



BAHRAIN: FUNDAMENTAL REFORM OR TORTURE WITHOUT END?

REDRESS
Ending Torture. Seeking Justice for Survivors





Bahrain: Fundamental reform or torture without end?

April 2013

REDRESS
87 Vauxhall Walk
London, SE11 5HJ
United Kingdom
+44 20 7793 1777
www.redress.org

IRCT
Borgergade 13
1022 Copenhagen K
Denmark
+45 3376 0600
www.irtc.org

Copyright © 2013 The Redress Trust and International Rehabilitation Council for Torture
Victims
All rights reserved

Publication date: April 2013

REDRESS, 87 Vauxhall Walk, London, SE11 5HJ, United Kingdom
IRCT, Borgergade 13, 1022 Copenhagen K, Denmark

For more information visit www.redress.org and www.irct.org

Cover photograph © Free Grunge Textures www.freestock.ca

CONTENTS

A. INTRODUCTION	6
B. CONTEXT	7
C. TORTURE & POLITICAL LIFE IN BAHRAIN	8
Prior to independence	8
1970s-1990s: systematic torture and ill-treatment	9
Reforms.....	12
Re-emergence of mass arrests and torture and ill-treatment in detention	13
The 2011 uprising and crackdown	16
D. EVIDENCE OF ONGOING TORTURE AND ILL-TREATMENT	19
Torture and ill-treatment in detention	19
Evidence of torture and ill-treatment outside formal places of detention	21
The use of tear gas.....	29
E. RESPONSES TO ONGOING TORTURE AND ILL-TREATMENT.....	33
Safeguards in detention.....	34
The right to complain, investigations, accountability & reparation	38
F. FUNDAMENTAL: ENTRENCHING THE RULE OF LAW AND RESPECT FOR HUMAN RIGHTS ..	51
G. THE ROLE OF INTERNATIONAL ACTORS	55

EXECUTIVE SUMMARY

The issue of torture and other cruel, inhuman and degrading treatment has been an integral part of the ongoing crisis in Bahrain. At the same time, public commitments to the eradication of torture have been a key plank of the Government of Bahrain's response to international criticism in the face of widespread human rights violations.

Bahrain has a long and deep-seated record on the use of torture to counter political dissent, and REDRESS and IRCT have worked with many survivors of torture and ill-treatment from the country for over 15 years. The eventual response to the 2011 mass protests in Bahrain in the wake of uprisings in other Arab countries was brutal. A state of emergency was called, the streets were violently cleared resulting in deaths and injuries. Thousands were sacked from their jobs, and nearly three thousand people were arrested, many of them held incommunicado and tried before special military courts. Many of those held alleged they were subjected to torture and ill-treatment at the hands of state officials in detention, and a number of persons died under torture.¹

This response followed a pattern that has been in place since at least the mid-twentieth century. Political, social and labour unrest, and violent repression in response, were a recurring feature of British political rule in Bahrain during the twentieth century. That legacy was continued and consolidated after independence, until reforms in the early 2000s led to a dramatic decrease. However, reforms did not deal with past violations, and as tensions flared up again the old patterns returned.

In the second half of 2011, international calls for action to be taken led the King to appoint the Bahrain International Commission of Inquiry (BICI), to consider the events following the February protests. It found that state agents had been responsible for numerous and serious human rights violations, including the systematic use of torture and ill-treatment in detention. A range of reforms were recommended to address past violations and to prevent their recurrence, and the government committed to implementing them within 100 days, namely by March 2012.

This report considers torture and ill-treatment in Bahrain after the implementation of those reforms. It draws on the past experiences of REDRESS and IRCT in the country, their joint mission to Bahrain in April-May 2012, which involved the medical documentation of cases of alleged torture and ill-treatment, and detailed follow-up and engagement in casework since that time. The report concludes that torture and ill-treatment continue, and that obligations towards victims have not been met.

Our experiences suggest that torture and ill-treatment in Bahrain occur in a number of different contexts, both in detention and by riot police in the context of ostensibly controlling protests. REDRESS and IRCT heard and documented significant evidence of conduct that could not be justified as necessary and proportional force in policing protests. This includes sustained periods of physical and psychological ill-treatment, potentially amounting to torture, in "unofficial" places of detention; violence against protesters while they were under the control of police at the time of arrest or against bystanders; the use of disproportionate, and potentially deliberate, force against protesters and bystanders during protests, including excessive use of batons, the indiscriminate use of tear gas, and even

¹ *Report of the Bahrain Independent Commission of Inquiry*, 23 November 2011, <http://www.bici.org.bh/BICIreportEN.pdf>, ("BICI Report"), para. 873.

deliberate targeting of actual tear gas canisters against individuals, as well as widespread use of shotguns with bird shot ammunition against unarmed protestors.

The report concludes that the reforms introduced after the BICI address some of the custodial safeguards to prevent torture and ill-treatment. However, key gaps in protection remain. In addition, the steps taken lack the historical and contextual awareness needed to bring about sustained change. The reforms do not deal with the fundamental issues underlying the resort to torture and ill-treatment, including the failure to combat it when it occurs. Reforms have been carried out while a significant number of individuals remain in prison on charges brought against them during the 2011 state of emergency, at a time when they were subjected to torture and ill-treatment, as documented by the BICI, and at the same time that a number of high profile activists have been arrested on free speech offences. Among lawyers, civil society actors and victims there is a broad lack of trust in justice sector institutions. This includes institutions tasked with investigating alleged violations, and a concern that the government has been attempting to “buy off” victims of violations with monetary compensation only. Although there have been some prosecutions of officials involved in human rights violations, the investigations and prosecutions have failed to deal with high level involvement and command responsibility. They have in a number of cases been brought on lesser charges and have in some cases resulted in acquittals despite clear evidence of wrongful death, including as a result of torture.

History is repeating itself in Bahrain: reforms are introduced to limit the use of torture and ill-treatment in detention, without, however, properly addressing past violations or the wider structural factors which enable it. There are serious overarching, generic issues which must be addressed in order to succeed in the fight against torture and ill-treatment in Bahrain. In essence this requires a broader reform process within the country, which allows for the accommodation of difference and the alleviation of mistrust, while entrenching the rule of law and a culture of general respect for human rights. The traditional strategies of safeguards and accountability for torture and ill-treatment are important but must be located in, and complemented by fundamental reforms in order to be effective.

RECOMMENDATIONS

To the government of Bahrain:

On preventing and responding specifically to torture and ill-treatment

- Develop and implement an anti-torture policy based on specific commitments, including legislative and institutional reforms as well as effective monitoring mechanisms. This policy must address the legacy of impunity and the deep-rooted lack of trust of many Bahrainis in the ability of the system to provide protection and justice.
- As a matter of urgency:
 - Enshrine in law the right to access to a lawyer immediately after arrest, and at any event before the beginning of questioning; any evidence obtained through interrogation without a lawyer present should be inadmissible in Court and such interrogation should lead to disciplinary action against those responsible;
 - Enshrine in law the right to prompt access to *independent* medical examinations by a doctor of choice for those in detention;
 - Enshrine in law the right to *independent* autopsies in all cases of suspicious death,

- including all deaths in custody;
 - Allow international forensic experts unhindered access to Bahrain to carry out medical examinations and autopsies where victims or their families so request;
 - Repeal the Counter-terrorism Act, and reform the Criminal Procedure Code to shorten the period of time before which a person must be brought before a judge to 24 hours;
 - Ratify the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and draw on the support of the Subcommittee on Prevention of Torture to promptly establish an independent and effective monitoring body for all places of detention;
- Reiterate the applicability of the prohibition of torture and ill-treatment in the context of demonstrations and provide training and clear instructions to forces on applicable standards. To this end, in particular, review, and bring into conformity with international standards, the use of force in the context demonstrations, particularly the resort to teargas and bird shot;
- Undertake prompt, impartial and effective investigations into allegations of torture and ill-treatment, whether following complaints or *ex officio* where credible information indicates that such acts have been committed. Investigations must be capable of establishing the facts, including structural patterns underlying violations, and identifying the perpetrators and the chain of command, military and civilian, of those responsible for serious crimes;
- Investigate and prosecute suspected perpetrators where sufficient evidence is available, including higher-ranking officials responsible for torture or ill-treatment by giving orders or failing to prevent such acts where they were in a position to do so (command/superior responsibility), and subject convicted perpetrators to adequate punishments;
- Recognise the rights of victims of torture and ill-treatment and their families, lawyers and civil society organisations to pursue remedies and demand justice, and ensure their protection, as well as that of witnesses, against any threats, harm or adverse consequences related to their role;
- Provide victims, including next of kin of disappeared and extrajudicially killed persons, with effective remedies and reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-recurrence as appropriate. Compensation in particular should be adequate and should not come at the expense of criminal accountability of the perpetrators. Victims' concerns, views and rights should form an integral part of any mechanisms considered and taken to provide reparation for torture and ill-treatment. In this regard, General Comment 3 on implementation of Article 14 by States Parties, recently adopted by the UN Committee Against Torture, should be used as a guiding document in the provision of effective remedies and reparation;

Institutional reform

- Undertake comprehensive security sector reform with a view to ensuring that military, law enforcement and national security conduct themselves with the highest integrity and in conformity with international standards and are representative of Bahraini society . Reforms should include in particular:

- vetting of police, military, national security officials, public prosecutors and judges alleged to have been responsible for or complicit in torture, ill-treatment or other serious crimes;
- restructuring the composition of the military, police and national security to ensure recruitment without discrimination, particularly on the grounds of belonging to an ethnic or religious group, and reviewing recruitment of foreign nationals in circumstances that are detrimental to their respect for the rights of Bahraini citizens;
- enhanced and ongoing training on human rights compliant methods of policing (including crowd control);
- internal accountability and disciplinary mechanisms;
- external oversight of the chain of command;
- Enhance the effectiveness of Bahraini forensic medical services by:
 - in the short-term, training a sufficient number of Bahraini doctors in relevant forensic medicine disciplines in accordance with the Istanbul Protocol (on investigation and documentation of torture) and the Minnesota Protocol (on investigation of extra-legal, arbitrary and summary executions), and, in the long-term, the creation of general forensic medical education in Bahrain;
 - the creation of independent and sufficiently resourced forensic medical services outside the organisational structure of the Public Prosecution and Interior Ministry, ensuring guarantees of tenure for its staff (whether foreign or nationals) coupled with monitoring and evaluation of its activities;
- Undertake comprehensive reform of the judiciary, ensuring its independence and perception of impartiality, including by:
 - engaging with the UN Office of the High Commissioner for Human Rights in a comprehensive assessment of the elements, processes and practices of the current judicial system;
 - putting in place transparent recruitment processes;
 - excluding judges and prosecutors who have been involved in special military courts;

Lift restrictions on civil society

- Release prisoners of conscience and reform laws under which they were convicted;
- Acknowledge the role of civil society, lawyers, health professionals and other human rights defenders in contributing to the effective implementation of the prohibition of torture and ill-treatment. To this end, enable civil society, including national and international human rights defenders, effectively to engage on, and monitor Bahrain's conduct having a bearing on human rights. This includes refraining from any measures that have a deterrent impact, particularly restrictions imposed on human rights organisations and the prosecution of human rights defenders;

To international actors:

- Adopt a principled policy of engagement with the Government of Bahrain on the issue of torture and ill-treatment and the use of materials, equipment and weapons, based on the objective of effective promotion and implementation of the prohibition of torture and ill-treatment as recognised in international law;
- Review and revise any policies that are capable of contributing – directly or indirectly – to perpetuating patterns of torture and ill-treatment or impunity;

- Refrain from taking any measures or statements that may be interpreted as condoning acts amounting to torture or ill-treatment or excessive use of force, or conduct otherwise contrary to Bahrain's obligations under international law;
- Monitor closely Bahrain's compliance with international obligations, including the need to fully implement the measures set out in the BICI report, and insist on further reforms required as set out in this report;
- Critically evaluate to what extent foreign nationals tasked with implementing reforms fulfil their tasks by effectively promoting applicable international human rights standards;
- Support the work of civil society and human rights defenders aimed at addressing the issue of torture and ill-treatment in Bahrain with a view to enhancing protection, justice and reparation for the victims of torture and ill-treatment.

A. INTRODUCTION

The issue of torture and other cruel, inhuman and degrading treatment (“ill-treatment”) has been an integral part of the ongoing crisis in Bahrain. Its widespread use, combined with almost complete impunity, has raised serious concerns over the lack of protection, accountability and justice for victims, in addition to highlighting broader rule of law and governance issues. REDRESS has worked with many survivors of torture and ill-treatment from Bahrain over the past fifteen years and has repeatedly raised concerns about the institutionalised use of torture and ill-treatment in the country.² In recent years, IRCT has been actively supporting rehabilitation and medical initiatives with local actors in Bahrain.

This report builds on that experience, on a joint mission by the organisations to Bahrain at the invitation of the government in April-May 2012, and on detailed follow-up and engagement after that visit. The visit was restricted by the government to five working days, and was therefore limited. However, during that time representatives of REDRESS and IRCT met with senior members of the government³ and civil society⁴ to discuss ongoing concerns about the use of torture and ill-treatment, and the government’s implementation of the recommendations of the Bahrain Independent Commission of Inquiry (BICI).⁵ During the visit REDRESS and IRCT also met with more than a dozen individuals who alleged they – or their relatives – had been tortured or otherwise ill-treated, taking testimonies and (to the extent possible given the limited time available) carrying out medical examinations in line with the Istanbul Protocol on the Investigation and Documentation of Torture.⁶

REDRESS and IRCT have followed developments closely since their visit, giving time to assess progress both on the issues that the government stressed had been addressed by reforms introduced in the first months of 2012 following the BICI recommendations, and in pursuing accountability and reparation in individual cases. Now, a year after the National Commission set up to implement the BICI recommendations made its final report to the King,⁷ we assess the level of effective implementation of the reforms and progress made in individual cases. This assessment focuses particularly on the underlying structural issues which must be addressed effectively to combat torture and ill-treatment in Bahrain, and examines to what extent these structural causes have been tackled in responses taken to date.

