

AT AUCKLAND

Appellant:	AB (Bahrain)
Before:	B L Burson (Member)
Counsel for the Appellant:	D Mansouri-Rad
Counsel for the Respondent:	No Appearance
Date of Hearing:	30 November 2011
Date of Decision:	21 December 2011

DECISION

INTRODUCTION

[1] This is an appeal against a decision of a refugee and protection officer of the Refugee Status Branch (RSB) of the Department of Labour, declining to grant refugee status and/or protected person status to the appellant, a citizen of Bahrain.

[2] The appellant claims to be at risk of serious harm if returned to Bahrain on account of his political activities for an unlicensed opposition group. The central issue to be determined is whether the appellant has a well-founded fear of being persecuted.

[3] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

THE APPELLANT'S CASE

[4] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[5] The appellant was born in the late 1980s. The appellant's family lived in the village of X, situated not far from the capital city of Manama. The population in his village are all Shi'a. He is married with a young child.

[6] During the 1990s, there was considerable tension in Bahrain between the Shi'ite majority and the Sunni dominated government over widespread discrimination against Shi'ites. During this period, there were numerous raids on X and other Shi'ite villages by the security forces and many people were arrested and detained. Although no one in the appellant's immediate family was arrested on these occasions, the appellant and his family took to the streets to protest against this repression, as did many other families.

[7] After completing high school, the appellant obtained employment in a trade. He experienced discrimination from public officials when going about his daily affairs. His personal experiences of discrimination and the continuing general repression of Shi'ites generally caused him to join the Association for the Unemployed in 2006. The appellant assisted with the setting up of chairs and audio and visual equipment for meetings which he also attended.

[8] In around 2008, the appellant joined Al-Haq, a political organisation which had been established some time earlier by Hassan Mushaima, the leader of the Association for the Unemployed. Hassan Mushaima had disagreed with Al-Wifaq, an umbrella organisation of various Shi'ite political organisations, over ideology and tactics. Whereas Al-Wifaq was a committed member of the political process and took part in the elections, the position of Al-Haq was that the elections were a sham and would not bring about real change. They campaigned for Shi'a to boycott the elections. Al-Haq organised demonstrations and set about building up grassroots support to bring real change in Bahrain.

[9] The appellant became attracted to Al-Haq and was an active member. At a village level, Al-Haq was loosely organised. The appellant was contacted by telephone by a friend who was also in Al-Haq and told that he was required to do some activity. This consisted of setting-up meeting venues and audio-visual equipment. On numerous occasions, he distributed flyers in various villages and in Manama of speeches that Hassan Mushaima had given. From time to time demonstrations were called and the appellant participated in over 50 of these.

[10] The appellant encountered no difficulties until he was arrested for taking part in a demonstration in X in March 2010. He was handcuffed, blindfolded and taken to a detention centre. Upon reaching the detention centre, he was made to

stand against a wall for five hours. He was randomly hit about his head and back while standing there. He was then taken to another room where he was interrogated about his reason for attending the demonstration and with whom he had attended. During this interrogation he was punched and kicked, and hit with a stick.

[11] When the officer asked him why he attended the demonstration, the appellant replied that he went there to seek his rights as a Shi'ite. This enraged his interrogators and they set about punching, kicking and hitting him for a sustained period. He was then tied in a stress position and suspended from the ceiling for what the appellant estimates to be around an hour, during which he was further assaulted. When the appellant was taken down, he was unable to walk or move his body. He was made to stand up and taken to another cell.

[12] Apart from the initial interrogation and assault he suffered on this first day, the appellant was not thereafter questioned by the authorities. However, he was subjected to minor assaults in the nature of slaps or kicks on a daily basis as he went to the toilet. He was constantly verbally abused. Approximately a month or so after his detention he was informed that he had been sentenced by a court in his absence to a period of three months' imprisonment.

