to provide an effective remedy and the needs of torture survivors to receive compensation and other forms of reparation was stressed by the Working Group on Arbitrary Detention.⁸ The views of civil society have also placed emphasis on the need for effective and enforceable remedies for torture survivors: “that mainstream opinion puts the highest priority on victims’ right to compensation inter alia for torture, and in particular to the medical care with specific physical and psychological attention.

With no adequate compensation, including the means for as full rehabilitation as possible, the Government directly contravened article 14 of the Convention of Torture.

Bahrain failed in fulfilling Article 14 of the Convention, which clearly stated that:

“Each State part 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.”

3.5-Education Regarding the Prohibition Against Torture

The measures that had been taken by the Government to fulfill its obligation on Article 10 –1 & 2 of the Convention, were not clear and without any statistical lists that show practical application of that article

There is not any specific details indicating that the Government includes the prohibition against torture in the rules or instruction issued in regards to the duties and functions of persons who may be involve in the custody, interrogation or treatment of any individual subjected to be any form of arrest, detention or imprisonment.

3.6-Treatment of “Non-Governmental” Human Rights organizations:

In the Government report page number 19 – B-article 2 –70- b-. The Government gave a summary about the non-governmental human rights committees and associations such as the Bahraini Human Rights Association and the Bahrain Center for Human Rights.

The government had recently dissolved the Bahrain Center for Human Rights because it was fully independent and carries out important activities and programmes, which focus on the human rights issues, including the prevention of torture.

⁸Report of the Working Group on Arbitrary Detention, para 28

The government does not recognize the “Bahrain National Committee of Martyrs and Victims of Tortures” let alone having dialog with it. The restrictive 1976 Penal Code article 163 consider the activities under “unauthorized” organizations as punishable for up to six months imprisonment.

3.8- No Guarantees Against Repetition of “Torture”

In the judicial system, judges are appointed by royal order and there are no independent criteria for choosing them, which means that they are not independent in their decisions. The 2005 US State Department report on Human Rights was concerned about the integrity of judges in Bahrain.

Recommendations

1. Nullification of Royal Decree 56-2002, that grants impunity accused of practising torture.
2. A full and impartial Investigation into all cases of murder and torture by a neutral national committee acceptable to the general public, consisting of judiciary individuals, and representatives of human rights organizations and political societies.
3. Survivors of torture and their family members should be entitled to bring civil claims for the physical and psychological harm they suffered as a result of torture and ill treatment, and should be entitled to, among any other remedies, compensation and rehabilitative care.
4. The government of Bahrain should provide in its penal code for all forms of torture, fully incorporating all elements of the definition contained in article 1 of the Convention.
5. the government of Bahrain should establish machinery for a systematic review of interrogation rules, methods and practices, particularly in police premises, in order to honour its commitments under article 11 of the Convention.
6. The Government of Bahrain should introduce real reforms to its penal code, particularly with regard to the reduction of the excessive powers granted to the executive by certain legislative provisions and the length and conditions of police custody and administrative detention as well as those old articles that violates the human rights.
7. while paying particular attention to the protection of the rights of persons arrested and detained, the State party should intensify the educational, training and information programmes provided for in article 10 of the Convention, for all the officials concerned.
8. the Bahraini authorities should undertake and expedite serious investigations into the conduct of the police forces in order to establish the truth of the many allegations of acts of torture and, if the results of the investigations are positive, bring the persons responsible before to the courts and issue and transmit to the police specific and clear instructions designed to prohibit any act of torture.

9. The government should reopen the non-governmental committee that had been dissolved recently specifically the **Bahrain Center for Human Rights (BCHR)**.
10. the government should allowed a neutral human right committee to make a sudden visits for the jails, custodies, detentions and any other places where the authorities keep detainees.
11. the government should fire all those colonels, officers, civilians that were accused of practising torture and investigations under the State Security Act of 1974.
12. the government of Bahrain should give full statistical information about the number of detainees from the 1974 until 2000 as well as the number of those killed under torture.
13. the government of Bahrain should compensate those families lost their relatives under torture or through the excessive force used by the riot police.

Background: The Practice of Torture in Bahrain (from 1974 to 2000)

During the period in which the State Security Act 1974 was in force,⁹ from 1974 to 2000, torture was endemic in Bahrain. The State Security Act contained measures permitting the Interior Ministry specifically the Interior Minister to arrest and imprison individuals without trial for a period of up to three years for crimes relating to state security. Other measures relating to the 1974 Act were introduced, (namely the establishment of State Security Courts) which added to the conditions conducive to the practice of torture.

