

0902971 [2009] RRTA 628 (2 July 2009)

DECISION RECORD

RRT CASE NUMBER: 0902971

DIAC REFERENCE(S): CLF2009/9690

COUNTRY OF REFERENCE: Bahrain

TRIBUNAL MEMBER: Jane Marquard

DATE: 2 July 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Bahrain, arrived in Australia [in] October 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] January 2009. The delegate decided to refuse to grant the visa [in] March 2009 and notified the applicant of the decision and his review rights by letter dated [in] March 2009.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] April 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. A summary of the documentary evidence before the Department and Tribunal is set out below.
20. The applicant is a 30 year old man who was born in [location deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant], Bahrain. He is a Shi'ite Muslim.
21. His parents and three sisters and brothers live in Bahrain.
22. He had 8 years of education and attended secondary school from September 1994 to June 1996. He worked as a driver from July 2001 until July 2002. He was unemployed between July 2002 and September 2006. From September 2006 until August 2007 he studied English in the USA. From August 2007 until October 2008 he worked for [company name deleted: s.431(2)] as a practice manager.
23. He arrived in Australia [in] October 2008 on a visitor's visa.
24. He said in his application that as a student in his teen years he was an active participant in the political unrest in Bahrain over the lack of democratic rights, following the dissolution of parliament in 1975.
25. He said that he helped collect signatures in 1994 for a petition calling for the nullification of the State Security law and court, the reinstatement of the 1973 constitution and the return of the dissolved elected parliament.
26. He stated that he was arrested in March 1996 and held in detention until July 1999. He suffered physical and mental torture for three weeks after his detention. Then he was held at [deleted: s431(2)] Prison of [deleted: s431(2)] Area until 1999.
27. He said after the death of Amir Shaikh Isa Bin Salman Al-Khalifa, his son king Hama Al-Kalifa took over power, and conditions eased slightly.
28. However the applicant's life continued under the repression of restrictive laws and the use of force to maintain a tight control over all forms of civil liberties including freedom of the press, speech, assembly, associations and some of their religious practice. The regime refused to permit an independent judiciary and continued to discriminate against Shi'ites as well as women and other groups. Corruption has been endemic.
29. The applicant claims his name was on a blacklist and his passport was confiscated by the security forces of the Ministry of Interior and its Public Security Force and other security services which maintain a tight control on internal order. He was unable to work in the public sector or travel overseas.

30. He said that for two years after his release, he kept a low-profile and had few visits from the security authorities to check on what he was doing. In 2000, the regime released all political prisoners. In 2001 he was given back his passport after being forced to sign certain papers without being allowed to read their contents.
31. He said it was difficult to find work. He survived through the help of a friend working in a company named [deleted: s.431(2)] and some occasional jobs. He did obtain a full-time job but was fired when his employers found out that he had been in detention.
32. In May 2007 the political unrest started up again and the security authorities reacted harshly, and the applicant feared for his life. Riots followed in December 2007 and the security authorities began rounding up suspects. The applicant was careful to keep away from the demonstrations but old friends began disappearing and turning up in prisons and being tortured. The unrest and heavy repression continued throughout 2008.
33. The applicant said that [in] September 2008 he was fortunate enough to obtain a visa to visit Australia to see and witness the genuine democracy enjoyed by citizens. The Bahraini authorities raised no objection to him leaving and were probably happy to see him go.
34. When he had only a few weeks left in Australia, he received a telephone call from a relative in Bahrain warning him of renewed security interest in him. Some officers of the Public Security Force accompanied by "intelligence elements" had gone to his house and asked for him. When they found out he was in Australia they asked when he would return. His father warned him not to return.
35. He said his deep fear arises from his background that he is a known and well-documented Shi'ite opponent of the regime who has been visiting a distant foreign country. He fears being detained on his return and being tortured in order to extract a confession about involvement in a terrorist plot and charged, charges which carry the death penalty.
36. In a letter from his adviser dated [in] January 2009, the adviser argued that he feared persecution at the hands of the Bahraini security authorities because of his status as a member of the Shiite majority, his membership of a particular social group being Bahrainis who have recently travelled overseas and whom the authorities fear may have been undertaking secret terrorist training against the ruling Sunni elite, and for political opinion hostile to the rulers of the kingdom, as he was a known demonstrator and activist who had already served three years of detention.
37. The applicant provided country information including US State Department reports and Human Rights Watch reports on the treatment of demonstrators.
38. A letter from [firm deleted: s431(2)] Lawyers dated [in] November 2008 stated that they acted for the applicant before the "State Security Court/Case Number [deleted: s.431(2)] of the Year 1998/State Security" They said the State Security passed an imprisonment sentence against their client. They said the applicant spent the period [date deleted: s.431(2)] March 1996 to [date deleted: s.431(2)] July 1999 in prison; part of that period "was in execution of this punishment".
39. The applicant also provided a letter from the Bahrain Centre for Human Rights documenting his activities in the 1980s. The letter included the following information:

- The applicant was involved in the collection of signatures in the 1994 petition calling for nullification of State Security Law and court, the reinstatement of the 1973 constitution and the return of the elected parliament which was dissolved in 1975.
- According to his well-known and respected lawyers, the applicant was arrested [in] March 1996 and released [in] July 1999. His lawyers were not allowed to meet him while in detention which was a normal practice during that period.
- During the 1990s Bahrain experienced unrest, including regular protests calling for democratisation and economic rights. This resulted in the death of more than 35 young human rights activists most of them Shia. Tens of thousands of people were arrested and hundreds of families deported.
- According to the applicant he was tortured continually for more than 20 days. No evidence was shown of his participation in protests, but he was detained and spent over three years in prison. He was coerced into signing papers he did not see.
- According to the Bahrain Centre for Human Rights and many international human rights organisations, torture was widely used during that time.
- The Shia majority has been routinely discriminated against by the ruling monarchy and government.
- The applicant's passport was released at the end of 2001 but since then he could not work as he was on the government black list. He was unemployed until 2004 then employed in a low rank job in a private company which fired him after knowing that he was arrested during the nineties. Blacklisting is normal for Shia people who were arrested.
- The applicant's parents have been sick since his arrest and treatment.
- Deterioration of the human rights situation has occurred since the beginning of 2005. Detainees are complaining of systemic torture including electrocution and sexual assault.
- The applicant's life could not be normal after being arrested during the nineties.

Submission from applicant's adviser dated [in] June 2009

40. The applicant is aged 30 and has six siblings.
41. He is known to the authorities as a high school activist who was arrested, interrogated with torture, and charged without appearance before a State Security Court. He understands the term of imprisonment imposed was 20 days but he was held for 3 years until an amnesty in July 1999.
42. After his imprisonment he was blacklisted by security authorities and unable to pursue further studies or perform even menial work. He was unable to obtain a passport for two years. He was sacked from his first job as a driver because the authorities told the employer about his imprisonment. He remained unemployed for five years.

43. He was persecuted by the security authorities. For another seven years he was denied civil and human rights. He was denied the right to education and work.
44. In 2006 he managed to “shake off this persecutory repression” and go to the USA for 12 months to study English. He has his first taste of freedom and restoration of his human dignity. With the situation in Bahrain relatively calm he returned to Bahrain in August 2007 and obtained a traineeship position in project management. After three months he was told his employers could not employ him because of his security imprisonment. In October 2008 he was out of work and was not permitted to enroll in a university degree. He was able to obtain a tourist visa.
45. He had kept aloof from demonstrations in late 2007 by the Shi’ite majority. In 2008 the security authorities began a crackdown. The authorities began invoking changes to the law to make it a criminal offence to do anything overseas that could be interpreted as bringing the country into disrepute.
46. After the applicant came to Australia he feared for his own safety and human dignity if he returned to Bahrain, because of his previous record and denial of his human rights such as right to work and education.
47. Their key submission is persecution based on religion (Shi’ite majority), membership of a particular social group (former imprisoned civil rights protestor who had been held in security imprisonment for three years and who has been and will continue to be deliberately denied the right of access to higher education and to work commensurate with his abilities and his sense of human dignity), and on the ground of imputed political opinion (a well-traveled Shi’ite whose international experiences will be deemed to have made him hostile to the ruling elite in the Sunni-dominated Kingdom of Bahrain)
48. The authorities regard young Bahrainis returning from overseas as suspect in engaging in anti-Kingdom utterances at meetings or worse, planning terrorist activities with overseas anti-kingdom elements. The applicant deeply fears being taken into custody, interrogated and tortured.
49. No reasonable person could discount the possibility that he could be targeted, or exclude the chance of this occurring as remote or insubstantial. He meets the *Chan* test.
50. Clearly there is serious harm as set out in the Migration Act. Also there is economic hardship and denial of access to basic human rights as set out in S 91 R.
51. The following cases were referred to the Tribunal: *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989)169 CLR 379 per Mason J, and *Win v MIMA* FCA 132 per Madgwick J.
52. The Department did not bother to interview the applicant.
53. The Department relied on out of date country information and omitted to refer to relevant human rights material.
54. Extracts of the Human Rights Watch 2009 World Report, news reports and reports on applicable Bahraini law were attached.

55. The Bahraini 1976 *Penal Code Article 134* prohibits citizens from making statements without approval about the kingdom. The 2006 *Protections Society from Terrorist Acts Act* is also used by the authorities.
56. A letter from the Bahrain Centre for Human Rights was provided. The letter said that the applicant was known to them as someone who collected signatures in the 1994 petition calling for nullification of state security law and court and the reinstatement of the 1973 constitution, and the return of the elected parliament dissolved in 1975. As a result he was arrested in March 1996, and released [in] July 1999. No charges were laid. He was tortured for more than 20 days. He was coerced into signing papers he did not see. His passport was released in 2001 and he was on a blacklist. Unemployed until 2004 he was employed in a low rank job then fired after the employers found out he was arrested. The treatment and imprisonment of the applicant drastically affected the health and morale of the applicant's parents. With the resurgence of escalating political protests in 2007 to 2009 and harsh responses from security authorities, reports from members of his family are that he has come to the attention of authorities again. Security authorities visited the family in the end of 2008. When they found out he has been overseas they wanted to find out where he has been and to whom he has spoken.
57. The Centre went on to say that they believed there was a high risk of his detention on arrival, interrogation, and serious threats to his liberty. They believe the security authorities will invoke the penal code, article 134 and the anti-terrorism law.