[13] Approximately a week or so prior to his release, he was taken to a room and informed by an officer that he was to be released but this was conditional upon him signing a piece of paper confessing to unspecified matters. He also had to resign from his work. When the appellant enquired as to what would happen if he did not agree to these conditions they told him he would remain in prison and that they would rape his wife to force him to confess in any future court appearance. Believing the authorities would make good on these threats, the appellant agreed and signed the confession. He was released a week later, but was warned that he would be under surveillance and that if there were any further disturbances in X he would be arrested.

[14] After his release, the appellant found alternative employment in a business he set up with his father. Concerned about the threats that had been made against him and, in particular, his wife, the appellant ceased all political activity. Although his friends in Al-Haq informed him of various activities that were planned, the appellant took no part in them.

[15] As the 'Arab Spring' unfolded in other parts of the region, he heard of a number of arrests of Al-Haq members in other villages who had previously been

detained by the authorities. When someone in his own village was arrested, his father suggested that he should get a passport and prepare to leave. In late January 2011, the appellant obtained a passport.

[16] Shortly thereafter, at the beginning of February 2011, rumours began to circulate on the Internet that there was a “day of rage” planned on 14 February 2011 similar to that which had been taking place in Egypt and Tunisia. Mindful of the threats made to harm his wife and arrest him, the appellant took his wife and child to her father’s house situated in her home village and he stayed with a friend in another village. His brother knew a man who worked in an official capacity and he had his brother inquire as to whether his name was now on a black list. He was told this was the case.

[17] While the appellant was in hiding at his friend’s house, he was telephoned by his mother who told him that the authorities had been to the family home in X to arrest him. The appellant left Bahrain the following day. Afraid to use his passport, the appellant departed Bahrain illegally by boat.

[18] Since he has been in New Zealand the appellant has remained in contact with his family members. He understands from a telephone conversation with his family soon after he arrived in New Zealand that there had been a further visit by security forces to the family home in February 2011. His family told them that he was no longer in the country. As far as he understands, there have been no further visits by the security forces looking for him since then.

[19] The Bahraini authorities are known to harass family members of wanted persons. To take precautions against this it was decided it would be safer for his wife and child to join him in New Zealand and, in July 2011, the appellant’s wife and child attempted to travel to New Zealand to join him. However, they were stopped by Immigration New Zealand officers at Hong Kong from boarding the flight to Auckland and were returned to Bahrain. Subsequently, in August 2011, the security forces threw a tear gas canister inside his father-in-law’s house. He does not believe this is a random event because the house is in a quiet area where no protest activity was taking place.

[20] The appellant understands from a telephone conversation with his sister that the Bahraini authorities attacked X in August 2011, firing random shots. He believes this is a collective punishment because people from the village had participated in protest demonstrations against the regime.

[21] The appellant is sceptical as to whether the recent report of the Bahraini Commission of Inquiry will have any immediate or lasting effect. He commented, when discussing the report, that there were reforms undertaken by the King in the late 1990s/early 2000 period but these did not substantially alter things and that people engaged in peaceful political activity continued to be routinely arrested, detained and mistreated.

Documents and Submissions

[22] On 29 November 2011, the Tribunal received from counsel written submissions dated 28 November 2011. Attached to those submissions was a further statement from the appellant dated 29 November 2011. Counsel made oral opening and closing submissions.

ASSESSMENT

[23] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) (section 129); and
- (b) a protected person under the 1984 Convention Against Torture (section 130); and
- (c) a protected person under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[24] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant’s account.

Credibility

[25] The Tribunal finds the appellant to be a credible witness. His evidence was generally consistent with what he had said previously. It was spontaneously given and detailed. He demonstrated an understanding of political affairs commensurate with his claim to have been a person who was politically active on behalf of the Al-Haq organisation.