² See, e.g. REDRESS, ‘Bahrain’, in *Reparation for Torture: A Survey of Law and Practice in Thirty Selected Countries*, 2003, <http://www.redress.org/downloads/country-reports/Bahrain.pdf>.

³ IRCT and REDRESS met with the Justice Minister, the Under-Secretary for the Minister of Human Rights, the Assistant Undersecretary for Court and Notary Affairs, the Senior Advocate General, the Head Prosecutor and advisers to the Ministry of the Interior John Yates and John Timoney.

⁴ These included senior lawyers and members of the Bahrain Rehabilitation and Anti-Violence Organisation (“BRAVO”), Bahrain Human Rights Society, Bahrain Center for Human Rights, Bahrain Nursing Society and political opposition society Al-Wefaq.

⁵ *Report of the Bahrain Independent Commission of Inquiry*, 23 November 2011, <http://www.bici.org.bh/BICIreportEN.pdf>, (“BICI Report”).

⁶ OHCHR, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”)*, Professional Training Series No. 8/Rev.1, 2004, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

⁷ See *Final Report of the National Commission to follow-up recommendations of the Bahrain Independent Commission of Inquiry*, 20 March 2012, http://www.biciactions.bh/wps/themes/html/BICI/pdf/report/nc_report_en_1.pdf (“BICI Follow-Up Report”).

B. CONTEXT

Bahrain is a small archipelago in the Persian Gulf, connected by a 25 km causeway to Saudi Arabia to the west, while Qatar lies to its south east and Iran approximately 200 km to its north and east. Ruled at different times by Arabs, Portuguese and Persians, in 1783 the Al Khalifa family gained control of the territory, ending a century of dominance by Persian settlers, and have continued to rule to this day.⁸

The kingdom is in a critical strategic location, positioned between Saudi Arabia and Iran in the oil-producing Gulf. Stable rule has been favoured by world powers, and both the United States (US) and the UK count Bahrain as a key ally.⁹ From the mid 19th century Bahrain was a UK protectorate, until it declared independence in 1971. During that period the UK regularly intervened in domestic affairs, and provided powerful British advisors to the Al-Khalifa family.¹⁰ Bahrain has continued to provide key support for US and UK interests, particularly the containment of Iran, and has hosted the US naval headquarters in the Gulf for over 60 years.¹¹

Bahrain has a population of around 1.2 million people, with around 54% of that population, and around 83% of the total workforce, made up of expatriates.¹² Although the ruling Al Khalifa family is Sunni Muslim, Bahrain has a large Shia population (estimated at around 60%-70%).¹³ Inter-sectarian tensions have come to the fore since 2011. However, as noted in the BICI report, a picture of Bahrain as deeply divided between two monolithic communities, Shia and Sunni, is “*both inaccurate and incomplete*”:

Bahrain is notable for having both Christian and Jewish communities that have lived in the country for many years. Residents of Bahrain also adhere to various other faiths, including Hinduism and Sikhism, and they are all allowed to practise their religions freely. In addition, there are noticeable and sometimes significant differences within the Shia and Sunni communities of Bahrain in relation to their religious affiliation, political views, economic fortunes and social grievances.¹⁴

Nevertheless the BICI found that “[r]eligious background, sectarian affiliation and ethnic origin are closely intertwined with political views and economic empowerment” and that “[c]laims of sectarian discrimination and favouritism are a common accusation levied by each group against the other within the country”.¹⁵

⁸ BICI Report, paras. 42-47.

⁹ In 1991 the United States signed a formal defence pact with Bahrain and has designated it a “*major non-NATO ally*”, entitling it to sales of sophisticated US weapons systems: see, Kenneth Katzman, ‘Bahrain: Reform, Security, and U.S. Policy’, Congressional Research Service, 2013, p. 23, <http://www.fas.org/sgp/crs/mideast/95-1013.pdf>. For the UK’s relations with Bahrain see the Foreign and Commonwealth Office’s written evidence to the Foreign Affairs Committee’s Inquiry into the UK’s relations with Saudi Arabia and Bahrain, 19 November 2012, paras. 34-39, available at:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmffaff/writev/bahrain/sab40.htm>, and written evidence of Robin Lamb, 18 November 2012, available at:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmffaff/writev/bahrain/sab55.htm>.

¹⁰ Including by deposing three leaders it deemed unsuitable, in 1868, 1869 and 1923: see written evidence of Kristian Coates Ulrichsen to the UK Foreign Affairs Committee Inquiry on the UK’s relationship with Saudi Arabia and Bahrain, 21 December 2012, para. 3, available at:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmffaff/writev/bahrain/sab60.htm>.

¹¹ *Ibid.*, p. i.

¹² BICI Report, paras. 43 and 59.

¹³ Katzman, above n.9, p. 1.

¹⁴ BICI Report, para. 73.

¹⁵ *Ibid.*, para. 73.

Many Shia argue that they are victims of systematic discrimination on religious grounds, evidenced by the limited numbers of Shia in important government agencies such as the Bahrain Defence Force (“BDF”), the National Security Agency (“NSA”) and the Police (and high number of Sunni expatriates employed), and by far higher poverty levels among Shia than Sunni.¹⁶ The BICI reported that many in the Sunni community reject these allegations of discrimination, pointing both to Shia spheres of influence within certain government ministries, the existence of many successful Shia families with thriving businesses, and poverty among Sunni families.¹⁷ Notably, while many key figures in the opposition are Shia, and many Sunnis are supportive of the royal family, some Sunni families “*have a history of political activism and include leading figures from the opposition movements of the twentieth century that share the grievances expressed by their Shia compatriots*”.¹⁸

Bahrain’s history, geography, society, and multiple influences are therefore important factors in its social and political dynamics, and in the approach adopted towards it by international actors. While these dynamics play a key role in the resolution of the current political crisis, they must also be carefully borne in mind in the fight against torture and ill-treatment in Bahrain.

C. TORTURE & POLITICAL LIFE IN BAHRAIN

In June 2011, BICI was instituted to consider the events following protests in February and March 2011. It found that in their wake:

*the NSA [...] and MoI [...] followed a systematic practice of physical and psychological mistreatment, which in many cases amounted to torture, with respect to a large number of detainees in their custody.*¹⁹

This, however, was not new in Bahrain, which has a legacy of systematically using torture to repress political dissent and demands for greater political freedoms.

Prior to independence

Political, social and labour unrest, and violent repression in response, were a recurring feature of British political rule in Bahrain during the twentieth century. Unrest resulted from nationalist and pro-independence activism, underground trade union activity and inter-communal violence between Sunni and Shia (which began after an incident that many at the time believed to be a deliberate provocation by those in power).²⁰ Local forces under the direction of the British advisor to the ruler, Charles Belgrave, who was ‘Chief Administrator’ from 1923 to 1956 and “*effectively the most powerful man in the Emirate*”, were responsible for violently quelling dissent.²¹ Unrest intensified in 1953, leading to widespread arrests, and in 1956 the British moved in troops to crush the revolt. Three of the revolt’s leading figures were taken by Royal Naval ship and imprisoned on St Helena Island in the South Atlantic.²²

¹⁶ *Ibid.*, para. 70.

¹⁷ *Ibid.*, para. 71.

¹⁸ *Ibid.*, para. 72.

¹⁹ *Ibid.*, para. 1238.

²⁰ Adam Curtis, *If you take my advice, I’d repress them*, BBC Blog, 2012, available at: http://www.bbc.co.uk/blogs/adamcurtis/posts/if_you_take_my_advice_-_id_rep.

²¹ Written evidence of Kristian Coates Ulrichsen, above n.10, para. 3. See also *Ibid.*, and Human Rights Watch, ‘Routine Abuse, Routine Denial’, 1997, available at: <http://www.hrw.org/reports/1997/bahrain/>.

²² For more detail see Human Rights Watch, *ibid.*

In 1965, another popular uprising took place over the right to unionise, which also called for an end to police harassment, leading to general strikes.²³ The British again sent in troops to crush the revolt, and deported many of the uprising's leaders.²⁴ The next year, the British installed another 'advisor', Ian Henderson, as head of the state's security services. Henderson had been a Colonial Police Officer in Kenya prior to his arrival in Bahrain, and had been accused of using torture in putting down the Mau Mau rebellion in the 1950s.²⁵ Foreign Office documents show that the senior British diplomat in Bahrain persuaded the ruler to appoint Henderson as head of what was called the Special Branch, and to give him "*a free hand to reorganise it into an efficient, modern covert surveillance "anti terrorist" organisation*".²⁶ Henderson remained in place as head of the state security apparatus until 1999.²⁷

1970s-1990s: systematic torture and ill-treatment

The immediate aftermath of independence led to tentative steps being taken toward introducing elements of a democracy in the country. In 1973 Emir Isa Al Khalifa, the new head of state, adopted a Constitution which placed the power to review legislation and question the government in a National Assembly composed of 30 directly elected representatives (to be increased to 40 members after the first term) and 14 appointed members. It also set out a number of important guarantees of individual rights. Political prisoners from the previous era were freed, and exiles invited to return. However, in 1975, after the National Assembly had opposed the executive on a number of issues, the Emir dissolved the National Assembly and suspended the articles of the Constitution vesting legislative authority in it.²⁸

One of the key issues on which the National Assembly had defied the executive was the adoption of a State Security Law in response to a series of strikes.²⁹ The proposed law permitted the arrest and imprisonment of individuals without trial for up to three years for any person suspected of having "*perpetrated acts, delivered statements, exercised activities or [...] been involved in contacts inside or outside the country, which are of a nature considered to be in violation of the internal or external security of the country...*"³⁰ Following the dissolution of the National Assembly, the State Security Law was passed by royal decree in 1975 and state security courts were established, which remained in place until 2001.

These conditions provided the environment for mass arrests and the reportedly widespread use of torture as a means of repressing political demands throughout the next two and a half decades. The government followed its dissolution of the National Assembly "*with a wave of arrests, detentions without trial, and forced exile that by the end of the decade had crippled the leftist and secular nationalist opposition*".³¹ Following the revolution in Iran, a

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*, and written evidence of Kristian Coates Ulrichsen, above n.10, para. 4.

²⁶ Curtis, above n.20. See also Human Rights Watch, above no.20 citing Fred Lawson, *Bahrain: The Modernization of Autocracy*, Boulder: Westview Press, 1989, p.67.

²⁷ Following allegations made by several Bahraini torture survivors in the UK, REDRESS asked the Metropolitan Police to investigate Henderson with a view to prosecution under the UK law which criminalises torture wherever it is committed. After several years of inquiries, including a visit by the Metropolitan Police to Bahrain, REDRESS was told that there was insufficient evidence to proceed against Henderson.

²⁸ Human Rights Watch, above n.21.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

distinct Shia opposition arose and in 1981, 73 individuals were arrested for plotting with Iran to overthrow the State. After several months of incommunicado detention and alleged torture they were tried in the State Security Court and received long periods of imprisonment, including 62 sentences of more than 15 years.³² Arrests and exiles of opposition activists continued over subsequent years, and intensified after unrest sparked by clashes between police and protesters in Shia villages in 1994. According to the International Crisis Group, the root causes of the unrest were wide-ranging:

authoritarianism; the absence of basic civil and political rights; extensive anti-Shiite discrimination; corruption and favouritism within the ruling family and among those closest to it; a repressive and largely foreign-staffed security apparatus; and a stagnant economy. Shiites formed the bulk of protesters, although Sunnis embraced the goal of returning to the 1973 constitution and holding national assembly elections, and helped organise pro-reform petitions signed by tens of thousands.³³

The same organisation described the authorities' response as "*brutal*":

Thousands of demonstrators were detained, and opposition leaders were exiled. ... The next several years saw an escalating cycle of repression and violence -- including burning tyres, stoning police, and using cooking gas canisters as makeshift bombs. While the violence eventually subsided, it continued at a low level until 1999. The most deadly attack occurred in early March 1997, when five Bangladeshi workers were killed in a restaurant bombing. Security forces, mostly recruited from the Balochi area of Pakistan, with officers from Jordan and other Arab countries, laid siege to villages and raided the homes of reputed activists. Thousands of Bahrainis were arrested and tortured.

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.... Those who signed reform petitions, whether Shiite or Sunni, faced official retribution ranging from harassment and employment blacklisting to detention and ill treatment.³⁴

In 1997 the then Special Rapporteur on Torture, Sir Nigel Rodley, reported to the then UN Human Rights Commission that he had:

continued to receive information indicating that most persons arrested for political reasons in Bahrain were held incommunicado, a condition of detention conducive to torture. The Security and Intelligence Service (SIS) and the Criminal Investigation Department (CID) were alleged frequently to conduct interrogation of such detainees under torture. The practice of torture by these agencies was said to be

³² *Ibid.*

³³ International Crisis Group, 'Bahrain's Sectarian Challenge', 6 May 2005, p. 2, available at: <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iran%20Gulf/Bahrain/Bahrain%20Sectarian%20Challenge.pdf>.