Applicant's supplementary statement to the Tribunal received [in] June 2009

58. The applicant said that he was very disappointed that his application had been refused by the Department without an interview.
59. He said that he spent three years in Bahraini prisons for "no good reason other than the Sunni ruling elite's suspicions about its Shi'ite citizens." He said that Australia and the USA had shown him how he, his family and friends had been repressed.
60. He said he would be detained on arrival and interrogated about what he had been doing in Australia. He said he had not intended to stay in a western country and would not attempt to do so were it not for his genuine fear of persecution.
61. He said he understood why his father was warning him not to return. He said he had many alerts about the dangers facing him from relatives and friends.
62. He said he comes from the village of [deleted: s431(2)] east of the capital city of Manama. He and his three brothers are unmarried and two of his three sisters are unmarried.
63. His father was a Shi'ite and therefore only able to work as a taxidriver. In high school the applicant became aware of their plight so actively helped the dissidents.
64. He said the new ruling King and Sunni elites maintained their repression through restrictive laws and the use of force, maintaining a tight control over all forms of civil liberties including freedom of the press and freedom of speech, assembly, association and some religious practices. The regime disallowed independence of the judiciary and continued to discriminate against Shi'ites, women and other groups. Corruption was endemic. The King is encouraging

50 000 Sunnis from Saudi Arabia to go to Bahrain and gain nationality in order to secure a Sunni majority.

65. The applicant said because he was a Shi'ite he was banned from working in the government sector and wealthy companies. He provided to the Tribunal five documents showing his attempts to get work after his release from prison. He was rejected four times. He worked for 12 months until the authorities told his employers about his imprisonment and he was fired. He finally studied and was given his taxi-drivers licence but was refused registration because of his imprisonment record. He went to the court but they said they could do nothing because his police record considers him a troublemaker and security risk.
66. He said he tried to complete secondary school but was rejected from the public school. His family could not afford private schools.
67. He said his mothers and sisters sold their jewellery and his father contributed his savings in order to support him financially to go to the USA. When he returned he got a traineeship position which was cancelled after the company was alerted by security operatives.
68. He said that inside prison he was surrounded by bad people. People were always screaming. After his release he could not sleep properly.
69. He said that during early interrogations the officers threatened to bring his sisters and mother to prison if he did not sign statements. They threatened further torture and rape. He signed without knowing what he signed.
70. He said that he is still traumatized and lives in fear. He has friends who died from cancer caused by the torture they endured.
71. He said he has spoken to human rights activists in Australia who have advised him to attend trauma treatments. He hopes to rebuild his life in Australia.

Translated email statements from applicant's father dated [in] June 2009

72. The applicant's father said that the Bahraini Security Forces have barbarically carried out raids without approval at his house three times, on [date deleted: s.431(2)] December 2008, [date deleted: s.431(2)] December 2008 and [date deleted: s.431(2)] March 2009. They were accompanied with officers and intelligence men wearing masks. They searched his home and asked about his son. They are collecting information about him as he advocates human rights and freedom of expression.
73. He said that under pressure he told them that his son was travelling so they would not know where he was and subject him to torture again. He says his son will be arrested at the airport if he returns

Hearing

74. The applicant appeared before the Tribunal [in] June 2009 to give evidence and present arguments. The Tribunal also received oral evidence from [Person A], a friend of the applicant. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

75. The applicant was represented in relation to the review by his registered migration agent who was present at the hearing.
76. The applicant said he comes from [town deleted: s431(2)], about 15 kilometres from the capital. His family still live there and he was living in the family home before he came to Australia.
77. The applicant was asked why and when he became involved in student politics He said he became involved in 1994 when he witnessed repression and unfairness in Bahrain, and saw there was no parliament, and the authorities implemented the State Security law and court. He said that he was one of those demanding the implementation of the 1973 constitution, which was just and fair.
78. He was asked whether he was involved with a political group and what it was called. He said that he was not, but was an activist with a human rights organisation, the Bahrain Human Rights Organisation. He was asked who its leader was. He said that it was Abdul Hadi El Khawaja.
79. He said that he collected signatures to be presented to the Bahraini government. Because he was young he was provided with the papers to be signed and then he went about collecting signatures.
80. He was asked to tell the Tribunal about how the 1994 petition began He said that it began with the persecution of the people In 1994, there was much unfairness and lack of job opportunity, and a lack of parliamentary life, and the authorities arrested activists. The petition was asking for the revival of parliament and to stop the state security law and court. He said the petition also asked for the reinstatement of the 1972 or 1973 constitution. He was asked if he knew how many signatures the petition began with. He said in his area there were 20 000 signatures
81. He was asked to tell the Tribunal about the 1973 constitution and why he and others wanted it reinstated. He said that the constitution was reflecting the numbers in parliament and the population in Bahrain. The majority of the population are Shi'ia. They wanted to reinstate the Constitution to have constitutional rights to demand their rights, which are simple. He said that when the emir got rid of the Constitution, Shi'ias could not even have the right to demand work. He was asked when it was that the assembly and constitution were dissolved. He said it was in 1975.
82. He was asked when clashes between authorities and petitioners began. He said that it was in 1995. He said that peaceful demonstrations occurred but the authorities were heavy handed, using teargas and assaulting protestors. Great numbers of detentions resulted. Anyone belonging to the Shi'ite faith could be bashed in the streets and detained. These practices continued until after he was detained.
83. He was asked what the name was of the most broadly based opposition grouping. He said that it was an independent movement for the opposition, there was opposition in the whole area but it was co-ordinated by Al-Jamri, a knowledgeable cleric to whom people listened. He said that he called for peace and he was one of the speakers of the Parliament when there was a Parliament.

84. He was asked whether anyone prominent was arrested in 1995 and who that was. He referred to Shiek Al-Jamri, Abdul Wahab Hussain and Sheik Ali Soulleiman.
85. He was asked how he went about collecting petitions. He said that he talked to people and explained to them the importance of the constitution and endeavoured to get as many signatures as possible. He said he went to mosques or anywhere there was a gathering or at people's houses.
86. He was asked what activities he was involved in besides the signing of petitions. He said that he was not involved in any other activities.
87. He said that his family was not involved in anti-government activities.
88. He was asked whether at the time he knew of the dangers of being involved in student protests. He said he did not, because the activities were peaceful, and he was involved in normal activities and did not think there was anything to fear.
89. He said that they stopped collecting signatures in 1995 because the situation was bad, and people were getting detained. He said when he got arrested he had not been involved in political activity for a while, but people who were detained were asked to give names, and he believes that under pressure, someone gave his name.
90. He was asked where he was when he was arrested. He said he was at home, at 2am, when the authorities arrived in 20 cars. He did not see them but was told later. He said these people took him away, after bashing him in front of his parents and siblings. He said the arresting authorities were masked. They took him to a prison called the Al Qalaa (the Castle) and they placed him under continuous interrogation. There were very painful bashings for about 20 days. He said there was continuous torture; he is not in a position to describe how callous it was. For example they took his clothes off, and they said they would bring in his mother or sister to rape. They wanted him to confess about people he knew in politics. He said that he was burnt with cigarettes on his hands, scars are now very visible on his hands. They put electricity wires under his nails and electrified him.
91. He said that he was arrested with others, but he was not in a position to see the others as he was blindfolded. He said he did not see anyone for 7 months because he was blindfolded and then isolated, he only heard their screams from the torture.
92. He was asked how long he was interrogated for. He said that after the threats and bashing for the twenty days he gave his signature on papers, but he did not know what was in the papers because he was blindfolded, and they were threatening to rape his siblings. After that he was put in a segregated cell for three months alone. After that he was transferred to another prison, where he stayed for the rest of the three years.
93. He said he was not officially charged.
94. He was asked whether he had a lawyer. He said he did but only by name as he was not able to visit him and there was no court case. He said that his parents did not know where he was for seven long months. They did not know if he was dead, or injured.
95. He was asked whether he received visitors while in prison after the seven months. He said he received visitors, 2 members at one time. The family was not able to do anything as he was not the only arrested person.

96. He was asked to tell the Tribunal about his release. He said that he was released in 1999 after the inauguration of the new leader after the Sheikh died and the son became the ruler. He released all the prisoners.
97. He was asked if he thought about leaving the country when he came out of prison. He said that he could not as his passport was confiscated. He had to sign new documents. They took his fingerprints. He was not able to work or leave the country or live a normal life.
98. He was asked whether there was any continued surveillance of him. He said that there was.
99. He was asked if he has ever been involved in any other anti-government activity since he was released. He said he did not as he was fearful as he did not want to subject his family to harassment. He said he joined peaceful demonstrations demanding fair opportunity in jobs and work. He said this is the natural thing to do. He said he was involved in these protests about seven months before coming to Australia. The Tribunal asked him if he was not fearful that he would be arrested again. He said that the fear is always there. But he was not living as a human being at that time and he had to take part in such demonstrations demanding his rights, as he had no rights to study as he had lost everything when he was arrested. He had nothing to lose. He was asked how often he was involved in these demonstrations and he said it was not many demonstrations, but he did get involved in demonstrations for employment and a better life. The Tribunal said that in one of his statements he talked about keeping a low profile, and asked him if participating in protests would not have drawn attention to himself again. He said that the simplest right is the right to work and he asked whether he should stay at home without demanding this rights.
100. He said his passport was returned in 2001 because he was persistent and went to the passports office continuously because he wanted his passport to find a job. He said he did get his passport returned as there was voting on for the National Convention. They gave the passport to him to vote even though it was nearly expired. Then he applied for a renewal.
101. He was asked why he did not apply for a protection visa when he was in the United States. He said that he was not thinking of applying for refugee status because his intention was to study and work to help his family, particularly as his mother sold his jewellery for him.
102. He was asked if he returned to Bahrain safely from the United States. He said that he did.
103. He was asked why he envisaged a problem returning from Australia to Bahrain if he was not arrested when he returned from the United States to Bahrain. He said that while he has been in Australia he received a notification from his father that the Ministry of the Interior visited their home twice, in masks, demanding to know where he was. This is why he is now fearful.
104. The Tribunal told the applicant it was important to understand why he thought the authorities would be interested in him after such a long time. He said that most of the ex-detainees have been arrested more than once and some are still under arrest now. His understanding is that they are intimidating new activists by arresting the old ones. The Tribunal asked if the ex-detainees were involved in politics now and he said that he did not know.
105. He was asked if he was freely able to obtain a passport in 2006. He said that he was not. He said that in 2006 he was given a passport but they did not give him work because his name was on a blacklist. The Tribunal asked why he thought the police had become interested in

him recently. He said that any ex-detainee, political activist or Shi'ite is in danger. He said his life is now in constant danger in Bahrain.