[26] His account of being detained and tortured is consistent with country information. Significantly, the Human Rights Watch Report *Torture Redux: The Revival of Physical Coercion During Interrogations in Bahrain* (February 2010) (“the HRW *Torture Redux* report”) at pp35-48, notes accounts of detainees being suspended in painful positions. A number of the former detainees interviewed reported being pulled off the ground so their feet were not touching and being forced to sign a confession without being told what it contained. Although an issue was raised at the RSB about the absence of injuries from this treatment, the Tribunal observes that the only significant torture the appellant suffered was on the first day of his detention and, thereafter, he was subjected only to regular but minor slaps and punches from the guards. The appellant reported having bruises about his body and suffering aches. It is likely any injury he did sustain would have passed to a great extent. Also, many of those interviewed in the Human Rights Watch Report do not confirm any lasting injuries as a result of their treatment.

[27] Furthermore, the International Crisis Group report *Popular Protests in North Africa and the Middle East (VIII); Bahrain’s Rocky Road to Reform* (28 July 2011) at p7 (“the ICG Bahrain Reform report”) confirms that dismissal from employment was one of the tactics used by the government against those who had participated in demonstrations.

[28] The Tribunal is concerned that, despite being issued with a valid passport, the appellant claims to have been on a list of persons prohibited from travelling. This incongruity is troubling. However, country information in the form of the lengthy *Report of the Bahrain Independent Commission of Inquiry* (23 November 2011), at chapter 4, sets out in some detail the events of February and March 2011. It notes at paragraph 187 that in late January 2011:

“Ideas began to circulate on a number of online forums and social networking platforms, such as Facebook and Twitter, which included calls for demonstrations to demand political, economic and social reform in Bahrain.”

[29] However, consistent with the appellant’s account, it was not until early February 2011 that a Facebook page called “February 14th Revolution in Bahrain” was established to call for mass protests throughout Bahrain on 14 February 2011. The report notes that the page quickly gained popularity and several thousand people joined it. Thereafter, at paragraph 189 a group calling itself “The Youth of the February 14th Revolution” issued a statement outlining a list of steps that, in their view were necessary to achieve change.

[30] Given the appellant's passport, a copy of which is on file, was issued prior to the emergence on Facebook and other social media sites of plans to hold mass demonstrations on 14 February 2011, it is possible that the appellant's name as a youth activist in the Al-Haq movement did not appear on a black list until after he had been issued with his passport. It is not something that can be dismissed as implausible. Accordingly, the Tribunal extends to the appellant the benefit of the doubt on this point.

[31] The appellant's account is therefore accepted in its entirety. The Tribunal finds that the appellant is a Bahraini national who has been active at a low level for the Al-Haq organisation, an unlicensed opposition Shi'ite political society in Bahrain. He has participated in a number of demonstrations and was arrested and detained for three months in mid-2010. During this detention, he was subjected to torture and interrogation on his first day of detention. He was thereafter sentenced *in absentia* to three months' imprisonment on unspecified charges and suffered minor assaults on a regular basis thereafter.

[32] He was forced to sign a blank confession and resign from his employment as a condition of release. Threats were made to rape his wife and arrest him in the event he undertook any further political activities.

[33] The appellant has not undertaken any such political activity because he is concerned that the security forces will make good their threat against himself and his wife. For this reason, the appellant went into hiding immediately it became clear that there was to be a large-scale demonstration against the regime similar to that which had taken place in Egypt and Tunisia. The appellant took his wife and child to her father's house situated in a village some 30 minutes drive away. While in hiding, the authorities came to his house to arrest him. The appellant fled Bahrain illegally the following day.

[34] After arriving in New Zealand, the appellant was in contact with his family. He was advised there was a subsequent visit to the family home by the authorities looking for the appellant but that his family advised them he had already left the country.

The Refugee Convention

[35] Section 129(1) of the Act provides that:

"A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention."

[36] Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

“... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

[37] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

Assessment of the Claim to Refugee Status

[38] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the failure of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[39] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008) at [57].

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Bahrain?