Torture appears to have been most prevalent between 1994 and 2000 when civilians sought the return of a liberal Constitution and their Parliament by presenting two public petitions to the Emir (head of the country then). Individuals who were connected to this petition were deemed to be acting against the regime and were subsequently detained under the State Security Laws, subjected to torture and a number of them were forced into exile. More than 70 citizens were killed during this time. Some of them under torture and some by the use of excessive force.¹⁰

The Special Rapporteur summed up the practice of torture during that period in his 1997 report to the Human Rights Commission:

“Most persons arrested for political reasons in Bahrain were held incommunicado, a condition of detention conducive to torture. The Security and Intelligence Service (SIS) and the Criminal Investigation Department (CID) were alleged frequently to conduct the interrogation of such detainees under torture. The practice of torture by these agencies was said to be undertaken with impunity, with no known cases of officials having been prosecuted for acts of torture or other ill-treatment. In cases heard before the State Security Court, defendants were reportedly convicted solely on the basis of uncorroborated confessions made to political or security officials or on the testimony of such officials that confessions had been made. Although defendants often alleged that their "confessions" had

⁹ This led the government to dissolve the assembly in order to enact the State Security Laws. In essence this was the root cause of human rights violations within Bahrain during the last 20 or so years. US Department of State, Bahrain Country Report on Human Rights Practices for 2001 supra, p. 1; Foreign and Commonwealth Office, Foreign Policy: Regional Country Profiles – Bahrain, p. 2; Amnesty International report: “Bahrain Violations of Human Rights”9 May 1991, p. 4.

¹⁰ Annex no (1) contained List of victims and how they have been killed in the custody and by the use of excessive force.

been extracted under torture, impartial investigations of such claims were reportedly never ordered by the court. In addition, medical examinations of defendants were rarely ordered by the court, unless the defendant displayed obvious signs of injury. Such outward displays of injury were said to be uncommon, since torture victims were usually brought to trial well after their injuries had healed¹¹.

Bahrain's past track record for gross violations of human rights, in particular torture has been frequently raised in a variety of UN fora; it has been one of the countries subjected to the 1503 procedure¹² and has been the subject of a resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities¹³ as well as urgent appeals from the Special Rapporteur on Torture and the Working Group on Arbitrary Detention.¹⁴ Bahrain has also attracted condemnation for its use of torture by the European Union during the 1990's; the European Parliament has passed two resolutions (the first in 1995 and the second in 1997), both of which condemned the use of torture. In 1995, the European Parliament demanded that "an independent inquiry be opened into allegations of murder and torture" and that Bahrain "abolish the State Security Law and other legal provisions which restrict liberties and human rights"¹⁵. In 1997, the European Parliament passed a further resolution on Bahrain calling on the Government "to release political prisoners, to facilitate the return of exiles and institute due process of law, according to accepted international standards".¹⁶ Furthermore, concerns about Bahrain's human rights record has been raised by British MPs in Parliament. This appears to have been triggered by the large number of Bahraini's in exile in the UK and by the alleged involvement of Ian Henderson, a UK national, as head of the Security and Intelligence Services.¹⁷

¹¹ Fifty-third session, Item 8(a) of the provisional agenda UN Doc. E/CN.4/1997/7, 10 January 1997, para 26; see also US Department of State, Bahrain Country Report on Human Rights Practices for 2001, supra, p. 1; Amnesty International report: "Bahrain Violations of Human Rights" supra, Summary, p. 2; and Report of the Working Group on Arbitrary Detention – Visit to Bahrain, para 90 according to which prisons are no longer overcrowded and conditions of detention are satisfactory. UN Doc.E/CN.4/2002/77/Add.2.

¹² From 1991 to 1993, 47th-49th session, see Office of the High Commissioner for Human Rights, States examined under the 1503 procedure by the Commission on Human Rights (as up to 2003).

¹³ Situation of human rights in Bahrain, Sub-commission resolution 1997/2, adopted at the 24th meeting, 21 August 1997, in which the Sub-Commission noted "the information concerning a serious deterioration of the human rights situation in Bahrain, including discrimination against the Shi'a population, extrajudicial killings, persistent use of torture in Bahraini prisons on a large scale as well as the abuse of women and children who are detained, and arbitrary detention without trial or access by detainees to legal advice" and expressed "its deep concern about the alleged gross and systematic violations of human rights in Bahrain."

¹⁴ See e.g. UN Doc. E/CN.4/1996/35, 9 January 1996, para.33; UN Doc. E/CN.4/1998/38, 24 December 1997, para.24 and Opinion No.15/1997 of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/1998/44/Add.1, 3 November 1998.

¹⁵ Points 3 and 5 of Resolution on the continued human rights violations in Bahrain B4-0208 and 0276/95.

¹⁶ Para 3 of Urgency Resolution under Rule 47 of the Rules of Procedure passed on 18 September 1997

¹⁷ Commons written answers 31 Jan 1995 reported in Hansard – see also debate on Bahrain in the House of Commons on 3rd June 1997