106. He was asked if he would be involved in politics when he returned. He said that he did not wish to go back as he is worried about his family. He has left his family and birthplace and is fearful for their safety.
107. He was asked about his statement that he would not have wanted to leave Bahrain were it not for the threats to his father. He said if it were not for the threats he would return to Bahrain. He said that he would return because he would want to be with his family and because he loves his country.
108. He was asked to describe what happened when the authorities visited his father. He said that according to his father the police are asking for him constantly and vehemently. His father told him that his son was overseas but he said he did not know where he was. He said that the police had gone to his father's house twice. The Tribunal said that his father's statement was to the effect that there were three visits. The applicant said he may be confused and did not read the papers carefully.
109. He was asked to describe what other "alerts he had from relatives and friends". He said when he speaks to friends or husbands of his sisters they tell him of the raids to his house and express their opinion that he would be arrested if he returned.
110. He was referred to his statement in which he discussed the discrimination against Shi'ites. He was asked in what way some of their religious practices were controlled. He said that the authorities closed a mosque because they think the sheikh there is opposing the government.
111. He was asked if they could attend mosque and worship freely. He said they could but their religious practice and belief is different than the Sunnis so they could not really perform their natural daily life.
112. He was asked why he was rejected from his public school. He said that after being released from gaol he tried to continue studies but the government did not allow him to go back because he was a political prisoner. He was asked how old he was when he was taken into prison and he said he was 17.
113. He was asked what he meant by not being able to study in Bahrain at university. He said he applied and was refused.
114. He was asked what it is he fears most. He said that he feared being subject to repetition of the torture and interrogation to which he was subject previously. He said that anyone arrested there is never normal when they are released. More than one person has died in custody. The torture is shocking, electricity and "ironing" the body.
115. He was asked how his situation has affected his family. He said that they have been affected. His mother had been in good health, now she has high blood pressure, diabetes and poor vision from crying.
116. He was asked if he wished to say anything further and he said he did not.

Evidence of [Person A]

117. The witness said he knew the applicant from Bahrain when the applicant was released from prison. The applicant lived near his grandparent's home.
118. He said he is a student in Australia.
119. The witness said that he knew that the applicant had been in prison for three years. He said that he did not know and did not ask why he had been in prison.
120. The witness said that he had heard people in Bahrain are subjected to horrible torture and bashing and are made to go naked in winter. He had heard that they threatened to rape the applicant and his siblings.
121. He said that 40 martyrs were killed from torture in the 1990s.
122. The witness said the applicant's father had been contacted and the applicant knew he would be subject to danger if he returned.
123. The witness said that the majority of people in Bahrain are from Shi'ite faith. He said that the Sunnis prevent the Shi'ites from working in the military, education or health sectors. He said the government discriminates against religion and it has nothing to do with citizenship. Any Shi'ite working in Bahrain gets less than 500 a month. He said that anyone who takes the path of demanding human rights or at least freedom of expression is subject to persecution by the authorities and constant surveillance. He said they target activists in the streets even in plain clothes, to teach them not to demand rights. He said that when they try to organise a peaceful demonstration they get authorisation from the government, but then the authorities try to deter the demonstration before it begins so their voices cannot be heard. The danger is for political activists, and one released activist lost a testicle.

Advisor

124. The adviser said loss of work and education is persecution.
125. He said the applicant is very sincere and honest and has a deep, sincere fear of returning.

Country information

The 1994 petition

126. Country information indicates that a petition was circulated in 1994 calling for the restoration of the National Assembly and the involvement of women in the democratic process. The petition was critical of the economic situation at that time and of laws which restricted the freedom of citizens and contradicted the constitution enacted in the absence of parliament. Sources reported that from late 1994 there were widespread protests and clashes between the security forces and demonstrators which appear to have peaked in 1996.
127. According to the International Crisis Group (ICG) "social and sectarian divides clearly overlap" in Bahrain, particularly for Shiites who comprise "an estimated 70 percent of the native population" (International Crisis Group 2005, *Bahrain's Sectarian Challenge*, 6 May, Middle East Report No. 40, p.1).

The 2005 ICG report provides the following information on the political situation leading up to events in the 1990s in Bahrain:

Even prior to independence, and with British support, the ruling Al-Khalifa family played a dominant economic and political role. Between 1961 and 1999, local politics could roughly be summed up as a condominium between the Amir, Sheikh 'Isa bin Salman, and his brother, Sheikh Khalifa bin Salman, who is still prime minister. Facing an opposition displaying sharp class and ideological features in the late 1960s and early 1970s, the Al-Khalifa sought to buttress their legitimacy by calling for creation of an assembly that would be tasked with drawing up a constitution pursuant to which a partially elected national assembly with limited legislative powers would come into being. The constitution was promulgated in June 1973, and national elections were held in early December.

The experiment was short-lived but political activism continued across a broad front, progressive and conservative alike. Labour leaders organised numerous industrial strikes. In response, the ruling family issued a wide-ranging State Security Measures Law in 1975 granting the government summary powers to arrest and hold without trial persons suspected of acting or expressing views "which are of a nature considered to be in violation of the internal or external security of the country". The assembly's elected members, divided on many other issues, were united in opposition to these steps, insisting they ought to have been submitted for their approval. In August 1975, the Amir dissolved the assembly and, circumventing the Constitution, refused to call for new elections within two months. This remains a defining moment in the relations between regime and opposition: in the view of many, the government has been operating illegally since October 1975. In the 1990s dissatisfaction with the political system and lingering frustrations over social inequalities spilled over into action as state security forces and activists engaged in a half decade of violent conflict (International Crisis Group 2005, *Bahrain's Sectarian Challenge*, 6 May, Middle East Report No. 40, pp.1-2).

128. According to Human Rights Watch, the 1994 petition was a second "popular" version of a more formal one drawn up in October 1992 and presented to Amir Isa bin Salman Al Khalifa on 15 November 1992 by a six-member delegation. The 1992 petition was said to have been "circulated privately and soon secured over 280 signatures of merchants, lawyers, writers, and other professionals, including several former elected members of parliament" It requested that the amir issue orders for the election of the National Assembly. The 1994 petition "retained the focus of the first" petition but was more critical of the economic crisis and laws enacted in the absence of parliament. It also called for the involvement of women in the democratic process (Human Rights Watch 1997, *Bahrain – Routine Abuse, Routine Denial*, June, pp.13,24-25,29-30 <http://www.hrw.org/reports/1997/bahrain/> – Accessed 28 November 2007).
129. The 1994 petition includes the following:

As your highness is aware, the Consultative Council which you had appointed by an Amiri decree does not fill the existing vacuum due to the closing down of the most important and only legislative institution. The reality we now face dictates that we will fail our duty if we do not speak-out frankly to you. Your wise leadership witnesses the incorrect circumstances that our country is passing through amid the changing regional and international environment while the constitutional institution is absent. Had the banning of the National assembly been lifted, it would have enabled overcoming the negative accumulations which hinder the progress of our country. We are facing crises with dwindling opportunities and exits, the ever-worsening unemployment situation, the mounting inflation, the losses to the business sector,

the problems generated by the nationality (citizenship) decrees and the prevention of many of our children from returning to their homeland. In addition, there are the laws which were enacted during the absence of the parliament which restrict the freedom of citizens and contradict the Constitution. This was accompanied by lack of freedom of expression and opinion and the total subordination of the press to the executive power. These problems, your Highness, have forced us as citizens to demand the restoration of the National Assembly, and the involvement of women in the democratic process. This could be achieved by free elections, if you decide not to recall the dissolved parliament to convene in accordance with article 65 of the Constitution...('Translation of the Historic Petition being circulated in Bahrain since October 1994' 2006, Bahrain Freedom Movement website, 8 November <http://www.vob.org/index.php?show=news&action=article&id=14&lang=english> – Accessed 22 May 2009).

130. It is of interest that the US State Department in its human rights report for 1995 stated that a Bahrain citizen may submit a petition to influence government decisions:

Citizens do not have the right or ability peacefully to change their government or their political system, and political activity is strictly controlled by the Government. Since the dissolution of the National Assembly in 1975, there have been no formal democratic political institutions. The Government permits neither political parties nor opposition organizations. The Prime Minister, Shaykh Khalifa Bin Sulman Al-Khalifa, makes all appointments to the Cabinet. All other government positions are filled by the relevant ministries. About one-third of the cabinet ministers are Shi'a Muslim, although they do not hold security – related offices. The ordinary citizen may attempt to influence government decisions through submission of personal written petitions and informal contact with senior officials, including appeals to the Amir, the Prime Minister, and other officials at their regularly scheduled public audiences, called majlises (US Department of State 1996, 'Section 3: Respect for Political Rights: The Right of Citizens to Change Their Government' in *Country Reports on Human Rights for 1995 – Bahrain*, March)

Government response to the petition

131. Sources report that widespread protests and clashes between security forces and demonstrators began from late 1994. The demonstrators sought the reinstatement of the National Assembly, the restoration of the country's 1973 constitution and the release of political prisoners. The authorities reportedly responded with mass arrests of protesters and other suspected government opponents.