The Al Haq Movement for Liberty and Democracy

[40] According to International Crisis Group Report *Popular protests in North Africa and the Middle East (iii): The Bahrain Revolt* at page 18, Al-Haq is described as “the most important unlicensed opposition group” in Bahrain. It is described as being “more confrontational” than Al-Wifaq and has rejected any form

of engagement with the government. According to the International Crisis Group, it has focussed on grassroots activism and civil disobedience. Its urging of young supporters onto the streets has led to serious clashes with the security forces. As a result, Al-Haq has gained “a considerable following” among Shi’ites. Members of Al-Haq are routinely accused by the government of inciting violence.

[41] Al-Haq’s position of non-cooperation with what it considers to be an oppressive regime and the calling for demonstrations played a significant role in the escalation of the conflict in March 2011. As noted in the IGC *Bahrain Reform* report, at the time, the Al-Wifaq party had been engaged in semi-secret negotiations with the government over political reform but these had not produced any tangible results. Time effectively ran out. The report observes at p2:

“The turning point came when the youth groups that had been leading the protests called for a march on the royal place in Al-Rifah, outside Manama on 11 March. By most accounts, this was encouraged by three unlicensed opposition groups present in the [Pearl] roundabout: Al-Haq, Al-Wafaa and the Bahrain Islamic Freedom Movement... At a press conference that day, Al-Haq’s leader Hassan Mushayma, who had received a hero’s welcome upon his return from London on 26 February, called for the regime’s downfall through a peaceful escalation of protests and the establishment of a democratic republic.

The announcement of this coalition shocked the alliance of seven licensed groups, including al –Wifaq, which refused to participate in the march, as they felt that the youth group’s initiative would seriously undermine their talk with the crown prince. For their part, the ruling family and large parts of the Sunni community saw the call as proof of the protesters’ real intentions: to overthrow the regime as not, as Al-Wifaq and the other societies had argued, reform it. Moreover, they viewed the 11 March demonstration heading towards the king’s palace as an injurious provocation and an affront that they could not leave unanswered.”

Treatment of detainees during 2011 unrest

[42] Country information establishes that serious human rights abuses have been perpetrated against persons detained by the security forces in the wake of the unrest in 2011. The HRW *Torture Redux* report, at p1, observes that, while the Bahraini authorities had taken significant steps to curtail the use of torture and other ill-treatment by security officials from the high levels which existed in the 1990s, from 2007 onwards, officials had again begun to use torture and ill-treatment more frequently, particularly during the interrogation of security suspects. The *Report of the Bahrain Independent Commission of Inquiry* (23 November 2011) confirms this was the case in 2011 and contains a lengthy and detailed account of serious human rights abuses committed against persons detained following the 14 February 2011 and subsequent demonstrations: see pp276-281.

[43] In its general observations section, at pp406-411, the Commission notes it received 559 complaints of mistreatment of persons in custody. At pp420-469 the Commission lists a summary of torture allegations. A number of cases refer to persons arrested and detained from the appellant's village.

[44] It also noted at paragraph [1696]:

"The most common techniques for mistreatment used on detainees included the following: blindfolding; handcuffing; enforced standing for prolonged periods; beating; punching; hitting the detainee with rubber hoses (including on the soles of the feet), cables, whips, metal, wooden planks or other objects; electrocution; sleep deprivation; exposure to extreme temperatures; verbal abuse; threats of rape; and insulting the detainee's religious sect."

The Commission concluded many of the detainees who claimed to have been physically mistreated were also subjected to coercion into signing confessions or admitting to accusations of criminal conduct. Consequently, these measures fell within the meaning of torture as defined in the Convention Against Torture.

[45] The Commission referred to a lack of accountability of officials within the security system in Bahrain creating a culture of impunity, whereby security officials have few incentives to avoid mistreatment of prisoners or take action to prevent mistreatment by other officials: see paragraph [1698]. The Commission received evidence indicating that, in some cases, judicial and prosecutorial personnel may have implicitly condoned this lack of accountability.