³⁴ *Ibid.* See also US Department of State, 'Bahrain Country Report on Human Rights Practices for 2001', 4 March 2002, <http://www.state.gov/j/drl/rls/hrrpt/2001/nea/8246.htm>; Amnesty International, 'Bahrain Violations of Human Rights', 1991, p. 3, <http://www.amnesty.org/en/library/asset/MDE11/001/1991/en/1308acfc-ee51-11dd-9381-bdd29f83d3a8/mde110011991en.html>; US Department of State, 'Bahrain Country Report on Human Rights Practices for 1996', 1997, p. 3; Human Rights Watch, above n. 21, p. 52. See also European Parliament, Resolution B4-0777, 0780 and 0802/97, Resolution on Human Rights Abuses in Bahrain, adopted 18 September 1997.

undertaken with impunity, with no known cases of officials having been prosecuted for acts of torture or other ill-treatment. In cases heard before the State Security Court, defendants were reportedly convicted solely on the basis of uncorroborated confessions made to political or security officials or on the testimony of such officials that confessions had been made. Although defendants often alleged that their “confessions” had been extracted under torture, impartial investigations of such claims were reportedly never ordered by the court. In addition, medical examinations of defendants were rarely ordered by the court, unless the defendant displayed obvious signs of injury. Such outward displays of injury were said to be uncommon, since torture victims were usually brought to trial well after their injuries had healed.

In addition to its use as a means to extract a “confession”, torture was also reportedly administered to force detainees to sign statements pledging to renounce their political affiliation, to desist from future anti-government activity, to coerce the victim into reporting on the activities of others, to inflict punishment and to instil fear in political opponents. The methods of torture reported include: falaqa (beatings on the soles of the feet); severe beatings, sometimes with hose-pipes; suspension of the limbs in contorted positions accompanied by blows to the body; enforced prolonged standing; sleep deprivation; preventing victims from relieving themselves; immersion in water to the point of near drowning; burnings with cigarettes; piercing the skin with a drill; sexual assault, including the insertion of objects into the penis or anus; threats of execution or of harm to family members; and placing detainees suffering from sickle cell anaemia (said to be prevalent in the country) in air-conditioned rooms in the winter, which can lead to injury to internal organs.³⁵

During the 1990s Bahrain’s record of gross human rights violations, in particular torture, was repeatedly raised in a variety of UN fora. It was one of the countries subjected to the 1503 procedure,³⁶ a confidential complaints procedure, and was the subject of a resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities³⁷ as well as urgent appeals from the Special Rapporteur on Torture and the Working Group on Arbitrary Detention.³⁸ Bahrain also attracted the condemnation of its use of torture by the European Union during the 1990s and the European Parliament, which passed two resolutions (the first in 1995 and the second in 1997).³⁹

³⁵ UN Human Rights Commission, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. E/CN.4/1997/7, paras. 26-27.

³⁶ From 1991 to 1993, 47th-49th session, see Office of the High Commissioner for Human Rights, States examined under the 1503 procedure by the Commission on Human Rights, <http://www2.ohchr.org/english/bodies/chr/stat1.htm>.

³⁷ Situation of human rights in Bahrain, Sub-commission resolution 1997/2, adopted at the 24th meeting, 21 August 1997, in which the Sub-Commission noted “*the information concerning a serious deterioration of the human rights situation in Bahrain, including discrimination against the Shi’a population, extrajudicial killings, persistent use of torture in Bahraini prisons on a large scale as well as the abuse of women and children who are detained, and arbitrary detention without trial or access by detainees to legal advice*” and expressed “*its deep concern about the alleged gross and systematic violations of human rights in Bahrain*”.

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

³⁹ In 1995, the European Parliament demanded that “*an independent inquiry be opened into allegations of murder and torture*” and that Bahrain “*abolish the State Security Law and other legal provisions which restrict liberties and human rights*” (Points 3 and 5 of Resolution on the continued human rights violations in Bahrain B4-0208 and 0276/95.) In 1997, the European Parliament passed a further resolution on Bahrain calling on the government “*to release political prisoners, to facilitate the return of exiles and institute due process of law,*

Reforms

Towards the end of the 1990s there were signs that the government accepted that reform was necessary. In 1998 the International Committee for the Red Cross (ICRC) conducted its first prison visits in the country. The government ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and invited a delegation of the UN Working Group on Arbitrary Detention to visit the country.⁴⁰ In 1999 Emir Sheikh Hamad Bin Isa Al Khalifa succeeded his father as head of state, and initiated a series of reforms.

In 2001 a large majority of Bahrainis approved in a referendum a National Charter, providing for the change of Sheikh Hamad's title to King, and the reintroduction of the elected National Assembly. However a year later the Sheikh introduced a revised Constitution by decree, which was seen as a regression from the limited democratic rights originally guaranteed under the 1973 constitution.⁴¹

Nonetheless, the government also freed hundreds of political prisoners,⁴² repealed the State Security Law and undertook reforms to the administration of justice. These reforms included the abolishment of the state security courts and transfer of the Public Prosecution from the Ministry of the Interior to the Ministry of Justice.⁴³

The reforms gave rise to high hopes within and outside of Bahrain that torture and other forms of ill-treatment would cease to be commonplace, and that the victims of these practices would receive justice and reparation, as required by UNCAT.⁴⁴ Bahrain received praise for the improvements it had made to its human rights record; the government was commended for *"the decisive scale and scope of the reforms that have been undertaken and the accompanying acts of clemency"* and it assured international actors of its *"genuine willingness to build a State governed by the rule of law"*.⁴⁵ The reported incidence of torture and ill-treatment in detention greatly decreased, although Human Rights Watch reported that some serious violations continued, such as beatings by security forces during protests and at the point of arrest.⁴⁶ At its first examination before the UN Human Rights Council's Universal Periodic Review process in 2008, the government was at pains to stress that torture had occurred in the past, but was no longer carried out in Bahrain.⁴⁷

according to accepted international standards" (Para 3 of Urgency Resolution under Rule 47 of the Rules of Procedure passed on 18 September 1997).

⁴⁰ Human Rights Watch, 'Torture Redux: The revival of physical coercion during interrogation in Bahrain', February 2010, p.13, <http://www.hrw.org/ar/reports/2010/02/08/torture-redux-0>.

⁴¹ The constitution provided for an unelected consultative council, with powers equal to that of the National Assembly, and which had the casting vote in cases of deadlock between the chambers. It also transferred the Public Audit Court from the control of Parliament to the King, and gave the King the right to refer any draft legislation to the Constitutional Court (whose members are appointed by him) which has final word on the constitutionality of the legislation.

⁴² See Human Rights Watch, 'Torture Redux', above n.40, p.11; BICI Report, para. 88.

⁴³ Human Rights Watch, 'Torture Redux', above n.40, p.5.

⁴⁴ See, eg. BICI Report, para. 87: (*"By all accounts, the ascension to power of the current monarch, HM King Hamad, ushered in an era of hope, with optimism that the political, economic and social sources of discontent among Bahrainis would be addressed."*)

⁴⁵ See REDRESS, above n.2, p. 9, referring in particular to the report of the Working Group on Arbitrary Detention, which visited Bahrain in 2001, UN Doc. E/CN.4/2002/77/Add.2, paras. 56 and 112.

⁴⁶ Human Rights Watch, above n.40, p. 14.

⁴⁷ In the Bahraini Government's submission to the First Cycle of the UPR, it stressed that *"there are no cases of torture"* in Bahrain, and cases referred to by the Committee Against Torture had been prior to the reform process beginning in 2001: Human Rights Council, 'National Report submitted in accordance with paragraph 15(a) of the

However, the reforms came at a price as they failed to tackle the legacy of torture and the government even took steps that thwarted any prospects for accountability and justice. The introduction of an amnesty law in 2002 meant that no officials were held to account for the torture and ill-treatment that had gone before, and that no victims were afforded reparation. The law, enacted in Decree No. 56 of 2002, purported to grant a blanket amnesty for any case (criminal or civil) to all officials who allegedly perpetrated crimes (including torture) against victims or political prisoners.⁴⁸

The impact of the decree was that no alleged perpetrator was tried for torture or ill-treatment even though the practice of torture in Bahrain during the 1980s and 1990s had been well documented. On 11 December 2002, the Bahraini Public Prosecution refused to consider torture allegations made by eight victims against a former member of the security service and 15 of his colleagues. The public prosecution's response was that the case was void, due to the general and particular amnesty introduced by decrees nos. 10 and 56.⁴⁹ On 11 September 2003, the public prosecutor refused to investigate another complaint of torture initiated by three Bahrainis (two men and a woman), introduced against former members of the security service.⁵⁰ In 2005 the Committee against Torture recommended the removal of the amnesty law, also to ensure that victims obtained redress.⁵¹ However no steps were taken to repeal the decree.

Re-emergence of mass arrests and torture and ill-treatment in detention

Despite the reforms, and initial decrease of the practice in detention, the government had clearly failed to deal with the underlying structural factors that had led to and facilitated torture and ill-treatment. When unrest returned the authorities reverted to old patterns.

By 2005 international observers reported that Bahrain's reform was stalling, and that sectarian tensions were rising.⁵² Uneven political reform led to disappointment and frustration that reform measures were in fact aimed at strengthening the state and the monarchy. The reforms had also failed to tackle past grievances, discrimination and sectarian tensions.⁵³

Clashes between the government and its critics escalated from 2004 onwards, and this was met by what the International Crisis Group described as *"increasingly aggressive moves by the government, which more and more resorts to police tactics and authoritarian measures*

Annex to Human Rights Council Resolution 5/1', 11 March 2008, UN Doc, A/HRC/WG.6/1/BHR/1, p.22, http://www.upr-info.org/IMG/pdf/Bahrain_State_report_Off_EN_2008.pdf.

⁴⁸ Decree 56 provides that: *"No lawsuit related to or result from crimes that were subject to general clemency will be heard in front of any judicial panel irrespective of the plaintiff's person or position and the accused person, whether he was civilian, a civil employee, or a military officer who was directly involved in the crime or was a partner to the crime that occurred during the period the preceded the issuance of this decree."* The prisoners had themselves been granted an amnesty under Decree 10 of 2001 in relation to *"crimes affecting national security"* under the jurisdiction of the National Security Court. Decree 10 provided that: *"A general amnesty shall be granted for crimes affecting national security and have been committed by citizens before the enactment of this Law and for which the court provided for in Article (185) of the Penal Code has the jurisdiction to hear"*.

⁴ Case by Attorneys: Mr Ahmed Jasim Abdulla, Mr Abdulla Al-Shamlawi, Mr Mohammed Ahmed Abdulla. Mr Essa Ebrahim, Mr Mohammed Redha Bu-Hussien Against Adel Fleifel and 15 members of the security service.

⁴⁹ Alwasat newspaper, 12 December 2002.

⁵⁰ This case was put forward by Attorneys Dr Hassan Radhi and Mrs Jaleela Al-Sayyed.

⁵¹ Committee Against Torture, Concluding Observations: Bahrain, UN Doc. CAT/C/CR/34/BHR, para. 7 (d) and (3).

⁵² International Crisis Group, above n.33, p. i.

⁵³ *Ibid.*

to maintain order".⁵⁴ Repressive criminal laws, which allowed for the arrest of dissidents for broadly defined crimes against the state, remained in the penal code.⁵⁵ In September 2004 Abdulhadi Al-Khawaja, a prominent rights activist, was arrested, leading to protests, some of which turned violent.⁵⁶ In 2006 a new 'counter-terrorism' law was enacted despite strong opposition from local and international organisations.⁵⁷ It disregarded recognised safeguards against torture and ill-treatment, providing broad powers to detain and hold individuals for up to 75 days without judicial review, and on the basis of secret evidence, for broadly defined offences deemed to be against the interests of the state.⁵⁸

From late 2007 increasing unrest in Shia neighbourhoods led to a large number of arrests, and reports of torture and other forms of ill-treatment in detention began to surface again.⁵⁹ These began after protests in Shia neighbourhoods and villages and intensified on Bahrain's national day, 16 December 2007, following the death of a young protester. Opposition activists claimed that the young protester was killed by tear gas, and the authorities maintained he had died of natural causes.⁶⁰ On 17 December 2007 members of the Special Security Forces began a wave of arrests targeting more than 60 individuals. Some defendants alleged that they had been deprived of sleep, tied up for long periods and denied medical attention. Some declared that they had been subjected to sexual assault whilst in detention.⁶¹ In one noteworthy instance, a case was thrown out of court on the basis of evidence provided by government medical doctors that supported some of these

⁵⁴ *Ibid.*

⁵⁵ Such as Article 134A (crime for a citizen to attend a public meeting abroad with the intent of discussing political, social or economic conditions in the State of Bahrain so as to "undermine its prestige or standing"), Article 165 (crime to "expressly incite others to develop hatred or hostility towards the system of government"), Article 168 (crime to wilfully broadcast any "false or malicious news reports, statements or rumours or to spread adverse publicity, if such conduct results in disturbing public security, terrorizing people, or causing damage to public interest"), Article 174 (to produce or possess any "pictures designed to cause offence to the country's reputation") and Articles 214 and 216 (to offend "the Amir of the country, the national flag or emblem" or "the National Assembly, or other constitutional institutions, the army, law courts, authorities or government agencies").

⁵⁶ International Crisis Group, above n. 33, p. 3.

⁵⁷ See, eg. Carnegie Endowment for International Peace, 'Controversial Counterterrorism Law, Family Courts Challenged in Bahrain', 2005, <http://carnegieendowment.org/2008/08/20/controversial-counterterrorism-law-family-courts-challenged-in-bahrain/6c7f>; Bahrain Center for Human Rights, 'Bahrain ratifies 'counter-terrorism bill' despite pleas by UN, Amnesty, Front line and ICJ', 14 August 2006, <http://www.bahrainrights.org/en/ref14080601>.