132. According the US State Department's human rights report for the year 1995:

A petition, written in 1994, calling on the Amir to reinstate the former National Assembly, or to allow elections for a new one, continued to circulate in 1995. The petition reportedly has more than 20,000 signatures. Despite opposition charges to the contrary, there is no evidence that the Government has arrested anyone for signing or circulating the petition (US Department of State 1996, 'Section 3: Respect for Political Rights: The Right of Citizens to Change Their Government' in *Country Reports on Human Rights for 1995 – Bahrain*, March).

133. Nonetheless, the same US State Department report mentioned that Abdul Amir Al-Jamri, one of the original signers of the 1994 petition, had been arrested and that other individuals had lost their jobs:

During the year, one of the original 14 signers, Sa'id Abdulla Asbool, lost his job at the Ministry of Works, Power, and Water, reportedly for circulating the petition at the Ministry during work hours. There are reports that other employees have lost their government jobs for participating in the petition drive. Ahmed Shamlan, a local newspaper columnist, was reportedly suspended from his job for signing the petition, and a doctor at Salmaniyah Hospital was stripped of his department chairmanship, but retained his job. Other signers, like Munira Fakhro, a member of the University of Bahrain faculty, were dismissed from their positions. Abdul Amir Al-Jamri, a prominent Shi'a cleric, longtime opposition activist, and one of the petition's original signers, was placed under house arrest on April 1, where he remained until his release on September 25. Al-Jamri is accused of committing a wide variety of security-related crimes (US Department of State 1996, 'Section 3: Respect for Political Rights: The Right of Citizens to Change Their Government' in *Country Reports on Human Rights for 1995 – Bahrain*, March).

134. In 2001 *The Economist* reported that:

...In 1994, some 25,000 Bahrainis signed a petition demanding reforms. In the following year, 38 people died in violent clashes with the police, and up to 15,000 were arrested. Unrest had simmered ever since ('Your kingdom for our rights' 2001, *The Economist*, 22 February http://www.economist.com/world/mideast-africa/displaystory.cfm?story_id=E1_VTTSRD&source=login_payBarrier – Accessed 22 May 2009).

135. Human Rights Watch discussed the aftermath of the 1994 protests as follows:

December 1994 saw the outbreak of protracted social unrest that, with some lapses, is now in its third year. In the months following December 1994 there were continued street protests, further arrests, and several government announcements of prisoner releases. In late February 1995, the prime minister stated that 300 persons remained in detention in connection with the unrest, while Reuters cited local resident estimates of around 2,000. In March and April the number of incidents and arrests climbed again, and there were additional fatalities. While some of those arrested were picked up for specific offenses involving violence or vandalism, and some for nonviolent activities such as distributing leaflets, writing graffiti or publicly urging the government to negotiate with the opposition, many arrests were indiscriminate and many of those detained were never formally charged.

Among those held without charges were the most politically prominent detainees, such as Shaikh Abd al-Amir al-Jamri, an elected member of the dissolved National Assembly and the informal head of the most broadly based opposition grouping, the Bahrain Islamic Freedom Movement. He was detained on April 1, 1995, along with several other Shi'a community leaders, including Abd al-Wahab Hussain, Hasan Mushaima, and Shaikh Khalil Sultan. "We were not surprised when they took us," Shaikh Khalil told Human Rights Watch. "We knew they were recording our sermons." At no point in the ensuing five months of captivity were any of the detained community leaders charged with a crime.

(Human Rights Watch 1997, *Bahrain – Routine Abuse, Routine Denial*, June, pp.33-35 <http://www.hrw.org/reports/1997/bahrain/> – Accessed 28 November 2007).

136. Another article on the 1994 petition and the ensuing events is by Munira Ahmed Fakhro, who appears to be one of the original signatories to the 1994 petition. Fakhro writes:

"In June 1994, unemployed workers demonstrated outside the Ministry of Labor and Social Affairs, but they were dispersed and told that the government would come up with a solution

to their problem within two months. However, nothing came of this. Demonstrations resumed during the months of September and October of that year. In October 1994, a group of prominent citizens and religious leaders from both sects presented a petition to the amir, citing the employment situation, slackness in business, forced exile, restrictions on freedom of expression and subordination of the press to the government as examples of some of the problems Bahrain was facing. Nearly 23,000 citizens signed this petition calling for the restoration of parliament. The leading signers of the petition asked for permission to meet the amir to present it but their request was turned down.

Following the arrest of three of the most prominent religious Shi'i leaders (Shaikh Ali Salman and two others), there were demonstrations in many Shi'i villages in December. A large number of arrests resulted, and that in turn led to more disturbances. The outcome was more than 30 killed, a few hundred injured and 3,000 to 5,000 people arrested, among them nearly 30 women and 50 children aged 12 to 15 years. All of those arrested were Shi'i. In addition, many schools and electric power substations were set on fire and destroyed. Since then, demonstrations and arrests have continued intermittently.

When we look at this situation, it is important to distinguish two different events without confusing them. The first was the petition that was signed by 23,000 citizens (men and women from both sects), the majority of which (nearly 70 percent) were Shi'i, and more than 20 percent women. This petition called for specific reforms, such as the return to democracy, an end to corruption, a reduction of unemployment and limitation of foreign labor. The second event was the series of street demonstrations and violence – in which only the Shi'i participated – that erupted in the capital and the villages after the arrest of the Shi'i cleric Shaikh Ali Salman.

It has been observed that the authorities and their media tried to confuse and combine the two events (the petition and the street violence). They were in fact separate, though parallel, matters, the main issue being a move toward peaceful political and civic reforms in which many leading members from both sects participated. The authorities played their part intelligently by dividing the movement and giving it a sectarian complexion, thereby concentrating on the Shi'i element and ignoring the Sunni participation. Not one Sunni was detained during the first year of the uprising. The first Shi'i leader to be detained (Ali Salman) was allegedly the one who played a major role in writing the petition and calling for a large number of signatories through his preaching in the mosques. He was also accused of instigating the villagers in an incident that sparked the whole uprising, when some marathon runners were stoned by villagers objecting to what they saw as the improper and indecent exposure of men and women wearing running shorts.

The authorities persisted in their accusations that there exists a Shi'i-inspired plot to overthrow the regime, and insisted that there is a Hezbollah underground organization in Bahrain. They also accused Iran of involvement in the plot by supplying the movement with arms and money. So far they have not produced the evidence to support the case.

The crux of the problem was the petition calling for reforms. The authorities had no wish to discuss the matter with anyone, especially where democracy was concerned. Admittedly, they played their cards cleverly by neutralizing the Sunni position and causing alarm among the other regimes in the region by indicating that the fire might spread in their direction. Furthermore, they aroused the U.S. suspicion that the Iranian influence might extend into the area should the requests in the petition be granted". (Fakhro, Munira A., 'The Uprising in Bahrain: An Assessment' in Sick, Gary G. & Potter, Lawrence G. (eds) 1997, *The Persian Gulf at the Millennium: Essays in Politics, Economy, Security, and Religion*, St. Martin's Press, New York, pp.181-182,342).

137. The ICG states that “clashes and unrest began in late 1994 in Shiite villages outside the capital Manama”. The government’s response was said to have been “brutal”, detaining demonstrators and exiling opposition leaders. The ICG reported that there was escalating violence and repression over the next several years. Although the violence eventually subsided, it continued at a low level until 1999. Clashes again escalated between the government and opposition in 2004 (International Crisis Group 2005, *Bahrain’s Sectarian Challenge*, 6 May, Middle East Report No. 40, pp.2-3).

138. The ICG continues in its 2005 report:

What dialogue existed between opposition and regime was fruitless, as the government detained without charge or trial, and often in solitary confinement, key opposition interlocutors, such as Sheikh Abd al-Amir al-Jamri and Abd al-Wahhab Hussein. Those who signed reform petitions, whether Shiite or Sunni, faced official retribution ranging from harassment and employment blacklisting to detention and ill treatment. Considerable ill-will persists today in many Bahraini communities, particularly in the Shiite areas, where arrest, harassment and torture were commonplace. There is little satisfaction that past grievances have been resolved (International Crisis Group 2005, *Bahrain’s Sectarian Challenge*, 6 May, Middle East Report No. 40, p.3).

Information about the arrest of political activists around 1996

139. Information received from the Bahrain Center for Human Rights (BCHR) advises that 1996 “was the peak year of the wide unrest in Bahrain during 1994-1997”(Al-Khawaja, Abdulhadi, President, Bahrain Center for Human Rights 2007, Email to RRT Research & Information: ‘RE: Request for information from the Refugee Review Tribunal, Sydney, Australia’, 2 December).

140. The *Amnesty International Report 1997* states that protests and unrest which began in 1994 continued into 1996. It notes that many of the arrests were carried out in the Shi’a districts of Bani Jamra, Sitra, Jidd Hafs and al-Sanabes. Many demonstrations were peaceful, however, some escalated into clashes with police and security forces. (Amnesty International 1997, *Amnesty International Report 1997 – Bahrain*, London, pp.83-86).

141. Human Rights Watch, in its *World Report 1997*, covering the events of 1996, also reported that widespread street demonstrations and clashes with security forces resumed at the end of 1995 and the beginning of 1996. Virtually all those people detained were Shi’a. Between March and October 1996, 156 people were reportedly sentenced to prison by the State Security Court. It was estimated that, at any one time in 1996, between 1,000 and 2,000 people were held without charge (Human Rights Watch 1996, *World Report 1997 – Bahrain (Events of 1996)*, December http://www.hrw.org/reports/1997/WR97/ME-02.htm#P139_53612 – Accessed 28 November 2007).