[46] The Tribunal notes that the Commission has made a number of recommendations, in particular, to establish an independent impartial national commission to follow-up and implement the recommendations of the Commission. Principal amongst these recommendations was the establishment of an independent and impartial mechanism to determine accountability of those in government who have committed unlawful or negligent acts resulting in the deaths, torture and mistreatment of civilians with a view to bringing legal and disciplinary action against them. It recommends the adoption of legislative measures requiring the Attorney-General to investigate claims of torture and other forms of cruel, inhuman or degrading treatment or punishment and to use independent forensic experts. It has also recommended an extensive programme of training of law enforcement and other officials, the judiciary and prosecutorial personnel regarding prevention and eradication of torture and ill-treatment.

The current situation

[47] The political situation in Bahrain has, to some extent, stabilised. On 31 May 2011, the King announced an end to the state of emergency and a “National Dialogue” established: see ICG *Bahrain Reform* report at pp9 and 16. However, tensions remain. The report notes, at pp14-15 that the unrest has had a significant adverse effect on the reputation Bahrain had built up over a number of years as a safe and secure financial haven. Government bond rates have been downgraded and there have been “huge losses” in the tourism, restaurant, retail and entertainment sectors of the economy.

[48] According to the ICG, it is unclear how much actual influence the King has and it is uncertain how the government will react to this economic state of affairs. It is possible that the government will tolerate economic hardship “as a necessary price for suppressing the opposition and preventing recurring protest”. It quotes a western diplomat as stating that there are persons within the government who are “actively against reconciliation, are deeply sectarian and are ready to take the financial hit, and prefer to pursue a divide-and-rule strategy, believing that Saudi Arabia will underwrite the economy”.

[49] Inter-communal tensions also remain. It notes, at pp15-17 that:

“The lifting of the state of emergency eased repressive measures but did not end them, and the results of many aspects of the crackdown have yet to be reversed.” The convictions of political leaders and activities in special security courts still stand, and they remain imprisoned, in some cases under life sentences. Those who lost their jobs have yet to be rehabilitated and reinstated. Destroyed mosques and other religious structures lie in ruins with no indication they will be rebuilt. Some things cannot be mended: the dead cannot be brought back to life, and the effects of torture cannot truly be undone, even if physical wounds heal. A community remains traumatised, fearful of further attacks.”

[50] More particularly, street protest and conflict between Shi’ites and the security forces, while greatly reduced from the levels earlier in 2011, have not entirely disappeared. The report notes that while there has been a partial withdrawal of military forces from the streets, this has not been absolute. Public security checkpoints remain. Shi’ites complain that security forces “routinely converged on and beleaguered their areas at night and skirmishes have broken out. As of July 2011, mobile police patrols were coolly monitoring Shi’ite areas for signs of persons gathering or staging demonstrations. Whenever a local protest has taken place, these have been dispersed with tear gas, rubber bullets and stun grenades. Security forces have cordoned off and are conducting surveillance of majority Shi’ite areas, tapping mobile phones and monitoring the movement of

“suspects” Shi’ite religious buildings continue to be destroyed. As many as 10,000 persons took to the streets in June 2011 demanding greater political rights and protests occur most Fridays after prayers.

[51] Taking these factors into account, the ICG *Bahrain Reform* report concludes at p17:

“As anger and resentment build, the prospect of violence rises and that of genuine dialogue recedes, regardless of the King’s publically expressed commitment to the contrary.”

The ICG further conclude that, while a number of factors mitigate against large-scale armed insurrection, a campaign of urban violence is possible. However, in the short term, a mixture of politics and street protest is likely to continue. Beyond that, much depends on the nature and outcome of the national dialogue process.

[52] For similar observations about continuing protest and unrest as well as the potential for more conflict in the future, see also: Ali Al-Aswad “Bahrain politician warns of civil war” *Institute of War and Peace Reporting* (15 August 2011) Frank Gardner “Meeting the king of simmering Bahrain” *BBC News* (15 October 2011) and Bill Law “Bahrain unrest continues after king’s reform promises” *BBC News* (25 November 2011).