⁵⁸ Law no. 58 of 2006 with respect to the protection of the community against terrorist acts. "Terrorism" is defined as "the use of force or threatening to use it or any other unlawful means constituting a crime legally punishable by law resorted to by a perpetrator for the execution of an individual or collective criminal plan with the aim of disrupting public order or threatening the Kingdom's safety and security or damaging national unity or security of the international community if this would result in harming persons terrorizing and intimidating them and endangering their lives, freedoms or security or causing damage to the environment, public health, national economy or public utilities, facilities or properties or seizing them and obstructing the performance of their business activities, preventing or obstructing the government authorities, places of workshop or academic institutions from carrying out their activities": art. 1. For further detail about the law see REDRESS, 'Universal Periodic Review of Bahrain: Submission by the Redress Trust', 2011, paras. 20 and 24, <http://www.redress.org/downloads/publications/REDRESSUPRsubmissiononBahrain-final.pdf>.

⁵⁹ *Ibid.*, p. 14; US State Department, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices – 2008: Bahrain', 25 February 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119113.htm>. and 'Country Reports on Human Rights Practices – 2007: Bahrain', 11 March 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100593.htm>.

⁶⁰ Human Rights Watch, above n. 40, pp. 1-2.

⁶¹ REDRESS, 'Parliamentary Human Rights Group Seminar: Bahrain; failed political experiment, serious HR violations', 21 August 2008, p. 1, http://www.redress.org/downloads/publications/Bahrain_seminar_presentation_main.pdf; Human Rights Watch, above n. 40, p. 14.

allegations of torture and ill-treatment.⁶²

Further waves of protests and arrests continued in August 2010 and September 2010 in the lead-up to elections⁶³ including the arrests of approximately 160 Shias under the 2006 Counter-terrorism Law, including high profile activists and clerics.⁶⁴ Among the detainees was Jaafar Al Hasabi (see inset) whose case REDRESS raised with the UN Special Rapporteur on Torture and continues to pursue to this day.⁶⁵ His case illustrates the continuity of torture and impunity: individuals like Jaafar Al Hasabi have been at risk of torture at most times in Bahrain's recent history to date. Equally, he has been given no reason to expect Bahrain's

Case Study: Arbitrary Detention and Torture in 2010

Jaafar Al Hasabi is a Bahraini/British national, although his Bahraini citizenship was unilaterally revoked by the Bahrain government in November 2012, in violation of applicable international standards. He was first tortured in Bahrain in the early 1990s and, after fleeing to the United Kingdom, sought reparation from the Bahraini government to no avail. On a visit to Bahrain in August 2010 he was again arbitrarily arrested along with approximately 30 others and detained for more than six months, during which time he was subjected to sustained torture.

In August 2010, while on a trip back to Bahrain to visit his family, Mr Al Hasabi was arrested at the airport by plain-clothes officials and taken to a building used by the National Security Agency known as 'the Fort' in Manama. In the initial six weeks of his detention, Mr Al Hasabi says that he was subjected to almost continual blindfolding, beatings and kicking during interrogation, electric shocks, *falaqa* (beatings to his feet), forced standing, use of stress positions, threats to his family, and sleep deprivation. He was made to sign a confession which he says was false.

Mr Al Hasabi was initially held incommunicado and denied access to a lawyer. After 15 days he was taken before a magistrate and although a lawyer was present, Mr Al Hasabi was not given the opportunity to speak to him before the hearing or at all in private. During the hearing the lawyer asked about marks on Mr Al Hasabi's wrists, and said that Mr. Al Hasabi had been tortured. The magistrate took note of this, but did not take any further action. Mr Al Hasabi was only allowed access to his family after six weeks.

Late in 2010, Mr Al Hasabi was charged with criminal offences based solely on confessions obtained under torture and was brought to trial with 22 other detainees for alleged terrorism offences. The detainees were denied the opportunity to prepare a defence – speaking with their lawyers for the first time only for half an hour during the first hearing. They made allegations of torture, which were raised on numerous occasions before the court, but the court did not consider the admissibility of the confessions. No independent investigation was carried out into the allegations, no independent medical examination was allowed and no person has been held to account. In December 2010 after a number of hearings the detainees' lawyers resigned en masse in protest at the violation of their clients' rights.

Mr Al Hasabi and those being tried with him were released in February 2011 after citizens took to the street in protest. Mr Al Hasabi returned to the UK where he has since remained, however others who had been detained with him were re-arrested in March 2011 and were sentenced (along with nine other political prisoners) on 22 June 2011 by a military 'National Safety Court' to periods of imprisonment between 15 years and life. After a number of appeals, these sentences were upheld by the Court of Cassation in February 2013.

⁶² Human Rights Watch *Ibid.*, pp. 5 and 66.

⁶³ Kenneth Katzman, *Bahrain: Reform, Security, and U.S. Policy* (Congressional Research Service), 2 March 2011, p. 3: <http://fpc.state.gov/documents/organization/158480.pdf>.

⁶⁴ *Ibid.*, p. 4.

⁶⁵ See further <http://www.redress.org/case-docket/allegation-letter-to-un-special-rapporteurs-on-jaafar-al-hasabi>.

authorities to provide any protection, acknowledgment, accountability or other forms of reparation for the torture and ill-treatment suffered. His case, and others like it, serve as visible reminders of the lack of justice for torture in Bahrain, and constitute critical yardsticks for the seriousness of Bahrain in genuinely addressing the legacy of torture and ill-treatment in the country.

Despite the initial positive impact of reforms on the incidence of torture and ill-treatment in Bahrain, the pattern of its use to repress dissent re-emerged in response to rising tensions and protests. The same institutions – the police and NSA – used the same pattern of arrest, long periods of detention, torture and ill-treatment that had been used in the previous era. This practice has been facilitated by repressive criminal laws, including the Counter-Terrorism Law, a lack of adequate safeguards in detention, and (in many but not all cases) the acquiescence of the public prosecution⁶⁶ and judiciary.⁶⁷ This was the structure already in place when the largest protests Bahrain had ever seen erupted in February 2011.

The 2011 uprising and crackdown

In the wake of popular uprisings in Egypt and Tunisia in 2011, Bahrain witnessed mass protests in February and March 2011 from citizens demanding constitutional change. After an early crackdown in which a number of protesters were killed,⁶⁸ the protests were largely tolerated by the government for a number of weeks. However, after an unsuccessful attempt at national dialogue, led by Crown Prince Salman, and a further escalation of protests resulting in a blockade of the financial district on 13 March, Bahrain requested the assistance of fellow Gulf Cooperation Council (“GCC”) states “to protect key sites”.⁶⁹ On 14 March 2011 Saudi troops and police from the United Arab Emirates entered Bahrain, and on 15 March, the King declared a three-month ‘State of National Safety’.⁷⁰ Bahraini troops cleared Pearl Roundabout, where protesters had gathered, and demolished it on 18 March 2011.⁷¹ Approximately 2,700 people, mostly Shias, were dismissed from their jobs for participating in the protests, and numerous Shia mosques were demolished.⁷² Unprecedented mass arrests, detentions, and trials before special military ‘National Safety Courts’ followed.⁷³ The state of national safety was declared at an end on 1 June 2011.⁷⁴

⁶⁶ See Human Rights Watch, above n. 40, pp. 2-3 (“Several of the detainees had also been brought in front of prosecutors who failed to respond appropriately to their complaints of ill-treatment. In a number of instances prosecutors failed to record complaints, order forensic medical examinations, or launch any investigation into a detainee’s allegations. In some cases, prosecutors returned detainees to the custody of the same security officers allegedly responsible for the abuse in the first place. Other prosecutors did appropriately send detainees for medical exams when the detainees complained of torture”).

⁶⁷ For an exception, where all defendants were acquitted by the Court in part because it concluded on the basis of medical reports that the defendants had been physically coerced into confessing, see *Ibid.*, p. 66.

⁶⁸ Two protesters were killed in the early days of the protests, and then on 17 February 2011 security forces surrounded Pearl Roundabout, where protesters had gathered, and used rubber bullets and tear gas to clear the area: Katzman, above n.63, p. 3.

⁶⁹ Katzman, above n. 9, p. 8.

⁷⁰ In accordance with the Constitution, a state of National Safety or martial law can be proclaimed by decree for a period of three months, and can be renewed subject to the approval of the National Assembly: Constitution, art. 36(b). During a period of martial law any constitutional provisions may be suspended within the limits prescribed by the law: Constitution, art. 123 (the only exceptions are that the meetings of the Consultative Council and the Chamber of Deputies cannot be suspended, and the immunities of its members cannot be interfered with). This does not expressly apply, however, to a state of National Safety.

⁷¹ Katzman, above n. 9, p. 8.

⁷² *Ibid.* BICI Report, paras. 1313-1322 (demolition of mosques); 1337-1427 (dismissals).

⁷³ BICI Report, pp. 263-310. See also, Human Rights Watch reports: ‘Bahrain’s Human Rights Crisis’, 5 July 2011, p. 4, http://www.hrw.org/sites/default/files/related_material/Bahrain's%20Human%20Rights%20Crisis_0.pdf; and ‘Bahrain: Medics Describe Torture in Detention’, 21 October 2011, <http://www.hrw.org/news/2011/10/21/bahrain-medics-describe-torture-detention>; Bahrain Center for Human

Following significant international pressure, the events of the period from February to June 2011 were examined by an international commission appointed by the King and known as the Bahrain Independent Commission of Inquiry (BICI), which delivered its report in December 2011. The Commission found that state agencies had been responsible for numerous and serious human rights violations during the period February to June 2011.⁷⁵ They found that security forces had carried out arrests:

without presenting an arrest warrant or informing the arrested individual of the reasons for arrest. In many cases, the security services of the GoB [Government of Bahrain] resorted to the use of unnecessary and excessive force, terror-inspiring behaviour and unnecessary damage to property. The fact that a systematic pattern of behaviour existed indicates that this is how these security forces were trained and were expected to behave.⁷⁶

The Commission also found that, between March and June 2011:

Many detainees were subjected to torture and other forms of physical and psychological abuse while in custody. This again indicates certain patterns of behaviour by certain government agencies. Not all of the detainees were subjected to all of the techniques of mistreatment. Rather, there was a more discernible pattern of ill-treatment with regard to certain categories of detainees. The extent of this physical and psychological mistreatment is evidence of a deliberate practice, which in some cases was aimed at extracting confessions and statements by duress, while in other cases was intended for the purpose of retribution and punishment.⁷⁷

The findings confirmed the institutionalised nature and continuity of the practice of torture. The forms of torture used were highly consistent with previous reports of the methods used from the 1970s onwards,⁷⁸ as were the patterns of mass arrests, detention for periods of up to 15 days without access to a lawyer or the outside world, and trials for national security offences based on evidence alleged to have been obtained by torture.

Similarly, the Commission held that the security forces had “[i]n many situations [...] violated the principles of necessity and proportionality [in responding to protests], which are the generally applicable principles in matters relating to the use of force by law enforcement officials”.⁷⁹ The evidence available to them, both forensic and ordinance reports, also indicated that “on a number of occasions the security forces fired their weapons without taking due care to ensure that individuals were not fatally injured”.⁸⁰

Rights: ‘Sports Journalist Faisal Hyat speaks of torture at Bahrain detention center’, 16 September 2011, <http://www.bahrainrights.org/en/node/4723>; Human Rights Watch, ‘Targets of Retribution: Attacks against Medics, Injured Protesters and Health Facilities’, July 2011, <http://www.hrw.org/sites/default/files/reports/bahrain0711webwcover.pdf>.

⁷⁴ Katzman, above n. 9, p. 8.

⁷⁵ For a summary see BICI Report, Chapter XII, General Observations and Recommendations.

⁷⁶ *Ibid.*, para. 1693.

⁷⁷ *Ibid.*, para. 1694.

⁷⁸ The Commission found that the most common forms of mistreatment used on detainees were blindfolding; handcuffing; enforced standing for prolonged periods; beating; punching; hitting the detainee with rubber hoses (including on the soles of the feet), cables, whips, metal, wooden planks or other objects; electrocution; sleep-deprivation; exposure to extreme temperatures; verbal abuse; threats of rape; and insulting the detainee’s religious sect (Shia), *Ibid.*, para. 1696.

⁷⁹ *Ibid.*, para. 1699.

⁸⁰ *Ibid.*

The Bahraini government accepted the recommendation of the Commission to hold those responsible for these violations to account,⁸¹ made amendments to provisions of its criminal laws and introduced various measures. These included training of security officials, introducing measures designed to act as safeguards in detention and the setting up of a special investigations unit within the public prosecution to “investigate unlawful or negligent acts that resulted in deaths, torture and mistreatment of civilians”.⁸² However, the reforms have not been matched by the required structural changes in the institutions already deeply implicated in the human rights violations concerned,⁸³ as they largely fail to address underlying issues which contribute to the environment in which torture and ill-treatment takes place, as set out further below.

⁸¹ See, for example, the speech of King Hamad on acceptance of the BICI report, 23 November 2011 (“*Officials who have not been up to their task must be held accountable, and be replaced*”), available at: <http://www.bna.bh/portal/en/news/481652>.

⁸² Wording of Recommendation 1716 of the BICI Report, above. See the BICI Implementation Report, progress on recommendation 1716, available at: <http://www.biciactions.bh/wps/portal/BICI>.

⁸³ See, eg. FIDH, ‘Bahrain: Silencing Dissent’, September 2012, pp. 26-7, available at: <http://www.fidh.org/IMG/pdf/rapbahrain595a.pdf>; Human Rights Watch, ‘Bahrain: Vital Reform Commitments Unmet’, 28 March 2012, <http://www.hrw.org/news/2012/03/28/bahrain-vital-reform-commitments-unmet>.

D. EVIDENCE OF ONGOING TORTURE AND ILL-TREATMENT

After the end of the emergency period in June 2011 and subsequent investigation of the BICI, there appeared to have been a decrease in the systematic use of methods of torture in detention.⁸⁴ However, despite the ostensible commitments to reform there is significant evidence that torture and ill-treatment by state officials has continued in Bahrain, and that this is not limited to the excessive use of force in controlling protests.