142. Some arrests reported in 1996 were:

- January 1996: Shaikh Abd al-Amir al-Jamri, the informal head of the main opposition grouping, the Bahrain Islamic Freedom Movement, and seven other community leaders were arrested (Human Rights Watch 1996, *World Report 1997 – Bahrain (Events of 1996)*, December http://www.hrw.org/reports/1997/WR97/ME-02.htm#P139_53612 – Accessed 28 November 2007; Human Rights Watch 1997,

Bahrain – Routine Abuse, Routine Denial, June, p.35/footnote 66
<http://www.hrw.org/reports/1997/bahrain/> – Accessed 28 November 2007)

- February 1996: Ahmad al-Shamlan, a lawyer and long-time leftist critic of the government, was one of few Sunni opposition activists to be detained (Human Rights Watch 1996, *World Report 1997 – Bahrain (Events of 1996)*, December http://www.hrw.org/reports/1997/WR97/ME-02.htm#P139_53612 – Accessed 28 November 2007 – Attachment 14; Amnesty International 1997, *Amnesty International Report 1997 – Bahrain*, London, p.84).
- March 1996: 10 women were reportedly arrested, “apparently because of their relationship to male political prisoners and their involvement in public protests” It was also reported that over 25 women, including high school students, were arrested in connection with protests; all 25 women were later released without charge or on bail (Amnesty International 1997, *Amnesty International Report 1997 – Bahrain*, London, pp.84-85).

143. In September 1996 Dr Andrew Rathmell wrote in the *Jane’s Intelligence Review* on the prosecution and conviction of dissidents:

Since March 1996 Bahrain’s State Security Court has enthusiastically prosecuted and convicted dissidents accused of a range of subversive activities. Summary sentences have ranged from three years for defendants convicted of printing and circulating illegal leaflets to the death penalty for three men convicted of an arson attack in which seven foreign workers perished.

The transfer of the prosecution of 85 offences away from the civil courts to the State Security Court was an indication of the increasing determination of the Bahraini authorities to stamp out persistent civil unrest by force. Since unrest broke out in late 1994 the authorities have intensified policing and rounded up hundreds of suspects in an attempt to quell the disturbances. Until this spring, however, they tried to downplay the importance of the troubles, imposing a virtual news blackout both at home and abroad.

Although the main strand of policy was repression, an attempt was made not to escalate the situation. A death sentence was only imposed reluctantly, on the insistence of a murdered policeman’s family, while limited attempts were made to cajole opposition leaders into restraining their followers.

The application of the State Security Law indicated, however, that advocates of a security-led approach had won the argument within the government...(Rathmell, Andrew 1996, ‘Middle East, Manama Cracks Down’, *Jane’s Intelligence Review*, 1 September).

144. According to Human Rights Watch the government expanded the security court in early 1996 to cope with an increase in the number of arrests. During the next ten months over 180 people were convicted under the state security process, compared to one estimate of less than 50 in 1995. This period also reportedly saw the increased detention of women and children (Human Rights Watch 1997, *Bahrain – Routine Abuse, Routine Denial*, June, p.38 <http://www.hrw.org/reports/1997/bahrain/> – Accessed 28 November 2007).

145. Also, in the Amnesty International Report 1997 – Bahrain it was reported that:

By the end of the year [1996], over a thousand political detainees were believed to remain in prison. Most were administratively detained under a law which permits the Minister of the Interior to detain individuals for renewable periods of up to three years. The law allows for a petition challenging the detention every six months, but many people were held without official orders and were detained for several months without judicial review (Amnesty International 1997, *Amnesty International Report 1997 – Bahrain*, London, p.84).

Release of political prisoners and detainees in 1999

146. Sources report that under the 1974 State Security Law people may have been detained without charge or trial for up to three years. The law was abolished in February 2001 (Amnesty International 2001, *Bahrain: Amnesty International hails recent positive human rights developments*, 20 February, AI Index MDE 11/003/2001, News Service Nr. 31 <http://www.amnesty.org/en/library/asset/MDE11/003/2001/en/8eea1093-dc33-11dd-9f41-2fdde0484b9c/mde110032001en.html> – Accessed 22 May 2009; Sakr, Naomi 2001, ‘Reflections on the Manama Spring: Research Questions Arising from the Promise of Political Liberalization in Bahrain’, *British Journal of Middle Eastern Studies*, Vol. 28, No.2, p.230; ‘Bahrain lifts key security law’ 2001, *BBC News*, 18 February http://news.bbc.co.uk/2/hi/middle_east/1177690.stm – Accessed 26 May 2009).

147. On the release of prisoners in 1999 Amnesty International reported:

The Amir of Bahrain, Shaikh Hamad bin ‘Issa Al Khalifa, acceded to power in March 1999 following the death of his father. Since then the Government of Bahrain has introduced a number of positive changes in the promotion and protection of human rights, including the release of hundreds of political prisoners. The Amir has publicly stated his commitment to the respect of human rights. These and other positive human rights development are highlighted in Section 1 of this report, and Amnesty International has publicly welcomed them. However, the organization remains concerned that human rights violations continue to take place and that some of the legislation, in force in the country since 1974, which in the past was a major contributing factor to the perpetration of gross human rights violations, has not been amended and continues to be used. In addition, the Bahraini Government continues to use the policy of forcible exile as a punitive measure against Bahraini dissidents and their families...

Since his accession to power in March 1999 the Amir, Shaikh Hamad bin ‘Issa Al Khalifa, has ordered the release of more than 800 political prisoners and detainees, including prisoners of conscience. The first amnesty was issued on 6 June 1999 when the Amir ordered the release of 320 people held without charge or trial in connection with anti-government protests and 41 political prisoners serving prison terms. On 17 November 1999 he ordered the release of another 200 political prisoners and detainees. On the occasion of Bahrain’s national day, 16 December, 195 political detainees and prisoners were released following a pardon from the Amir. Another 37 prisoners and detainees were released during the second half of March 2000 following an amnesty by the Amir to mark the religious Islamic holiday of ‘Id al-Adhha (feast of the sacrifice). To mark the Islamic new year on 5 April 2000 the Amir also ordered the release of 43 detainees held for involvement in anti-government protests. **Most of**

those released were held without charge or trial, some for up to five years Others had already served their sentences and were held beyond the expiry of their sentences. These releases, however, were conditional: prisoners and detainees had first to sign statements undertaking not to be involved in any anti-government activities. Following their release they were reportedly pressurized to give interviews to Bahraini newspapers in which they deplored their past actions and promised good behaviour in the future (Amnesty International 2000, *Bahrain: Human rights developments and Amnesty International's continuing concerns*, 21 November).

148. Human Rights Watch also commented on the prisoner release:

On June 6 the amir announced the phased release of three hundred and twenty untried detainees and forty-one convicted prisoners, and the pardon of twelve individuals living in exile. Days later he also announced that those released would receive assistance finding jobs; previous security detainees had reported that Ministry of Interior policies made it nearly impossible to find employment in public or private sectors after their release. As of this writing the government had not responded to requests by Human Rights Watch and other international human rights organizations for the names of those released, or for information about their convictions, making it impossible to evaluate the true extent and terms of the pardon. **Bahraini press accounts and reports by opposition groups suggested that many if not most of those amnestied were youths who had been held for months or years without trial, including Ahmed 'Ali Ahmad Hussain, an intermediate school student held for one year and four months, and Jaffar 'Ali Hassan, a seventeen-year-old who had been held for two years and nine months** (Human Rights Watch 1999, *World Report 2000 – Bahrain*, December).

149. Of some interest on imprisonment without trial is a February 2000 *BBC News* article which reported the case of Abdul Wahab Hussain, a Bahraini dissident, who was being brought to trial in 2000 after being arrested in 1996 “after signing a petition calling for the restoration of democracy” (Gardner, Frank 2000, ‘Bahraini dissident goes on trial’, *BBC News*, 29 February http://news.bbc.co.uk/2/hi/middle_east/660773.stm – Accessed 22 May).

Unrest into the 2000s

150. Reported clashes and incidents into the 2000s include:

- On 15 December 2008 the authorities staged a number of arrests to later announce uncovering an alleged “Terror Plot”. On 28 December 2008 state-controlled television showed a programme in which the detainees “confessed” to violence at a Haq rally before national holidays on 16 and 17 December. The next day daily newspapers reportedly published these confessions, including names and pictures of 13 of the youths shown in the television broadcast. Human Rights Watch also reported that 13 were believed to be abroad and were tried in absentia (World Organisation Against Torture 2009, ‘Bahrain Judicial harassment and slander campaign orchestrated against several human rights defenders’, 24 February <http://www.unhcr.org/refworld/docid/49acf9183.html> – Accessed 4 March 2009 ; Human Rights Watch 2009, ‘Charges Against 35 Political Opponents Also Marred by Lack of Evidence, Overbroad Laws, Trials in Absentia’, 23 March <http://www.hrw.org/en/news/2009/03/23/bahrain-coerced-testimony-taints-trial> – Accessed 26 March 2009).

- 2007: Demonstrations were carried out in 2007, including some timed to coincide with the Formula One Grand Prix in April (Law, Bill 2007, 'Riots reinforce Bahrain rulers' fears', *Sunday Telegraph*, 23 July <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/07/22/wbahrain122.xml> – Accessed 28 November 2007; 'Authorities used excessive force to prevent a rights march called upon by activists' 2007, Bahrain Center for Human Rights website, 15 April, source: Committee of Solidarity with Activists and Detainees of Conscience in Bahrain, 14 April <http://www.bahrainrights.org/en/node/1171> – Accessed 23 November 2007; 'Bahraini police, protesters clash' 2007, Bahrain Center for Human Rights website, 15 April, source: SuperSport Zone website, 14 April <http://www.bahrainrights.org/en/node/1172> – Accessed 23 November 2007).
- 2004-2005: Clashes between the government and its critics rose in 2004. The opposition was reportedly becoming more assertive, including writing petitions, holding conferences and organising public demonstrations. In March 2005, a week before Bahrain hosted the Formula One Grand Prix a "massive demonstration" was carried out by the main Shiite political association, al-Wifaq (International Crisis Group 2005, *Bahrain's Sectarian Challenge*, 6 May, Middle East Report No. 40, pp.3-5; Immigration and Refugee Board of Canada 2005, *BHR100629.E – Bahrain: Demonstrations held in Manama on 29 and 30 October 2004; numbers and treatment of those arrested and detained; whether those detained have been released; any court or legal action taken against those who participated in these demonstrations or whether they currently face any related charges (September 2004 – October 2005)*, 31 October).