[53] As to the national dialogue process established by the King, the *ICG Bahrain Reform* report, at pp18-20, notes concerns about its ability to deliver reform. The King must give approval before any recommended reforms can be implemented and there is no proposal to hold a popular referendum to ratify proposed changes. Furthermore, of the 280 handpicked participating individuals, “only a handful” came from the alliance of licensed political opposition societies, some of which refused to take part “while repression continued”. Al-Wifaq, which sent four representatives to the talks at the last minute, removed them after just two weeks because in its view, the Government had “disregarded the opposition’s efforts to make the talks meaningful”. ICG conclude:

“The regime decreed ‘national consensus dialogue’ runs the risk of becoming an exercise in treading water, while creating the illusion of forward movement, mostly for external consumption. The forum is far from being truly inclusive and can therefore not accomplish a national consensus on any of the topics under discussion. Nor does it provide for dialogue.”

[54] Similar concerns arise in respect of a committee established by the King in repose to the Commission of Inquiry report. Al-Wifaq and Wa’ad, a secular opposition party, are boycotting the committee: see Bill Law “Is Bahrain on route to reform?” *BBC News* (8 December 2011). According to this article, many activists

hold little hope that it will resolve their grievances and lead to genuine reform. Political prisoners remain in detention. Both Hassan Mushaima, the leader of Al-Haq and Abdul Jalil Singace, another prominent Al-Haq figure, as well as Ibrahim Sharif, the leader of Wa'ad, continue to serve long prison sentences. More than 1,000 persons are estimated to have been sacked from their jobs and not to have been reinstated: see Bill Law "Bahrain opposition remains wary of 'reform" *BBC News* (13 December 2011).

Application to the facts

[55] The appellant has been arrested, detained and tortured for his peaceful activities in support of Al-Haq, an unlicensed Shi'ite opposition group, which has placed itself outside of the political process which it does not believe will bring about real democratic change in Bahrain. The leader of Al-Haq has publically called for the Monarchy's downfall by means of escalation of peaceful protest and replacement with a democratic republic. The appellant has been arrested, and tortured for taking part in such activity. He has been threatened with re-arrest and threats have been made to rape his wife if he resumes his activities. To avoid this possible harm, the appellant has ceased his political activity.

[56] In light of these facts, there can be no doubt that the appellant has been the victim of past persecution in that there has been a sustained and systemic violation of his core human rights, in particular, his rights not to be subjected to torture or cruel, inhuman, degrading treatment or punishment (article 7 ICCPR); human conditions of detention (Article 10 ICCPR), to a fair hearing (Article 14 ICCPR), and freedom of expression and association (Articles 19 and 22 ICCPR). These breaches are demonstrative of a failure of state protection.

[57] The Refugee Convention, however, requires a forward looking assessment of risk. The existence of past persecution is not determinative of future risk although, in the absence of significant material changes in country conditions, it will be a reliable indicator of future risk of serious harm.

[58] Country information establishes that, while there has been some de-escalation in conflict since levels of violence seen in February-April 2011, conflict has not disappeared. Simmering inter-communal tensions remain. Protests, albeit on a lesser scale continue, as does suppression of them. There is close surveillance of Shi'ite areas and these regarded as 'suspects' by the security forces. There remains real potential for further outbreaks of violence given the deficiencies in the national dialogue process.

[59] The overwhelming sense emerging from the country information is that the tensions in Bahrain could spill over into more open confrontation at any time. Certainly, the authorities appear anxious to prevent any political protests on a large-scale and monitor persons who are considered suspects. It is likely that the appellant, as an active member of Al-Haq who has been detained and tortured previously, would be considered just such a person. The authorities' negative perception of him in this regard is evidenced by the fact that, during the large-scale unrest that took place in early 2011, the security forces have been to the appellant's house looking for him even though he took no part in organising those demonstrations or participated in them.