REDRESS and IRCT gained a picture of ongoing violence in the first half of 2012 during their visit to Bahrain through a series of meetings with a cross-section of actors and the medical documentation of twelve individuals who alleged to have been subjected to various form of violence at the hands of State security forces, especially the riot police. The medical documentation of alleged cases of violence and ill-treatment was conducted by medical experts in the visiting team, according to the Istanbul Protocol (United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). The team also met with lawyers and family members of other individuals who alleged to have been tortured.

With the limited time of only five days permitted to conduct a mission in Bahrain only a snap shot of events could be gleaned. Due to the time constraints imposed upon the mission by Bahrain, access to places of detention was not deemed feasible. However, it is clear that of the twelve individuals whose cases of alleged ill-treatment were documented using the standards of the Istanbul Protocol, ten of the alleged assaults by law enforcement officials were recent, occurring in the first four months of 2012.

REDRESS and IRCT have continued to monitor allegations of ongoing torture and ill-treatment closely since their mission, and have found that patterns of conduct shown through the very limited sample of cases it documented in mid-2012 appear to have continued since that time. The following section therefore draws both on the organisations' own findings and observations during April-May 2012, and reports of alleged violations since that time.

Torture and ill-treatment in detention

Despite the apparent reduction in torture and ill-treatment in formal places of detention, a number of cases in the first half of 2012 raised serious concerns that this practice continued even after the release of the BICI report. These included the deaths in custody of Muntadher Saeed Fakhar, Ebrahim Ali Ya'agoob and Yousif Ahmed Muwali.⁸⁵ Fakhar, aged 37, was arrested at a protest and taken to Hoora police station, where he died sometime during the next 24 hours. Witnesses reported that he was beaten at the time of arrest, and photographs of his body showed injuries consistent with beatings.⁸⁶ Ya'agoob, 19, was reportedly kicked and assaulted after arrest, and died in custody on the same day – a death the Ministry of Interior attributed to complications from sickle cell disease.⁸⁷ Muwali, a 23 year old who suffered from schizophrenia, was arrested in January 2012 and his body found three days later floating in the sea. Doubts were raised by the family about the official

⁸⁴ See, eg. Human Rights Watch, 'Bahrain: Police Brutality, Despite Reform Pledges', 29 April 2012, <http://www.hrw.org/news/2012/04/29/bahrain-police-brutality-despite-reform-pledges>.

⁸⁵ See FIDH, above n.83, p. 16.

⁸⁶ *Ibid.* For photographs see <http://www.crookedbough.com/?p=5332>: these appear to show patterned abrasions on the left temple (possibly boot/shoe print), contusion laceration parietally, part of this also patterned, another possible patterned abrasion on the left upper arm and contusions on the lower left arm

⁸⁷ *Ibid.*

explanation for the death as drowning, when the possibility was raised that Muwali's body showed signs of torture.⁸⁸ The Public Prosecution reported in May 2012 that further investigation into the death would take place,⁸⁹ but to date no further information has been released.

Out of the twelve individual cases documented on their visit, REDRESS and IRCT interviewed a juvenile who alleged that he was ill-treated in detention in 2012. He said that he had initially been taken to an informal place of detention (see further below), then to a police station, and then to the prison known as 'The Fort', where he said he was hit by police (out of sight but with the knowledge of the public prosecutor) after refusing to sign a confession. After this he signed a document, although he did not know what it contained, and when his lawyer later saw it many further pages had been added. Some of the lawyers REDRESS and IRCT spoke to said that they had a number of similar ongoing cases where individuals – particularly juveniles – had been beaten and were still being held in detention.

Since the visit there have been a number of other reports of torture in detention, and these appear to be again on the increase.⁹⁰ In November 2012 Amnesty International reported three cases, occurring in May and July 2012, where individuals had been beaten at the time of arrest, while being transferred to the police station and during interrogation. One of these men, Hussein Abdullah Ali Mahmood al-Ali, was held incommunicado for more than three weeks, and alleged that he had been threatened with rape and subject to electric shocks.⁹¹ Another, journalist Ahmed Radhi, said that he had been blindfolded for two days, beaten and threatened with sexual assault.⁹²

Another more recent case concerns the photojournalist Ahmed Humaidan, who was taken from a shopping centre parking lot by five plain-clothes security officials on 29 December 2012. Humaidan was reported as having told his family that he was forced to stand up for hours while being handcuffed and blindfolded in a very cold room. He said that while he was blindfolded and handcuffed at the Criminal Investigation Department (CID) he had been forced to hold an unknown object and interrogators told him that it was a timed bomb set to explode. The unknown object was in his hands for hours. He was constantly monitored during this time, and was screamed at if he moved. Interrogators reportedly threatened to

⁸⁸ See Al Jazeera (2012), 'Autopsy finds torture behind Bahrain drowning', 18 May 2012, available at: <http://www.aljazeera.com/indepth/features/2012/05/2012515155335968439.html>. For the government's response, see Al Jazeera (2012), 'Bahrain rejects Al Jazeera story on death', 18 May 2012, <http://www.aljazeera.com/news/middleeast/2012/05/201251815024938214.html>.

⁸⁹ BNA, 'Public Prosecution Compares Findings of Original Autopsy and Secondary Examination of Drowning Victim', 18 May 2012, <http://5.153.12.16/portal/en/news/508968?date=2012-05-18>.

⁹⁰ In December 2012, the Bahrain Centre for Human Rights raised concerns about five citizens of Mehadza: Saeed Al Hirz, Ahmed Abdullah, Ebrahim Al-Sharqi, Talib Ali, and Hassan Al-Moalim, who were arrested by Bahraini authorities. It was alleged that for several weeks they were in custody without information about their location, and were reportedly tortured, ill-treated, and denied access to adequate medical care. The men were reportedly missing fingernails, had signs of electric shocks and several had a broken jaw. See Bahrain Centre for Human Rights, 'Bahrain: Disturbing Updates on the Current Situation of Talib Ali and 4 Other Citizens kidnapped by the authorities', 16 December 2012, <http://www.bahrainrights.org/en/node/5563>; Bahrain Centre for Human Rights, 'Two Years of Deaths and Detentions', 14 February 2013, <http://bahrainrights.hopto.org/BCHR/wp-content/uploads/2013/02/Second-Anniversary-Report-Published.pdf>. In January 2013, AhlulBayt news agency reported the case of 23 year old Habeeb Ayoub Al-Mughani, who was arrested on 10 April 2012 and taken to the Criminal Investigation Department (CID) in Adiya, where he was allegedly physically and psychologically tortured. During this time, Al-Mughani suffered from a cruciate ligament rupture on his right knee, which required surgery: See AhlulBayt News Agency (ABNA), 'Bahrain: Detainee Beaten, Now Confined to Wheelchair and Deprived From Medical Care Post-Surgery', 11 February 2013, <http://abna.ir/data.asp?lang=3&id=389798>.

⁹¹ Amnesty International, 'Bahrain: Reform shelved, repression unleashed', November 2012, p. 17, <http://reliefweb.int/sites/reliefweb.int/files/resources/mde110622012en.pdf>.

⁹² *Ibid.*

accuse his brothers of crimes if he did not confess, naming his brothers and randomly selected charges that they would arbitrarily bring against them. Although his family was allowed to visit him after one week in detention, he was denied access to a lawyer until 19 January 2013.⁹³ He has been charged with illegal gathering and producing Molotov cocktails.

Towards the end of 2012, Amnesty International also reported a number of cases of alleged torture and ill-treatment of children in detention, who were being held in adult prisons on charges of “illegal gathering” and in some cases, charges under the Counterterrorism law.⁹⁴ A number of the children were denied access to lawyers for up to 48 hours, and in some cases longer periods,⁹⁵ and were forced to sign “confessions” without lawyers present. These accounts were consistent with the more general information that lawyers had reported to IRCT and REDRESS during their mission, and the experience of the juvenile interviewed referred to above. At least two of the juveniles, Ebrahim al Muqdad (15 years old) and Jihad Sadeq (16 years old), were sentenced in April 2013 to periods of ten years imprisonment after being tried in the normal criminal court under the Counterterrorism law for burning an armoured vehicle.⁹⁶ Sadeq’s lawyer maintained that that the conviction was based solely on confessions taken under duress.⁹⁷

The growing number of reports of torture and ill-treatment in detention gives rise to serious concerns that initial decreases seen immediately after the release of the BICI report are reversing, and that such torture and ill-treatment continues. The factors that have allowed this to happen are examined in the next chapter.

Evidence of torture and ill-treatment outside formal places of detention

During their visit to Bahrain, REDRESS and IRCT gained a clear picture that much of the torture and ill-treatment by police that had taken place in detention prior to June 2011 had been displaced as police violence against protesters and others outside places of detention.

The law

The International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture (UNCAT) are relevant to the use of force by law enforcement officials. The ICCPR protects the rights to life, liberty and security of the person including freedom from torture and ill-treatment,⁹⁸ and guarantees the enjoyment of freedoms of opinion, expression and assembly.⁹⁹ UNCAT reflects in greater detail the prohibition of torture and ill-treatment expressed in the ICCPR. That prohibition is not restricted to conduct in formal places of detention, and the use of force by officials in any place may therefore rise to the

⁹³ See Bahrain Centre for Human Rights, ‘Bahrain: Renowned Photojournalist Ahmed Humaidan Psychologically Tortured During Interrogation and Denied Access to His Lawyer’, 19 January 2013,

<http://www.bahrainrights.org/en/node/5605>; Committee to Protect Journalists, ‘Bahrain arrests photographer who documented dissent’, 9 January 2013, <http://cpj.org/2013/01/bahrain-arrest-photographer-who-documented-dissent.php>. See also report (in Arabic): <http://www.alwasatnews.com/3803/news/read/735384/1.html>.

⁹⁴ Amnesty International, above n.91, p. 19-21.

⁹⁵ Amnesty International, ‘Child released without charge in Bahrain’, 2 January 2013,

<http://www.amnestyusa.org/our-work/latest-victories/child-released-without-charge-in-bahrain>.

⁹⁶ Bahrain Center for Human Rights, ‘Bahrain: Two children receive harsh sentences of 10 years imprisonment based on internationally criticized terrorism law’, 10 April 2013,

<http://www.bahrainrights.org/en/node/5701>.

⁹⁷ *Ibid.*

⁹⁸ International Covenant on Civil and Political Rights (“ICCPR”), Arts. 7 and 9.

⁹⁹ ICCPR, Arts. 19 and 21.

level of such treatment.¹⁰⁰

The use of force by law enforcement officials is governed by the principles of necessity and proportionality. International instruments such as the Code of Conduct for Law Enforcement Officials,¹⁰¹ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,¹⁰² provide guidance in assessing whether the force used was necessary and proportionate.

Article 3 of the Code of Conduct states that “*Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty*”. The commentary provides that:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. ...In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

These provisions are also reflected in Bahraini law, and the Code of Conduct introduced for police since the publication of the BICI Report.¹⁰³

An excessive use of force will be in breach of both international and domestic law, as set out in the instruments referred to above. It may violate the individuals’ right to life, where the use of force results in a risk to or loss of life.¹⁰⁴ It may also violate the prohibition of torture and ill-treatment. For example, if a law enforcement official intentionally targets an individual, and inflicts severe pain or suffering on them for one of the purposes prohibited under UNCAT (which include punishment, intimidation and discrimination), the conduct will

¹⁰⁰ ICCPR, Art. 7; UNCAT, Art. 1.

¹⁰¹ Code of Conduct for Law Enforcement Officials adopted by GA res 34/169 (1979) 17 December 1979 (“Code of Conduct for Law Enforcement Officials”).

¹⁰² Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev.1 at 112 (1990).

¹⁰³ Penal Code, Art. 180; Public Security Forces Law, Art. 13; Code of Conduct for Police Officers, Paragraph III, http://www.biciactions.bh/wps/themes/html/BICI/pdf/1717/code_of_conduct_en.pdf.

¹⁰⁴ See UN Human Rights Committee, General Comment No. 6, UN Doc. HRI/GEN/1/Rev.6 (2003), para. 3. See also General Assembly (2013), ‘Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests: Report of the United Nations High Commissioner for Human Rights’, 21 January 2013, UN Doc. A/HRC/22/28, para. 20, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.28.pdf>.

not only be disproportionate and an excessive use of force, but will amount to torture under international law.¹⁰⁵ In less severe cases it may amount to cruel, inhuman or degrading treatment or punishment, which is also covered by the ICCPR and UNCAT prohibitions.

Summary of concerns

Concerns expressed by Bahrain's allies relating to police conduct since the release of the BICI report have been largely limited to referring to "*instances of excessive force*" during protests.¹⁰⁶ However, during their five-day visit to Bahrain in April-May 2012, REDRESS and IRCT heard and saw significant evidence of conduct which could not be justified as necessary and proportional force to police protests.

Allegations of such violence falls into three broad categories:

- Sustained periods of physical and psychological ill-treatment, potentially amounting to torture, in unofficial places of detention;
- Violence against protesters while they were under the control of police (e.g. restrained, including by flexi-cuffs, or in police vehicles) or against bystanders;
- Use of disproportionate, and potentially deliberate and lethal, force against protesters and bystanders during protests, including the use of firearms, specifically shotguns with bird shot ammunition, as well as the use of tear gas launchers as firearms through the apparently deliberate firing of canisters directly at individuals at close range.

Each of these categories raises different legal issues that are examined with reference to representative cases below.