Human rights situation in Bahrain

151. The following information is taken from the US State Reports **2008 Country Reports on Human Rights Practices**

February 25, 2009

Bahrain is a monarchy with a population of approximately 1,050,000, including approximately 530,000 who are citizens. King Hamad Bin Isa Al-Khalifa is the head of state and all branches of government. The king appoints a cabinet of ministers; half are members of the minority Sunni Al-Khalifa ruling family. The 2002 constitution reinstated a legislative body with one elected chamber, the Council of Deputies, and one appointed chamber, the Shura Council. All political societies participated in the 2006 parliamentary and municipal elections. Trained local observers did not report significant problems during the elections, although allegations persisted that the government manipulated general poll center vote counts in some cases and gerrymandered political districts. Civilian authorities generally maintained effective control of the security forces.

Citizens did not have the right to change their government. The government restricted civil liberties, including freedoms of press, speech, assembly, association, and some religious practices. Domestic violence against women and children persisted, as did discrimination on the basis of gender, religion, nationality, and sect, especially against the Shia majority population. Trafficking in persons and restrictions on the rights of expatriate workers remained problems...

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed politically motivated killings during the year; however, in December 2007 Ali Jasem died after participating in a protest where Shia activists clashed with security forces. The official autopsy reported he died of "acute cardiovascular and respiratory collapse" after running more than two miles, but local human rights observers alleged his death was linked to inhaling tear gas used to disperse demonstrators.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices; however, there were allegations during the year that security forces employed them.

On several occasions during the year, police detained dozens of young men in connection with small but frequent skirmishes between police and youths throwing rocks and Molotov cocktails. These youths routinely alleged that while in custody, security forces beat them. Security forces denied the accusations, and some opposition political activists expressed doubt about some of the allegations.

Following December 2007 protests, security forces arrested and detained dozens of protestors in the Adliya jail. Some detainees reported that judicial interrogators beat and electrocuted them in prison. One detainee, Maytham Badr al-Shaykh, alleged that interrogators sexually assaulted and electrocuted him. Officials denied the allegations of abuse. On April 6 and 9, a court-appointed medical team examined the detainees, and on April 10, the team testified that they could neither prove nor disprove the defendants' accusations of abuse. The government denied the allegations, and on July 13, the high criminal court sentenced 11 of the 15 defendants to between one and seven years' imprisonment. The 11 lost their appeal on December 28.....

Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention, and the government generally observed these prohibitions, although there were some allegations to the contrary.

Role of the Police and Security Apparatus

The Ministry of the Interior (MOI) is responsible for public security. It controls the Public Security Force and the extensive security service, which are responsible for maintaining internal order. The Bahrain Defense Force (BDF) is responsible for defending against external threats and also monitors internal security. The security forces were generally effective in maintaining internal order.

A widespread lack of transparency made corruption in the security services difficult to assess. The press reported that in a number of cases, authorities jailed and/or fined law enforcement officials for misconduct, most often for accepting bribes.

On November 22, the MOI announced that it disciplined 23 police officers during the year for committing human rights abuses. They received prison time and/or fines. The MOI maintained a hot line for citizens to report police abuses; however, many in the Shia community believed that the MOI condoned police activities and therefore did not report allegations of abuse. In practice the MOI responded to allegations of abuse and public complaints by establishing ad hoc investigation committees. These committees did not issue public reports of their findings...

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Societal Abuses and Discrimination

Government and societal discrimination against the majority Shia population remained a problem. Sunnis received preference for employment in sensitive government positions and in the managerial ranks of the civil service, and the defense and internal security forces were predominantly Sunni. Unlike in previous years, there were no reports of religious discrimination in university faculty employment. Although Shia citizens held posts in the security forces, with few exceptions positions were not high ranking. During the year the Ministry of Defense did not recruit Shia for military service; however, the MOI made increasing efforts to recruit Shia into unarmed security agencies such as traffic and community police. In the private sector, Shia tended to work in lower-paid, less-skilled jobs. Educational, social, and municipal services in most Shia neighborhoods were inferior to those found in Sunni communities.

152. The following information was taken from the 2009 Human Rights Watch Report (www.hrw.org/en/node/72917, accessed 24 June 2009):

“Human rights conditions in Bahrain deteriorated in 2008. Despite the important reforms that the king, Shaikh Hamad bin `Isa al-Khalifa, adopted in 2001-02, the government has done little to institutionalize human rights protections in law. The government continues to subject freedom of expression, assembly, and association to arbitrary restrictions. People detained after demonstrators and security forces clashed in Manama in December 2007 alleged they were tortured.

Opposition political societies that boycotted the first National Assembly elections in 2002 participated in 2006 elections, but some groups have since boycotted the Assembly, protesting what they regard as the absence of real legislative authority for the elected representatives...

Freedom of Expression and Information

Authorities continue to use the press law (Law 47/2002) to restrict coverage of controversial matters, including official corruption. ..

In July the independent Bahrain Center for Human Rights (BCHR) reported that six journalists from publications affiliated with opposition political movements had been detained briefly and faced charges of inciting sectarian strife.

The country's sole residential internet service provider, Batelco, is government-owned. The BCHR in October estimated that the authorities were blocking at least 22 discussion forums and other websites, including its own.

Freedom of Assembly

Law 32 of 2006 requires the organizers of any public meeting to notify the head of Public Security at least three days in advance, and authorizes that official to determine whether a meeting warrants police presence on the basis of "its subject ... or any other circumstance." The law stipulates that meeting organizers are responsible for "forbidding any speech or discussion infringing on public order or morals," but leaves "public order or morals" undefined.

In December 2007 security forces and protesters clashed in and around Manama following the death of a protester in an earlier confrontation with security forces. Several demonstrators affiliated with opposition political movements subsequently faced charges, including those of illegal assembly, attacking security forces, and arson relating to the torching of a police vehicle during the clashes. Relatives of the detainees and several men detained briefly in connection with the clashes told Human Rights Watch that interrogators had tortured detainees and sexually assaulted at least one. Several detainees said interrogators abused them to elicit confessions. A court-ordered medical inquiry in April 2008 concluded that the men may have had injuries consistent with the abuses they described, but that delayed medical examinations made it impossible to verify claims of torture. In July Bahrain's High Criminal Court sentenced 11 of the detainees to jail terms ranging from one to seven years. Several of those convicted were subsequently pardoned; five were appealing their sentences as of November 2008.

Impunity

Decree 56/2002, which confers immunity from investigation or prosecution on government officials alleged to be responsible for torture and other serious human rights abuses committed prior to 2001, remains on the books. Despite the efforts of local human rights groups to establish a means for addressing such violations, the government insists that the matter is closed. In its submission to the United Nations Human Rights Council's Universal Periodic Review (UPR) mechanism in April 2008, Bahrain stated "there are no cases of torture in the kingdom."

Freedom of Association and Civil Society

The government continues to deny legal status to the Bahrain Center for Human Rights, which it ordered to be dissolved in 2004 after the BCHR's president publicly criticized the prime minister. Several other groups, including the National Committee for the Unemployed and the Bahrain Youth Human Rights Society, attempted in 2005 to register with the Ministry of Social Development, as required by law, but at this writing had received no response to their applications.

In 2007 the Ministry of Social Development drafted new legislation on civil society organizations, but at this writing the ministry had not submitted the draft to the parliament. The draft law contains some improvements over the existing Law 21/1989, but includes numerous provisions incompatible with international standards and best practices regarding freedom of association. For example, a version of the draft law circulated in November 2007 authorizes the Ministry of Social Development to close any organization for up to 60 days without a court order if it deems the organization to have violated any Bahraini law. It also appears to leave open the possibility of criminal penalties by stipulating that all Bahraini law applies to violations of the associations law...

Counterterrorism Measures

In August 2006 the king signed into law the "Protecting Society from Terrorist Acts" bill, despite concerns expressed by the UN special rapporteur on the promotion and protection of human rights while countering terrorism that it contained excessively broad definitions of terrorism and terrorist acts. Article 1 prohibits any act that would "damage national unity" or "obstruct public authorities from performing their duties." Article 6 prescribes the death penalty for acts that "disrupt the provisions of the Constitution or laws, or prevent state enterprises or public authorities from exercising their duties." The law also allows for extended periods of detention without charge or

judicial review. A group of Bahraini and foreign defendants accused of preparing terrorist attacks, the first people tried under the law, were sentenced in early 2008 to jail terms of several months but then released on the basis of time served in pretrial custody.