[60] While it is accepted that the King has established a committee to look into the report issued by the Bahrain Independent Commission of Inquiry, it is far from clear what effect, if any, this committee will have on the practices of the security forces. Concerns remain as to how effective it will be in addressing the human rights concerns raised. While the report of the Commission, at pp403-414, notes that, in the wake of the Commission's establishment, the Government did take a number of steps and that, after its establishment, there was a reduction in reports of mistreatment (paragraph 1643(o)), the Commission cites no evidence of the arrest and detention of those officers who have conducted the torture during the 2011 unrest or of those officials who ordered it. The main point that emerges from the Human Rights Watch "*Torture Redux*" report is that, despite a period where torture and mistreatment decreased in frequency, a return to such past practices came as political tensions have risen in Bahrain. These tensions, while reduced, remain very real.

[61] Weighing all these matters, the Tribunal is satisfied that should the appellant return to Bahrain, he could not freely exercise his right to engage in peaceful political activity in support of Al-Haq calling for the replacement of the Bahraini monarchy with a democratic republic without giving rise to a real chance of a recurrence of what happened to him in the past. For these reasons, the Tribunal finds that, should the appellant return to Bahrain at the present time and seek to resume his political activities in support of Al-Haq, there is a real chance that he will be arrested, detained and mistreated, amounting to his being persecuted.

[62] For these reasons, the first principal issue is answered in the affirmative.

Is there a Convention reason for the persecution?

[63] In order to be recognised as refugee, the claimant must establish not only a well-founded fear of being persecuted, but also that this predicament is linked to one of the five Convention grounds. As to the relevant standard, *Refugee Appeal No 76235* (6 September 2002) held, at [173]:

“...it is sufficient for the refugee claimant to establish that the Convention ground is a **contributing** cause to the risk of “being persecuted”. It is not necessary for that cause to be the sole cause, main cause, direct cause, indirect cause or “but for” cause. It is enough that a Convention ground can be identified as being relevant to the cause of the risk of being persecuted. However, if the Convention ground is remote to the point of irrelevance, causation has not been established.”

[64] On the facts as found, there can be no doubt that the appellant’s risk of being persecuted is linked to his actual political opinions. The second principal issue is also answered in the affirmative.

Conclusion on Claim to Refugee Status

[65] In light of the above, the Tribunal concludes that the appellant is entitled to be recognised as a refugee under section 129 of the Act.

The Convention Against Torture

[66] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

[67] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

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

Assessment of the Claim under Convention Against Torture

[68] Because the appellant is recognised as a refugee, he is entitled to the protection of New Zealand from *refoulement* to Bahrain. The recognition of the appellant as a refugee means that he cannot be deported from New Zealand to Bahrain: see Article 33 of the Refugee Convention and sections 129(2) and 164 of the Act. The exception to section 129 which is set out in section 164(3) of the Act does not apply. Therefore, there are no substantial grounds for believing the appellant would be in danger of being subjected to torture in Bahrain.

The ICCPR

[69] Section 131(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.”

[70] Pursuant to section 131(6) of the Act “cruel treatment” means cruel, inhuman or degrading treatment or punishment but, by virtue of section 131(5):

- “(a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards:
- (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.”

Assessment of the Claim under the ICCPR

[71] Again, because the appellant is recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Bahrain. For the reasons already given in relation to the claim under section 130 of the Act, there is no prospect of the appellant being deported from this country. Therefore, there are no substantial grounds for believing that the appellant is in danger of being subjected to arbitrary deprivation of life or to cruel, inhuman or degrading treatment or punishment in Bahrain. Accordingly, the appellant is not a person who requires recognition as a protected person under the ICCPR.

CONCLUSION

[72] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[73] The appeal is allowed.

"B. L. Burson"

B L Burson
Member

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