Torture and ill-treatment in unofficial places of detention

The use of unofficial places of detention by police to carry out torture and ill-treatment was reported in detail by Human Rights Watch in April 2012. The organisation raised concerns that following greater scrutiny of formal places of detention after the BICI report was released, police officers, with the acquiescence of their superiors, were carrying out torture and ill-treatment of protesters after arrest but prior to their transfer to police stations.¹⁰⁷

REDRESS and IRCT interviewed a juvenile who alleged that in February 2012, after being arrested while caught up in a protest, he was taken to a disused building by riot police. The treatment described was deliberate, for discriminatory and retributive purposes, and reached a level of severity so as to amount to torture under international and domestic law (see inset). According to the juvenile, this was not the first time he had been subjected to such treatment – the first time had been during 2011, when he was arrested for his

¹⁰⁵ Convention Against Torture, Article 1; General Assembly, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak', UN Doc A/HRC/13/39, 9 February 2010, para. 61, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-39.pdf> (use of excessive force in protests amounting to ill-treatment).

¹⁰⁶ See, eg. United Kingdom Foreign and Commonwealth Office (FCO), 'Quarterly Updates: Bahrain', 30 September 2012, ("*The police generally continue to handle provocation professionally but instances of excessive force and the indiscriminate use of teargas continue*") and 31 December 2012 ("*For the most part the police continue to handle provocation professionally, but instances of excessive force continue*"), <http://fcohrdreport.readandcomment.com/the-arab-spring/case-study-bahrain/quarterly-updates-bahrain/>

¹⁰⁷ Human Rights Watch, 'Bahrain: Police Brutality, Despite Reform Pledges', 29 April 2012, <http://www.hrw.org/news/2012/04/29/bahrain-police-brutality-despite-reform-pledges>.

involvement in the protests at Pearl Roundabout. However, he said that he had not raised a complaint about the treatment as the police and prosecutors were the ones involved in inflicting it. He had heard nothing further about his case since his release, and he did not wish to draw further attention to himself.

Torture in an informal place of detention

IRCT and REDRESS documented the case of a juvenile who was picked up by police after being near a protest in February 2012. He said that he and his friends were cornered by police in an alley, where they were beaten with weapons and kicked. He was then taken to a police jeep, where he was beaten further, and had his money, mobile phone and new shoes taken from him. From there he was then taken to a disused building where, over a period of hours, he was blindfolded and subjected to severe beatings, religious insults, threats to his life, and was thrown into a swimming pool (while handcuffed). The boy said that large numbers of police were involved in the abuse, and that it only came to an end after a person who seemed to be their superior, and who had initially tolerated it, told them to stop. He was then taken to a police station for questioning. He alleged that he was given medical treatment at the prison known as the Fort, and was assaulted again by police after he refused to sign a confession presented by the public prosecutor. He said that he had not been given access to a lawyer while he was held, although he was allowed to call his family on the third day of detention, after being transferred to Dry Dock prison. At the time of the interview he had not heard anything further about his case. The findings of the medical examination were highly consistent with his allegations.

Beatings of protestors by police

In situations surrounding protests, it may be difficult to distinguish between excessive use of force and intentional torture or ill-treatment. However, IRCT and REDRESS took testimonies from a number of individuals who described conduct that unambiguously indicated intent on the part of members of the security forces to inflict severe pain and suffering for prohibited purposes, having no justification on the basis of necessity or proportionality.

There has been considerable evidence of deliberate beatings of protesters and bystanders by riot police since the release of the BICI report. High profile incidents include the severe beating of protesters by police caught on camera on 16 December 2011.¹⁰⁸ More recently, in November 2012, the Bahrain Ministry of Interior said that it had launched an investigation after officers in Bani Jamra were secretly filmed beating an unarmed protester.¹⁰⁹ In December 2012 a video of Bahraini officer Ali Aaref slapping a citizen from A'ali twice, while the victim is holding a baby, went 'viral' (the incident allegedly occurred 23 December 2012, and has reached over half a million views). That same day, Bahrain's interior ministry announced that the officer had been detained pending an investigation.¹¹⁰ The response to this incident is examined further below.

Individuals interviewed by REDRESS and IRCT provided further evidence of such deliberate beatings by riot police, in circumstances where individuals were already under police

¹⁰⁸ *Ibid.*

¹⁰⁹ David Hobbs, 'Bahrain Authorities Investigate After Video Shows Police Beating Up Protester (VIDEO, PICTURES)', 12 November 2012, http://www.huffingtonpost.co.uk/2012/11/12/bahrain-authorities-investigate-police-brutality_n_2117524.html.

¹¹⁰ Robert Mackey, "Bahrain Detains Officer for Slapping Man", *New York Times*, 28 December 2012, <http://thelede.blogs.nytimes.com/2012/12/28/officer-detained-for-slapping-bahraini-man/>; Kingdom of Bahrain Ministry of Interior, 'Policeman referred to court for attacking man in A'ali', 24 December 2012, http://www.policemc.gov.bh/en/news_details.aspx?type=1&articleId=16023.

control. Six of the twelve individuals interviewed were not in official places of detention but were under the control of law enforcement officials at the time of the assault (four of these during 2012), having been caught and held by law enforcement officials, and in some cases restrained using plastic flexi-cuffs. While under the control of the law enforcement officials the individuals variously were severely beaten with sticks, truncheons, metal pipes, other objects as well as kicked with booted feet and punches. They showed injuries and marks typical of and highly consistent with these allegations.

Three individuals alleged to have been beaten and assaulted by law enforcement officials on the street in 2012,¹¹¹ and also further assaulted after having been forced into a police vehicle. However none of the three were subsequently taken to a police station, nor charged with any offence. Two of these three cases showed injuries highly consistent with blows from blunt instruments and injuries consistent with impact from kicks from booted feet. In the other individual the alleged injuries were only two days old at the time of the examination and were consistent with the fingers of one hand being forcibly bent backwards. The individual also stated that he police used a taser (electroshock weapon) on him while he was held in the back of a police vehicle.

Beatings in police jeeps

A number of individuals interviewed alleged that riot police took them to their jeeps and beat them after detaining them. One said that he was alone with five policemen who interrogated him in a police car, blindfolded. He was beaten all over his body (including head) with the barrel of a shotgun. Another said that while in a police jeep he was beaten with fists, with a stun gun, beaten on the back, teased and finally bitten on his back. His hair was burned with a lighter, and his face was slapped. One policeman turned his fingers backwards, and spat on him, including into his mouth. In both of these cases the individuals said that the beatings had gone on for around half an hour, after which time they were released.

A fourth individual alleged that he had been chased and caught in some open ground by riot police where he was beaten with a metal pipe and kicked with booted feet ten days before the date of the examination. That individual displayed recent abrasions and tramline bruising typical of blows from a cylindrical blunt object. His body also showed lacerations consistent with kicks from booted feet and other blunt trauma.

Law enforcement officials may use force that is “necessary” and “proportionate” to make a lawful arrest.¹¹² However, the use of violence against individuals already under the power and control of law enforcement officials – such as when they are already restrained or handcuffed – does not reach this threshold and would therefore normally amount to ill-treatment or torture.¹¹³

Excessive use of force during protests

Bahraini law enforcement officials are often confronted with street demonstrations and also conduct operations in villages and areas of the city where there are no demonstrations occurring. There are concerns that they continue to use force in such situations in ways that are prohibited under international law.

¹¹¹ A further two individuals reported such treatment during 2011.

¹¹² Code of Conduct for Law Enforcement Officials, Art. 3, and commentary to that article, para. (a).

¹¹³ See General Assembly, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak’, UN Doc. A/HRC/13/39, 9 February 2010, para. 61, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-39.pdf> (use of excessive force in protests amounting to ill-treatment).

Both national and international law ensure the right to peaceful assembly, and authorities may only restrict this fundamental right to the extent necessary in a democratic society to protect national security, public order, public health or morals, or the rights and freedoms of others.¹¹⁴ UN Special Procedure mandate holders have recently stressed the positive role of peaceful protests as a means of strengthening human rights and democracy,¹¹⁵ and that States should both facilitate and protect peaceful assemblies, including through negotiation and mediation.¹¹⁶ The dispersal of assemblies should only be a measure of last resort. Law enforcement authorities should not resort to force during peaceful assemblies, and they should ensure that force is only used on an exceptional basis.¹¹⁷ States have the obligation to ensure that law enforcement officials are sufficiently trained and equipped, particularly with regard to crowd control and the use of force,¹¹⁸ and they must adhere to standards on the use of force when dispersing crowds or making lawful arrests of those carrying out violence.¹¹⁹

The BICI report concluded that during 2011 the security forces (police and military) in Bahrain had “[i]n many situations...violated the principles of necessity and proportionality [in responding to protests], which are the generally applicable principles in matters relating to the use of force by law enforcement officials”.¹²⁰ The evidence available to them, both forensic and ordinance reports, also indicated that “on a number of occasions the security forces fired their weapons without taking due care to ensure that individuals were not fatally injured”.¹²¹

Despite reforms introduced following the BICI report, ongoing incidents point to continued violations of these principles by law enforcement officials. In some instances during 2012, the use force by law enforcement officials resulted in deaths. These included the death of 22-year old citizen journalist, Ahmed Ismail, in March 2012;¹²² the death of protester Fadhil Al Obaidli, from injuries received from a tear gas canister, in March 2012;¹²³ the death of protester, Salah Abbas Habib, in April 2012;¹²⁴ and the deaths of two protesters, Hossam Al Haddad and Hussein al-Ni’ma, in August and September 2012.¹²⁵ In February 2013 two further protesters were killed: Hussain Aljazeera died on 14 February from injuries to the abdomen received at close range from bird shot and his cousin, Mahmood Aljazeera, aged 20, died after being hit in the head by a tear gas canister fired by police.¹²⁶ Although there

¹¹⁴ ICCPR, Arts. 19 and 21; Constitution of the Kingdom of Bahrain, Art. 28(b) (“Public meetings, parades, and assemblies are permitted under the rules and conditions laid down by law, but the purposes and the purposes and the means of the meeting must be peaceful”).

¹¹⁵ General Assembly, ‘Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests: Report of the United Nations High Commissioner for Human Rights’, 21 January 2013, UN Doc. A/HRC/22/28, para. 9.

¹¹⁶ *Ibid.*, para. 8.

¹¹⁷ *Ibid.*, para.13.

¹¹⁸ *Ibid.*, para. 17.

¹¹⁹ *Ibid.*, para. 20. See in particular the Code of Conduct for Law Enforcement Officials, above n.101 and the UN Principles on the Use of Force and Firearms by Law Enforcement Officials, above n.102.

¹²⁰ BICI Report, para. 1699.

¹²¹ *Ibid.*

¹²² FIDH, above n.83, pp. 12-13.

¹²³ CBS News, ‘Clashes Erupt After Funeral in Bahrain’, 11 March 2012, http://www.cbsnews.com/8301-202_162-57394947/clashes-erupt-after-funeral-in-bahrain/.

¹²⁴ Guardian, ‘Bahraini protester found dead on eve of grand prix’, 21 April 2012, <http://www.guardian.co.uk/world/2012/apr/21/bahrain-protester-dead-grand-prix>. See further n. 127 below.

¹²⁵ FCO, ‘Quarterly Updates: Bahrain’, 30 September 2012, above n.106.

¹²⁶ BBC, ‘Bahraini dies after being struck by tear gas canister’, 22 February 2013, <http://www.bbc.co.uk/news/world-middle-east-21547109>. For a video of the shooting of Mahmood see

was evidence of the excessive use of force in all of these cases, only one has resulted in a prosecution, which is still in its early stages¹²⁷ (see the next section for the authorities' responses to these cases).

Examinations conducted during REDRESS and IRCT's mission also raised serious concerns about the excessive use of force by law enforcement personnel and, in particular, indicated either indiscriminate or deliberate targeting of protesters and bystanders with tear gas canisters and bird shot.

Tear gas canister injuries

Four of the 12 individuals interviewed alleged to have been shot during 2012 at close range and received injuries from, what they thought were tear gas canisters fired by law enforcement officials. One individual (see inset) alleged that he had received a direct hit from a tear gas canister directly below the knee, resulting in a fracture of the tibia. His injuries were consistent with this allegation and the marks on his leg were similar in appearance and size to marks witnessed on other individuals who also alleged to have received injuries from direct blows from tear gas canisters. Another, a juvenile, reported that he had been on an errand in a village where a peaceful protest was going on, when riot police came and shot a tear gas canister from around 10-15 metres away, hitting him in the head and causing a fractured skull which required an initial 12 days of hospitalisation and further surgery. At the time the tear gas canister was launched he says that there was nobody else on the road. The medical report confirmed that the injuries documented, together with photographs taken shortly after the incident, were highly consistent with a blow from a tear gas canister.

Tear gas canister injury resulting in broken leg

One individual interviewed by IRCT and REDRESS alleged that riot police fired tear gas canisters directly at him and his family from an approximate distance of 10 metres while they stood in front of their own house in a narrow alley way. While other members of his family received injuries from the tear gas canisters, he alleged that he received a direct blow from a tear gas canister to just below the knee, resulting in a fracture of the tibia that required surgical treatment. He displayed injuries consistent with this allegation and marks (healing abrasions) consistent with blunt trauma from a circular ended object such as a tear gas canister or baton round (so called "rubber bullet").

The two other individuals also alleged to have received direct blows from tear gas canisters after having been shot at in street protests by members of the security forces. The two men showed concentric circular marks or oval pigmented marks on the lower limbs highly consistent with blunt trauma from a circular ended object such as a tear gas canister or baton round.

While tear gas may be deployed as part of riot control methods, its use should be strictly controlled by rules of engagement and standard operating procedures.¹²⁸ Any law

<http://www.youtube.com/watch?v=Ump2Pz7NnfM>.