Harassment by the authorities of ex-detainees

153. Country information indicates that some people who have been detained in the past continue to be detained. It has also been reported that authorities harass human rights defenders and have prevented seminars being held on released prisoners ('Lawmaker warns of deep rifts if society fails to commit to dialogue' 2009, *Gulf News*, 8 May; Slackman, Michael 2009, 'Sectarian Tension Takes Volatile Form in Bahrain', *The New York Times*, 27 May <http://www.nytimes.com/2009/03/28/world/middleeast/28bahrain.html?pagewanted=all> – Accessed 26 May 2009).
154. According to a 10 January 2009 *Associated Press* news article Abdul Hadi al-Khawaja, a leading Shiite human rights activist, had been sentenced in 2004 but released early. He was again detained in 2007 and released after popular protests. In both instances he was charged with inciting against the kingdom. In January 2009 he was reportedly summoned by "Bahrain's state prosecutors on suspicion of inciting against the kingdom's Sunni rulers". The article states that "he was interrogated for four hours" The interrogation came after an earlier speech by al-Khawaja in which he called "Bahrain's rulers a 'gang' that should be ousted" ('Bahraini prosecutors interrogate activist' 2009, *Associated Press*, 10 January http://www.google.com/hostednews/ap/article/ALeqM5h6iJy8tbD8tgzcC_VZ4Ym1XLJOegD95JRO4O0 – Accessed 12 January 2009).
155. Another human rights activist, Ja'far Kadhim Ibrahim, was reportedly abducted and severely beaten in May 2009 by men "whom Ibrahim believed were working for a Bahraini security agency" He had been contacting political activists recently released from detention concerning allegations of torture and abuse in detention. Ibrahim himself had only been released from detention on 2 March 2009 after being detained for a month (Human Rights Watch 2009, 'Bahrain: Investigate Abduction, Beating of Rights Activist', 12 May <http://www.hrw.org/en/news/2009/05/12/bahrain-investigate-abduction-beating-rights-activist> – Accessed 27 May 2009).
156. Hassan Ali Mushaima was arrested in January 2009. He is the leader of the unauthorised al-Haq political association. His arrest, together with another prominent leader sparked off large protests in many Shia villages. Mushaima has reportedly been campaigning for democratic reforms and human rights for over 15 years and detained many times. In April 2009 he was one of 178 political prisoners pardoned by the King of Bahrain. He was said to have been tried on charges which included incitement to overthrow the regime as well as the membership of an illegal organisation (Bahrain Center for Human Rights 2009, 'Joint Statement by BCHR, BHRS and BYSHR: Alarming deterioration in human rights situation, detaining two prominent activists', 28 January <http://www.bahrainrights.org/en/node/2711> – Accessed 29 January 2009; 'Riots erupt in Bahrain over activist arrests' 2009, *Associated Press*, 26 January <http://www.ihf.com/articles/ap/2009/01/26/news/ML-Bahrain-Arrests.php> – Accessed 27 January 2009; Amnesty International 2009, 'Bahrain: Concerns about recent arrests and allegations of torture', 30 January <http://www.amnesty.org/en/library/asset/MDE11/001/2009/en/299a4618-ee4-11dd-b1bd->

[6368f1b61c3f/mde110012009en.html](http://www.amnesty.org/en/news-and-updates/good-news/bahrain-king-orders-release-political-prisoners-20090414) – Accessed 28 May 2009; Amnesty International 2009, ‘Bahrain King orders release of political prisoners’, 14 April <http://www.amnesty.org/en/news-and-updates/good-news/bahrain-king-orders-release-political-prisoners-20090414> – Accessed 22 May 2009).

157. The BCHR noted in respect of arrests in December 2008 concerning an alleged “Terror Plot” that many of the detainees were arrested as teenagers in the nineties:

Many of the detainees, who participated in the “confessions” replay, were arrested as teenagers during the nineties unrests. It is to be mentioned that they all come from the three neighboring village which showed relentless protests in the past period (Bahrain Center for Human Rights 2009, ‘A new wave of arrests justified by the uncovering a “terror plot”’, 2 January <http://www.bahrainrights.org/en/node/2641> – Accessed 6 January 2009).

158. In 2008 Amnesty International reported that human rights activists were being harassed:

“In Bahrain, human rights activists have been harassed at times with anonymous and threatening telephone calls, and insulting letters, phone calls and text messages. For example, Nabeel Rajab, the director of the banned Bahrain Centre for Human Rights, has been harassed and followed by plain clothes security officials in unmarked cars. On 19 July 2005 he was physically attacked by policemen during a peaceful demonstration in solidarity with unemployed people. His wife Somaya was in 2005 and 2006 made the target of a smear campaign and she has reportedly been denied promotion at work, in the Ministry of Transportation, apparently because of the activities of her husband.

Mohammad al-Jeshi, a lawyer and human rights activist, was about to travel to Geneva to attend a training course when he was stopped by plain clothes security men on 3 November 2008. They confiscated his mobile phone and laptop for more than an hour. He was asked about the purpose of his trip and the nature of his work. He was eventually allowed to board the plane.

On 6 November 2008 Bahraini newspapers published statements attributed to the Interior Minister saying that any Bahraini national, whether a member of a political association, parliament or NGO, would have to obtain government authorization before participating in conferences, seminars or meetings abroad with a view to discussing Bahrain’s internal affairs, including the economic, political and human rights situation, and before making any statements at such forums. He added that anyone not conforming would face imprisonment and a fine.” (Amnesty International 2008, *Challenging Repression: Human Rights Defenders in the Middle East and North Africa*, London, pp.38-39).

159. Also, according to the BCHR, authorities would not approve a seminar on the latest release of prisoners presented by the National Democratic Action Society (*Waad*), a political society, being held on its premises. To hold the seminar the organisation would have needed to apply to the Ministry of Interior (MOI) three days beforehand. It was also stated that the organisers of another public seminar to be held in a Shia community centre were approached by the MOI and threatened with force if the seminar was held on those premises. “At the last minute” the venue was “swiftly” changed to a location nearby (Bahrain Center for Human Rights 2009, ‘Authorities prevent public seminars from being held’, 28 April <http://www.ifex.org/en/content/view/full/102671/> – Accessed 29 April 2009).

Information on arrest or detention of Bahrainis returning from overseas travel

160. No information was found in the sources consulted on the arrest or detention of returning Bahrainis on the basis of being involved in terrorist plots or training against the Sunni elite. Although sources have reported that Bahrainis were arrested or detained on return to the country, the specific reasons for those arrests or detentions were not always clear. Also, according to Human Rights Watch, individuals abroad have been tried in absentia and activists abroad have been threatened with prosecution for meeting with foreign officials.
161. According to the BCHR, Hasan Mushaima Mushaima “was subjected to physical assault by the Special Forces at Bahrain Airport upon his arrival from the UK after participating in a seminar at the British House of Lords focusing on reforms in Bahrain” (Bahrain Center for Human Rights 2009, ‘Joint Statement by BCHR, BHRS and BYSHR: Alarming deterioration in human rights situation, detaining two prominent activists’, 28 January <http://www.bahrainrights.org/en/node/2711> – Accessed 29 January 2009).
162. The BCHR reported the arrival of from the United Kingdom on 1 January 2009:

On the evening Friday January 1, 2009, the authorities used the Security Special Force to attack tens of citizens who went to Bahrain Airport to meet Mr Hasan Mushaima – the Secretary General of HAQ Movement of Civil Liberties and Democracy – on arrival from the United Kingdom following a participation in an annual activity in the House of Lords concerned with the political and human rights situation in Bahrain.

In this regard, Mr. Rajab said: “I was monitoring the event at the airport at that instance. There was no reason what so ever to justify the attack of Special Forces on the innocent people and those around Mr. Mushaima on their way towards the car park.” He continued: “It was a horrible and terrifying sight when those forces used utmost ferocity and brutality on those present at that time, without distinction between a young or elderly of men and women”.

The Bahrain Center for Human Rights (BCHR) is gravely alarmed over the escalation of the use of excessive force in dealing with popular gatherings and fears that the persistent policy of suppressing religious freedoms and detaining and torturing Shiite citizens, under the context of “uncovering a terror plot”, could spark a popular anger, with unaccounted consequences... (Bahrain Center for Human Rights 2009, ‘Deploying foreign mercenaries to hinder religious practices, close a Shiite mosque, and prevent prayers’, 3 January <http://www.bahrainrights.org/en/node/2643> – Accessed 6 January).

163. The Voice of Bahrain website (dated 8 February 2006) and *Gulf News* (dated 29 December 2005) has reported the detention of a Qom-based cleric, Ayatollah Shaykh Muhammad Sanad, on arrival at the Bahrain airport in December 2005. The arrest “came two months after he had called upon the United Nations to intervene in support the right of the people of Bahrain to determine their destiny” (‘Bahraini opposition criticizes sentencing for peaceful protests’ 2006, *BBC Monitoring Alert*, source: Voice of Bahrain website, 8 February ; Toumi, Habib 2005, ‘Statement of cleric fails to appease societies’, *Gulf News*, 29 December <http://www.gulfnews.com/region/Bahrain/10007979.html> – Accessed 29 December).
164. It is of interest that, according to Human Rights Watch, in respect of some 35 defendants who were arrested after the Haq-sponsored rally in Bahrain in December 2008, 13 were believed to be abroad. These 13 people were reportedly tried in absentia (Human Rights Watch 2009, ‘Charges Against 35 Political Opponents Also Marred by Lack of Evidence, Overbroad

Laws, Trials in Absentia', 23 March <http://www.hrw.org/en/news/2009/03/23/bahrain-coerced-testimony-taints-trial> – Accessed 26 March,2009).

165. Also, Bahrain's interior minister in November 2008 reportedly threatened activists abroad with prosecution for meeting with foreign officials and discussing internal affairs of the country. Human Rights Watch stated:

In a statement published by Bahrain's official news agency on November 5, 2008, the interior minister, Sheikh Rashid bin Abdullah Al Khalifa, threatened Bahraini activists with prosecution for having meetings abroad "for the purpose of discussing internal affairs of the Kingdom of Bahrain in violation of the law," citing article 134 of Bahrain's penal code.

...The November 5 statement did not specify what individuals or groups were involved. But it followed a briefing by members of Bahraini rights groups in Washington, DC, on October 15 to the US Congressional Task Force on International Religious Freedom. Participants, some of whom are also affiliated with opposition political groups, alleged that the country's Sunni Muslim ruling family systematically discriminates against Bahrain's Shia majority.

A section of Article 134 of Bahrain's penal code stipulates that citizens who fail to obtain government permission to attend any meeting abroad or to meet representatives of foreign states, "with the goal of discussing political social and economic conditions in the State of Bahrain or any other state, which could weaken financial confidence in the State of Bahrain or diminish its stature," may be subject to jail terms of at least three months, fines, or both.

In his statement, the interior minister warned participants in such events against "disseminating information, statements, or rumors that are false or based on an agenda regarding conditions in Bahrain." He added: "Continued violation of the law with this conduct...will lead to taking the necessary legal measures to confront these events and the referral of those involved in them for prosecution" (Human Rights Watch 2008, 'Bahrain: End threats to rights activists', 12 November <http://hrw.org/english/docs/2008/11/12/bahrain20194.htm> – Accessed 14 November 2008).