¹²⁷ On 11 April 2013 the Head of Public Prosecutions announced that charges were being pursued against a Special Security Forces policeman accused in the death of Salah Abbas Habib. The charges brought against the policeman were reported to be under Article 75(4) (aggravating circumstance of offence being committed by a civil servant), Article 107(1) (definition of civil servant) and Article 333(1) (murder) of the Penal Code: BNA, 'Public Prosecution: Statement', 11 April 2013, <http://www.bna.bh/portal/en/news/556043>.

¹²⁸ General Assembly, 'Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests: Report of the United Nations High Commissioner for Human Rights', UN Doc. A/HRC/22/28, 21 January 2013, para. 17.

enforcement official using such methods of crowd control must be trained in its correct use, and also receive ongoing training.¹²⁹ The cases above appear to illustrate a lack of such training, the ignoring of such training or a lack of adherence to any rules of engagement. The cases documented in Bahrain indicate that the tear gas shell has been used as a weapon targeted at the bodies of members of the public from ranges sufficiently close to cause bone fractures, and/or to leave lasting marks. It is clear that the extent of the force from a direct blow from a tear gas shell required to fracture a skull could easily result in death or permanent injuries. Thus the tear gas shells are being employed as potentially lethal weapons.

It is feasible that there might be an occasional case where, in the course of a confrontation with demonstrators, a law enforcement official may inadvertently discharge the tear gas shell at close range resulting in direct injuries. However, the sheer number of cases demonstrating injuries consistent with direct force from tear gas shells, and video evidence in some cases,¹³⁰ suggests deliberate targeting of people with the shells themselves.¹³¹ This was also the perception of demonstrators relayed to IRCT and REDRESS during their mission.

Bird shot injuries

The other weapon used by the Bahrain law enforcement officers that has been consistently reported as causing injury and in some cases death is the shotgun, loaded with shells containing bird shot. Bird shot are multiple small pellets which are dispersed from the shotgun shell when fired. Bird shot shells contain a number of specific diameter pellets, with the available diameters varying between approximately 1.3 and 4.4 mm diameter.

In three of the cases documented in the mission to Bahrain, individuals incurred wounds highly consistent with multiple small projectiles typical of shotgun pellet injuries.¹³² In one of the cases the injuries were confined to the lower limbs. In the other two cases, the shotgun pellets showed a pattern of spread over the upper limbs, chest and abdomen.

The UN Basic Principles on the Use of Force and Firearms provide that law enforcement officials “shall, as far as possible, apply nonviolent means before resorting to the use of force” and may use force “only if other means remain ineffective”.¹³³ When the use of force is unavoidable, law enforcement officials must “exercise restraint in such use and act in proportion to the seriousness of the offence” and “minimize damage and injury, and respect and preserve human life”.¹³⁴

Law enforcement officials cannot disregard these requirements just because they are using bird shot, rather than bullets. When used on humans at longer ranges the spread of the pellets is less likely to cause death, but can clearly cause penetrating wounds. These wounds could maim if they strike the eye. However, as with any shotgun ammunition, even bird shot

¹²⁹ *Ibid.* See also UN Principles on the Use of Force and Firearms by Law Enforcement Officials, Art. 20.

¹³⁰ For example in the case of Mahmood Aljazeera – see above n.126.

¹³¹ See also Amnesty International, ‘Bahrain’s use of tear gas increasingly deadly’, 26 January 2012, <http://www.amnesty.org/en/news/bahrain-s-use-tear-gas-against-protesters-increasingly-deadly-2012-01-26>.

¹³² Two victims alleged to have been shot with bird shot by members of the security forces during street demonstrations two weeks prior to the examination. Both young men showed multiple healing small wounds, predominating over the upper and lower limbs and torso. Some of the wounds still had embedded hard spherical objects, and other wounds had sutures still in place where the victim stated that pellets had been recently removed by health staff in private clinics or homes. The wounds were typical of injuries from multiple small projectiles, such as from small gauge shotgun pellets.

¹³³ UN Basic Principles on the Use of Force and Firearms, above n.102, Art. 4.

¹³⁴ *Ibid.*, Art. 5(a) and (b).

can be lethal if fired at close range since the multiple shot will not be sufficiently dispersed, and the wad can cause penetrating wounds.

The evidence of those interviewed, and the frequency of reported bird shot injuries, including a number of fatalities, suggest that the requirements of restraint in the use of firearms are not being followed. This raises serious questions about any training received, as well as the failure to follow that training and instructions, which may result in the violation of the right to life, and the prohibition of torture and ill-treatment.¹³⁵ The continued resort to claims that such weapons are only used in self-defence should be subject to a detailed review of practice, and by independent and transparent investigations in individual cases (on the failure to do so, see the next chapter).

Profiles of alleged perpetrators

It was apparent through the testimonies that the alleged direct perpetrators were often foreign nationals or naturalised citizens, although in two cases individuals reported the direct involvement of Bahraini police officers in abuse. This reflects the make-up of the security forces, which since the 1960s has relied on foreign nationals from countries with a Sunni majority such as Syria, Pakistan and Yemen to staff its security positions.¹³⁶

The use of tear gas

In addition to direct targeting with tear gas canisters, a further ongoing concern is the indiscriminate use of tear gas in controlling protests.

The noxious and toxic effects of tear gas has been extensively documented in a report by Physicians for Human Rights, “Weaponizing Tear Gas”, published in August 2012.¹³⁷ That report examined the excessive and disproportionate use of the tear gas agent for dispersal of demonstrations, and its deliberate use in confined spaces such as people’s homes and cars. Many deaths have, and continue to be, attributed to the use of such gas.¹³⁸

A message given to REDRESS and IRCT during their visit to Bahrain was that as these protests often occur in Shia villages, whole villages and communities perceive themselves to be under attack. Where such use of tear gas can be shown to be disproportionate, there is an argument that its use amounts to, at the very least, ill-treatment of those targeted, whether they be individuals in houses, or whole communities. Concerns have been expressed about the use of tear gas in law enforcement. The European Court of Human Rights recently found that the use of tear gas without justification amounted to a violation of Article 3 (that case concerned spraying an individual in the face with tear gas after he had been detained).¹³⁹ Where such use is shown to be a deliberate targeting for prohibited purposes such as intimidation, punishment or discrimination, it may amount to torture.¹⁴⁰

¹³⁵ See above, n.104-105.

¹³⁶ Human Rights Watch, above n.21, n.68; International Crisis Group, above n.33, p. 2.

¹³⁷ Physicians for Human Rights, ‘Weaponizing Tear Gas: Bahrain’s Unprecedented Use of Toxic Chemical Agents Against Civilians’, August 2012, https://s3.amazonaws.com/PHR_Reports/Bahrain-TearGas-Aug2012-small.pdf.

¹³⁸ See, for example: Bahrain Centre for Human Rights, ‘Bahrain: Bassil Al-Qattan; Extensive Use of Teargas by Bahrain’s Authorities Claims Another Victim’, 30 December 2012, <http://www.bahrainrights.org/en/node/5585>; Christine Hauser, ‘Bahrain Criticized for Use of Tear Gas Following Boy’s Funeral’, 29 January 2013, <http://thelede.blogs.nytimes.com/2013/01/29/bahrain-criticized-for-use-of-tear-gas-following-boys-funeral>; Bahrain Center for Human Rights, ‘Bahrain: An 8 year-old-boy and an 87 year-old man; Two Victims in One Month of the Tear Gas Collective Punishment’, 27 January 2013, <http://www.bahrainrights.org/en/node/5617>.

¹³⁹ *Ali Günes v Turkey*, App. No. 9829/07, Judgment of 10 April 2012, par. 37-43.

¹⁴⁰ See further Physicians for Human Rights, above n. 137, p. 31.

The use of force and Bahrain's international obligations

Some, though by no means all, protests have undoubtedly been violent, including the use of Molotov cocktails. Violence has led to injury and some deaths of police officers.¹⁴¹ When REDRESS and IRCT raised the incidents of apparent excessive use of force with advisers to the Ministry of the Interior, one response was that as protests have become increasingly violent police have had to resort to such force for their own self-defence. This has also been the position adopted in investigations into deaths during protests during 2012 (see further in the next chapter).

Because of the escalation in tension it appears that law enforcement officials have consciously adopted a mindset that in controlling protests – whether violent or not – they are combating hostile forces, which will require the use of force. This response has continued in the absence of sufficient (or sufficiently followed) training. It has also been accompanied by deliberate actions by law enforcement officials, including beatings of protesters under their control, which have spurred on further violence and escalation, in turn further justifying officials' continued resort to force.¹⁴²

This is a pattern that has been displayed in the past. It is striking that in 2005, at a time of rising tensions, the International Crisis Group reported that: *“the government has tended to turn to more confrontational tactics more quickly, further fuelling the grievances that drive protesters into the streets in the first place”*.¹⁴³

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials recognise that police must have the *“appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training”*.¹⁴⁴ The European Court of Human Rights affirmed this principle, holding that when police carry out their duties in an area of extreme tension, where violent public disorder is expected, police must have the qualities necessary for that context to minimise the risk of injury.¹⁴⁵ Furthermore, where excessive force is used in such a context, and the police officer responsible is not sanctioned, this can be seen as giving other forces in the area a ‘carte blanche’ to continue to use force in this way.¹⁴⁶

It is easier for law enforcement officials to *“plausibly deny”* that injuries were deliberately or negligently inflicted in the context of protests, particularly where some of those are violent. It may also be tempting to exaggerate the violent nature of the protests to provide justification for further repression. However, many of the cases referred to demonstrate clear breaches of international human rights law, of rules on the use of force and show either deliberate policy of allowing such use of force, a lack of proper training, or enforcement of such training of the officers involved.

¹⁴¹ See, e.g. BBC News, ‘Bahrain policeman dies after bombing’, 19 October 2012, <http://www.bbc.co.uk/news/world-middle-east-20002393>.

¹⁴² On this, see Human Rights Watch, ‘Bahrain: Police Brutality, Despite Reform Pledges’, 29 April 2012, available at: <http://www.hrw.org/news/2012/04/29/bahrain-police-brutality-despite-reform-pledges>.

¹⁴³ International Crisis Group, above n.33, p. 4.

¹⁴⁴ UN Basic Principles on the Use of Force and Firearms, above n.102, Art. 18.

¹⁴⁵ *Aydan v Turkey*, App. No. 16281/10, Judgment of 12 March 2013, para. 99.

¹⁴⁶ *Ibid.*, para. 100: (*“l’absence d’imposition d’une sanction pénale à un gendarme qui a utilisé de manière injustifiée son arme à feu risque d’être interprétée comme une carte blanche donnée aux forces de l’ordre qui accomplissent leurs fonctions dans cette région et qui doivent s’assurer que de telles armes ne sont utilisées que dans des circonstances appropriées et de manière à minimiser le risque de dommages inutiles (voir le principe no 11 b) des Principes de base des Nations Unies de 1990, paragraphe 47 ci-dessus”*).

Full, independent and impartial investigations should be conducted into any such reports or complaints, and appropriate and proportionate punishments given to those found guilty.¹⁴⁷ Investigations and prosecutions should ensure that superiors responsible under the principles of command responsibility are also held to account. Law enforcement officials should undergo review and training in proper methods of crowd control including the scaled and proportionate use of force and in the rules of engagement and standard operating procedures for the use of such force. In particular the use of tear gas should be restricted, and when deployed, should be used proportionately and subject to strict control and review. The use of firearms, including shotguns armed with bird shot, should be a means of last resort and every use subject to an obligatory reporting and review mechanism.¹⁴⁸ Reparations should be awarded to the victims, or their families, of such disproportionate and inappropriate use of force.¹⁴⁹ However, as discussed in the following chapter, this has not been the practice to date.

Failures to protect

States have a responsibility to respect human rights, and to prevent acts by private or unknown actors that impair the enjoyment of individuals' human rights.¹⁵⁰ Where individuals are subjected to violence or other attacks by such actors the state has an obligation to use all necessary means feasible in the circumstances, known as due diligence, to prevent and respond to such acts by investigating and prosecuting those responsible. If it fails to do so appropriately, the state is responsible under international human rights law for the violation of the individual's rights, including the right to an effective remedy.¹⁵¹

In Bahrain REDRESS and IRCT were informed by a number of individuals that police repeatedly refused to protect the safety and property of

No police action taken on violent harassment

During its visit to Bahrain REDRESS met with members of a family whose son had been arrested in relation to the high profile death of a police officer. Since his arrest, they had been targeted by repeated attacks on their home by individuals. The family had stayed away from their home for a year, but returned in March 2012. In the first incident after their return a Molotov cocktail was thrown at the house and left a burn mark on the wall. They installed security cameras a few days later, but soon afterwards these were damaged. They went to the police the next day to make a complaint, and gave the police the number plate of a car they suspected was linked to the attack, but no further action was taken.

Around two weeks later one of the security cameras was stolen, and the family again made a complaint, but again no action was taken. A week later their house was set on fire in the middle of the night. The family called the police immediately, and the caller was asked, unprompted, about her brother who was in prison. The police and fire brigade did not appear for 45 minutes, after which time the family had succeeded in putting out the fire themselves. The next day the family went again to make a complaint; it was recorded and they were told that somebody would get back to them.

Over the course of their complaints the family had provided the police with information about who they thought was responsible for the attacks, CCTV footage, photographs of damage done, and the number plate of suspected individuals involved. Despite this, no action was taken, and at the time of speaking to them the family was taking shifts overnight to guard their home.

¹⁴⁷ UNCAT, Arts. 7, 13 and 14.

¹⁴⁸ UN Basic Principles on the Use of Force and Firearms, above n.102, Art. 19-20.

¹⁴⁹ ICCPR, Art.2(3), UNCAT, Art. 14.