FINDINGS AND REASONS

Nationality

166. The Tribunal accepts on the basis of his passport that the applicant is a citizen of Bahrain and will assess his claims accordingly.

Convention nexus

167. The applicant claims to have a fear of persecution on three grounds, political opinion, membership of a particular social group, and religion.
168. While it is well-known that Shi'ites are discriminated against in Bahrain, the applicant's claims are primarily based on his involvement in political activities in the 1990s (arising in part from his opposition to this discrimination). Consequently, his claims have been assessed on the basis of the Convention ground of political opinion.

Well-founded fear

169. The applicant claims to have a well-founded fear of persecution based on the fact that he was arrested, tortured and interrogated in 1995, following his involvement in collecting signatures for a petition to the government. He claims that he was in prison from 1995 to 1999 and during this time he was forced to sign papers without knowing their content. He claims that after his release he was placed on a blacklist, his passport was withheld (until 2001), he was unable to find good jobs or return to school, and he was kept under surveillance. He said when he did find a job his employers were told by the authorities of his security record and he was subsequently fired. He claims that recently his father has been visited by security authorities who have been looking for him. He claims in Bahrain a number of ex-detainees have been arrested and he fears being arrested at the airport upon return, being interrogated and tortured.
170. The Tribunal found the applicant to be a credible and consistent witness who did not appear to embellish his evidence.
171. The Tribunal accepts that the applicant took part in political activities in the 1990s, based on his thorough knowledge of political affairs and opposition figures at that time, and his detailed and concise account of his personal situation. He was able to talk knowledgeably about the 1973 constitution, the 1994 petition, the situation for Shi'ites in Bahrain, the opposition objectives, and the arrests in 1995.
172. The Tribunal also placed considerable weight on supporting evidence provided by the Bahrain Human Rights organization, a credible organization which has been involved in Bahrain politics for some time. This organization corroborated his story that he had been involved in collecting signatures for the 1994 petition and that he was imprisoned from 1996 to 1999, tortured and forced to sign papers. It confirmed that he was on a government blacklist, only able to find menial jobs and then fired after employers found out his security record. It confirmed his passport was held by the authorities until 2001. A letter from his lawyers provided further evidence of his detention.
173. Furthermore, his experiences accord with independent country information. His recount of the collection of signatures for the 1994 petition, the ensuing protests and clashes with authorities and the large volume of arrests in 1995 all accords with country information set out earlier in this decision. The details of the types of torture he endured, length of his detention and release with an amnesty in 1999 is also consistent with country information set out earlier in this decision.
174. The Tribunal was also persuaded by the applicant's deeply emotional recount of his experiences in prison, and by his comment that he has been made aware of trauma counseling while living in Perth. The Tribunal accepts that he was physically harmed through bashings and torture and psychologically harmed through the threats against him and his family, and the length of his detention, while he was only a very young man and very vulnerable to psychological harm.
175. The applicant claims that while he has been in Australia his father has had three visits from security officials who are looking for him. He claims that they will arrest him on return as they have been arresting other activists from the 1990s. He fears being arrested, interrogated and tortured, or killed. He claims that he may be charged under new terrorism laws relating to

returnee Bahrainis and that these laws carry the death penalty. He also fears continued discrimination amounting to lack of opportunity to find work when he returns.

176. The Tribunal had some doubt as to why the authorities would target the applicant if he has not been active in politics since the 1990s although he claimed that he has been involved in some peaceful demonstrations. However, it has been persuaded by the credible evidence of the applicant, and country information which supports his claims that although there have been some improvements in political life, the human rights situation in Bahrain is poor, and activists from the past are being targeted.
177. The applicant's evidence is that most ex-detainees have been arrested more than once and some remain under arrest. He said that his understanding is that the authorities are intimidating new activists by arresting the older ones. The applicant's claims are backed up by independent country information. While there is some ambivalence in the country information (for example, the United States State Reports on Human Rights Practices 2008 claim that the constitution prohibited arbitrary arrest and detention and that the government generally observed these prohibitions, although there were some allegations to the contrary), there appears to be no doubt that the human rights situation generally has deteriorated (see for example Human Rights Watch 2009 earlier in this decision).
178. In relation to the applicant's specific claims about being targeted as an ex-detainee, country information indicates that some people who have been detained in the past continue to be detained. It has also been reported that authorities harass human rights defenders and have prevented seminars being held on released prisoners ('Lawmaker warns of deep rifts if society fails to commit to dialogue' 2009, *Gulf News*, 8 May; Slackman, Michael 2009, 'Sectarian Tension Takes Volatile Form in Bahrain', *The New York Times*, 27 May <http://www.nytimes.com/2009/03/28/world/middleeast/28bahrain.html?pagewanted=all> – Accessed 26 May 2009).
179. According to a 10 January 2009 *Associated Press* news article Abdul Hadi al-Khawaja, a leading Shiite human rights activist, had been sentenced in 2004 but released early. He was again detained in 2007 and released after popular protests. In both instances he was charged with inciting against the kingdom. In January 2009 he was reportedly summoned by "Bahrain's state prosecutors on suspicion of inciting against the kingdom's Sunni rulers". The article states that "he was interrogated for four hours". The interrogation came after an earlier speech by al-Khawaja in which he called "Bahrain's rulers a 'gang' that should be ousted" ('Bahraini prosecutors interrogate activist' 2009, *Associated Press*, 10 January http://www.google.com/hostednews/ap/article/ALeqM5h6iJy8tbD8tgzcC_VZ4Ym1XLJOegD95JRO4O0 – Accessed 12 January 2009).
180. Another human rights activist, Ja'far Kadhim Ibrahim, was reportedly abducted and severely beaten in May 2009 by men "whom Ibrahim believed were working for a Bahraini security agency". He had been contacting political activists recently released from detention concerning allegations of torture and abuse in detention. Ibrahim himself had only been released from detention on 2 March 2009 after being detained for a month (Human Rights Watch 2009, 'Bahrain: Investigate Abduction, Beating of Rights Activist', 12 May <http://www.hrw.org/en/news/2009/05/12/bahrain-investigate-abduction-beating-rights-activist> – Accessed 27 May 2009).

181. The BCHR noted in respect of arrests in December 2008 concerning an alleged “Terror Plot” that many of the detainees were arrested as teenagers in the nineties:

Many of the detainees, who participated in the “confessions” replay, were arrested as teenagers during the nineties unrests. It is to be mentioned that they all come from the three neighboring villages which showed relentless protests in the past period (Bahrain Center for Human Rights 2009, ‘A new wave of arrests justified by the uncovering a “terror plot”’, 2 January <http://www.bahrainrights.org/en/node/2641> – Accessed 6 January 2009).

182. In 2008 Amnesty International reported that human rights activists were being harassed:

In Bahrain, human rights activists have been harassed at times with anonymous and threatening telephone calls, and insulting letters, phone calls and text messages. For example, Nabeel Rajab, the director of the banned Bahrain Centre for Human Rights, has been harassed and followed by plain clothes security officials in unmarked cars. On 19 July 2005 he was physically attacked by policemen during a peaceful demonstration in solidarity with unemployed people. His wife Somaya was in 2005 and 2006 made the target of a smear campaign and she has reportedly been denied promotion at work, in the Ministry of Transportation, apparently because of the activities of her husband.

Mohammad al-Jeshi, a lawyer and human rights activist, was about to travel to Geneva to attend a training course when he was stopped by plain clothes security men on 3 November 2008. They confiscated his mobile phone and laptop for more than an hour. He was asked about the purpose of his trip and the nature of his work. He was eventually allowed to board the plane.

On 6 November 2008 Bahraini newspapers published statements attributed to the Interior Minister saying that any Bahraini national, whether a member of a political association, parliament or NGO, would have to obtain government authorization before participating in conferences, seminars or meetings abroad with a view to discussing Bahrain’s internal affairs, including the economic, political and human rights situation, and before making any statements at such forums. He added that anyone not conforming would face imprisonment and a fine (Amnesty International 2008, *Challenging Repression: Human Rights Defenders in the Middle East and North Africa*, London, pp.38-39).

183. While some of these incidents of harassment relate to well-known activists, the information does indicate that activists from the past may be targeted. The Tribunal is persuaded that there may well be a risk of serious harm for ex-detainees. The Tribunal accepts the evidence of the applicant that his father has been contacted by security authorities, and his father’s email, which outlines his experiences with the authorities and his concern for his son were he to return. The Tribunal has also given weight to comments from the Bahrain Human Rights organization, which had knowledge of the visits to his father’s house. The organization said there have been escalating political protests from 2007 to 2009 and harsh responses from security authorities. The organization expressed the opinion that there is a high risk of detention on arrival, interrogation and serious threats to his liberty. They also believe the security authorities will invoke anti-terrorism law. While there is not a great deal of evidence on the invoking of the anti-terrorism law there is sufficient evidence (see country information set out above) that Bahraini activists returning from foreign countries face arrest on their return. The Tribunal accepts therefore that there is a real chance that the applicant may be arrested if he returns to Bahrain.

184. On the basis of all the evidence before it, and in particular the clear and credible evidence of the applicant, reinforced by evidence from the Bahrain Human Rights organization and independent country information, the Tribunal accepts that there is a real chance that the applicant will suffer serious harm were he to return to Bahrain. The Tribunal accepts that the applicant may be arrested, interrogated, tortured and discriminated against were he to return to Bahrain.
185. The Tribunal accepts that the applicant has a well-founded fear of persecution in the reasonably foreseeable future were he to return to Bahrain.

Relocation

186. The Tribunal has considered whether it would be possible for the applicant to relocate within Bahrain to avoid the risk of persecution. The Tribunal notes that Bahrain is small geographically and has a population of roughly 1 million people. The Tribunal accepts that if the authorities wished to target him it would be easy to find him no matter where he resided in Bahrain. The Tribunal accepts that it would not be possible for the applicant to relocate to another part of Bahrain and in this way avoid persecution.

CONCLUSIONS

187. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

188. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: RCHADW