¹⁵⁰ See, e.g. Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 8; Committee Against Torture, General Comment No. 2, UN Doc. CAT/C/GC/2 (2008), para. 18.

¹⁵¹ See, eg. IACTHR, Report No 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001; European Court of Human Rights, *Opuz v. Turkey*, App. No. 33401/02, 9 June 2009.

Shia-owned businesses or families with links to detainees. One high profile example was an attack carried out on a Jawad supermarket in April 2012. Security camera footage shows police standing by as private individuals break into and loot the shop.¹⁵²

In some cases, such as the case study on this page, there is evidence of acts against the individuals or families intended to intimidate them, and cause significant distress. Such treatment could certainly be seen as rising to the level of ill-treatment.¹⁵³ A persistent failure by the authorities to respond to complaints made about serious attacks on property, life and physical well-being may amount to acquiescence in the abuse, giving rise to Bahrain's responsibility for a violation of article 16 (ill-treatment) if not article 1 (torture) of UNCAT.

¹⁵² See Marc Owen Jones, 'Police Assist in Vandalising & Looting a Supermarket in Bahrain', 13 April 2012, <http://marcownjones.wordpress.com/2012/04/13/police-assist-in-the-looting-of-a-supermarket-in-bahrain/>.

¹⁵³ On this, see CAT, *Hajrizi Dzemajl v Yugoslavia*, Communication No 161/2000, UN Doc. CAT/C/29/D/161/2000.

E. RESPONSES TO ONGOING TORTURE AND ILL-TREATMENT

UNCAT, and other human rights treaties, oblige Bahrain, and other States Parties, to take effective legislative, administrative, judicial or other measures to prevent and respond to acts of torture in any territory under their jurisdiction.¹⁵⁴ One necessary step to fulfil this obligation in relation to torture in detention is the introduction of custodial safeguards which minimise the opportunity and incentives to carry out torture.¹⁵⁵ Another is the training of law enforcement officials, doctors and other public officials on the prohibition of torture and ill-treatment.¹⁵⁶ A third is ensuring that victims of torture and ill-treatment have the right to complain about such treatment,¹⁵⁷ that authorities investigate those complaints,¹⁵⁸ and that the victims obtain redress.¹⁵⁹ Each of these aspects of prevention and response were the subject of recommendations by the BICI.

During its visit to Bahrain, REDRESS and IRCT raised concerns with government officials and advisers about the evidence of ongoing torture and ill-treatment encountered, that had been reported by other organisations. These concerns were met by a number of responses.

First, there was an acknowledgment that there had been violations, but that these were being addressed by reforms introduced to implement the recommendations of the BICI. Key reforms highlighted were the introduction of further safeguards in detention, the training of police, military and justice sector actors, the introduction of Codes of Conduct for police and employment of international advisers, the removal of powers of arrest and detention from the NSS, investigations into allegations of torture and ill-treatment being carried out by a newly-formed Special Investigations Unit of the public prosecution, and the provision of compensation to victims of violations committed during 2011. Given that the BICI report had only been released four months previously, officials urged that these reforms be given time to take effect and show results.

Second, particularly in relation to more recent allegations, officials said that until formal complaints were made there was nothing that could be done to investigate them, and encouraged those who alleged they had been subject to violations to make a formal complaint to police or through the Courts.

Third, some officials and advisers drew attention to what they said was the very violent nature of the protests, and the fact that riot police faced very difficult circumstances, including danger to their own lives. It was suggested that what could be alleged to be the result of torture or ill-treatment could in fact be the result of legitimate force used in self-defence by police officers attempting to restore order.

However, civil society groups, senior lawyers and victims themselves were highly sceptical about the level of genuine will within the government to seriously address these issues. On one hand the government was seen to be saying to international actors that it was committed to reform and redress, while on the other its agencies continued to target

¹⁵⁴ See, eg. UNCAT, Art. 2; ICCPR, Arts. 2 and 7, and Human Rights Committee, General Comment No. 31, above n.150, para. 7.

¹⁵⁵ Committee Against Torture, General Comment No. 2, above n. 150, para. 13; General Assembly, 'Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment', UN Doc.A/56/156, 3 July 2001, para. 34-37.

¹⁵⁶ UNCAT, Art. 10.

¹⁵⁷ UNCAT, Art. 13.

¹⁵⁸ UNCAT, Art. 12.

¹⁵⁹ UNCAT, Art. 14.

individuals with torture and ill-treatment, and prosecutions for free-speech offences.¹⁶⁰ Concerns crossed a wide range of issues. These included a broad lack of trust in justice sector institutions, including those tasked with investigating alleged abuses (prosecutors and official medical examiners) and the courts, failures to respond to complaints made to police of torture and ill-treatment, inadequacies in public prosecution investigations into allegations of torture and ill-treatment, and a concern that the government was attempting to “buy off” victims of violations with monetary compensation only. They related also to broader concerns about the ongoing discriminatory targeting of Shia villages and individuals by police, the ongoing failure of judges to respond to complaints raised by defendants, the continued detention of political leaders and others who had been tried on the basis of evidence acknowledged in the BICI report to have been obtained by torture, and continued prosecutions and convictions of human rights activists for free speech offences. These issues, and the impact they have on real progress towards eliminating torture and ill-treatment in Bahrain, are examined below.

Safeguards in detention

The types of safeguards that are generally recognised as being important to prevent torture and ill-treatment include ensuring that:¹⁶¹

- detainees are promptly notified of the reason for their arrest and detention and informed of their rights (including to notify a person of their choice of their arrest, and to have access to a lawyer and to a doctor of their choice), and that these rights should apply and be guaranteed from the very outset of their custody;¹⁶²
- detainees are given unrestricted and private access to a lawyer of their choice as soon as possible, and in any event before any questioning takes place; and that the lawyer is present during any interrogation;¹⁶³
- the detention is subject to the prompt and regular review by the Courts;¹⁶⁴
- detainees are not held incommunicado;¹⁶⁵
- detainees are held in places officially recognised as places of detention and that

¹⁶⁰ As to which, see further below.

¹⁶¹ For more information generally see, Conor Foley, *Combating Torture: A Manual for Judges and Prosecutors*, Chapter 2, 2003, available at: <http://www.essex.ac.uk/combatingtorturehandbook/manual/>; Committee Against Torture, General Comment No. 2, above n. 150, para. 13; Human Rights Committee, General Comment No. 20 (1992), para. 11; General Assembly, ‘Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment’, UN Doc.A/56/156, 3 July 2001, para. 34-37; Commission on Human Rights, ‘Torture and other cruel, inhuman or degrading treatment or punishment Report of the Special Rapporteur, Theo van Boven’, UN Doc. E/CN.4/2004/56, 23 December 2003, paras. 27-49; General Assembly, ‘Report of the Special Rapporteur on Torture’, UN Doc. A/HRC/13/39, 9 February 2010, paras. 50-56; the Standard Minimum Rules for the Treatment of Prisoners (1955), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 August 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), adopted by UN General Assembly on 21 December 2010, UN Doc. A/RES/65/229.

¹⁶² Committee on the Prevention of Torture, CPT/Inf/E, ‘Extract from the 12th General Report’, 2002, paras. 40 and 42.

¹⁶³ See, generally, Association for the Prevention of Torture, *Legal Safeguards to Prevent Torture: The Right of Access to Lawyers for Persons Deprived of Liberty*, March 2010, available at: http://www.ap.t.ch/content/files_res/LegalBriefing2_Lawyers.pdf.

¹⁶⁴ As required by Article 9 of the ICCPR.

¹⁶⁵ Human Rights Committee, General Comment No. 20 (1992), para. 11. See also Report of the Special Rapporteur on Torture, UN Doc. A/56/156, 3 July 2001, para. 39(f).

effective custody records are maintained and accessible to relatives;¹⁶⁶

- there is systematic review of interrogation rules, instructions, methods and practices for compliance with human rights standards;¹⁶⁷
- detainees are offered a proper medical examination as promptly as possible after their admission to the place of detention or imprisonment, and regularly thereafter; that detainees have the right to request a second medical opinion by a doctor of their choice, and to have access to their medical records;¹⁶⁸
- where prosecutors come into possession of evidence that they know or believe to have been obtained by torture or ill-treatment, they must refuse to use such evidence against anyone except the person who used such methods and take all necessary steps to ensure the person responsible is brought to justice;¹⁶⁹
- any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment;¹⁷⁰
- places of detention be subject to regular monitoring by a suitably qualified independent body that can make recommendations that will be taken seriously. This has been recognised by a succession of UN Special Rapporteurs on Torture as one of the most effective ways of combating torture and ill-treatment in detention.¹⁷¹

There are also specific safeguards which should be in place concerning the treatment of certain categories of detainee, including women,¹⁷² juveniles¹⁷³ and persons with mental health problems.¹⁷⁴

Although Bahrain had some safeguards in its laws to ostensibly prevent arbitrary detention prior to the BICI report,¹⁷⁵ these protections were widely considered ineffective given consistent and credible reports that these minimal safeguards were being violated. Furthermore, laws permitting prolonged periods of detention without judicial oversight and conferring significant powers on the Prosecutor, particularly the Counter-terrorism Law, were also highly problematic as they facilitated recourse to torture.¹⁷⁶ In practice this led to

¹⁶⁶ Human Rights Committee, General Comment No. 20 (1992), para. 11. See also UN Body of Principle on the Protection of All Persons Under Any Form of Detention or Imprisonment, Principle 12.

¹⁶⁷ UNCAT, Art. 11.

¹⁶⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 24 and 25. See also Report of the Special Rapporteur on Torture, above n.165, para. 39(f).

¹⁶⁹ UN Guidelines on the Role of Prosecutors, Guideline 16.

¹⁷⁰ Human Rights Committee, General Comment No. 20 (1998), para. 11.

¹⁷¹ Report of the Special Rapporteur on Torture, above n. 165, para. 34-38; Report of the Special Rapporteur on Torture, UN Doc. A/61/259, 14 August 2006, para. 77; Report of the Special Rapporteur on Torture, UN Doc. A/HRC/13/39, 9 February 2010, para. 56.

¹⁷² See eg. the Standard Minimum Rules for the Treatment of Prisoners, Arts. 8(a), 23 and 53, and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

¹⁷³ See, eg. the Convention on the Rights of the Child, Art. 37.

¹⁷⁴ See, eg. the Standard Minimum Rules on the Treatment of Prisoners, para. 82; Convention on the Rights of Persons with Disabilities, Arts. 13(2) and 14.

¹⁷⁵ For example, under the Criminal Procedure Code persons arrested or detained have the right to be informed of the reasons for their arrest, the right to contact relatives and to seek the aid of a lawyer: Law of Criminal Procedures promulgated by Legislative decree No.(46) of the year 2002, art. 61.

¹⁷⁶ Seven days under the Criminal Procedure Code; this period can be extended by a Lower Court Judge for successive terms totalling up to 45 days: Criminal Procedure Code, art. 147. Where alleged crimes fall within the national security section of the Code, the public prosecutor may extend detention up to 45 days, and the High Criminal Court can then approve further pre-trial detention of successive terms of 45 days (arts. 146-148). Under the under the Terrorism Law an individual could be held for five days on the order of a (non-judicial) "judicial arrest officer", and extended for a further 10 days by the Public Prosecutor, and then for another 60 days (Law no.58 of 2006 with respect to the protection of the community against terrorist acts, arts. 26-28).

individuals being held incommunicado for 15 days, being granted only fleeting and supervised access to a lawyer after this time, but otherwise being held without contact with the outside world for long periods.

Following the publication of the BICI report, the government of Bahrain carried out reforms intended to address some of these shortcomings. The Supreme Judicial Council issued a statute regulating visits and inspections of prisons and detention centres, under which judges and members of the prosecution visit prisons, review incarceration orders and arrest warrants, and ascertain the health and conditions of inmates.¹⁷⁷ The Prosecutor General is to be notified of any violations found. On 22 December 2011 the Minister of the Interior also issued a decision introducing new procedures, and a form to be signed by detainees listing their rights, including that an arrest warrant must be produced, that prompt communication with lawyers must be ensured, and that family visits must be allowed in accordance with the Code of Criminal Procedure.¹⁷⁸ The form also requires that the individual is checked for injuries, and is examined by a doctor at the latest on the day after he or she is taken into custody and in any case prior to being released, and that the time of call to his or her lawyer is recorded.¹⁷⁹ Another reform was the construction of interrogation rooms with video-recording facilities,¹⁸⁰ and the training of judges and prosecutors to ensure that their activities contributed to the prevention of torture and ill-treatment.¹⁸¹

There have been significant improvements in relation to the incidence of torture in detention since the release of the BICI report.¹⁸² However, as outlined above, allegations have continued to be raised, leading to concerns that the safeguards are not sufficient on their own to prevent torture and ill-treatment. In addition, the evidence of displacement of torture and ill-treatment to outside places of detention cautions against focusing all attention on traditional safeguards in detention; while these are undeniably important they must be matched by other changes in the conduct of police and prosecutors, and the operation of complaints mechanisms and the judicial system. Considerable improvements were seen in the early 2000s in respect of the incidence of torture and ill-treatment, but in less than a decade these practices returned on a large scale.

Both judges and prosecutors play crucial roles in the operation of safeguards, and until trust is built in these institutions those particular safeguards will be seen by many to have little practical benefit. For example, one lawyer gave the example of ‘filtering’ by judges of complaints of torture made in Court – although the judge would now allow the detainee to speak about torture, they would not record these statements in the record of the hearing. Others point to the fact that political leaders remain in prison on the basis of evidence widely acknowledged to have been obtained by torture. These wider issues are addressed further below.

In addition, a number of key gaps remain in respect of safeguards that would provide greater protection to detained persons and transparency to any improvements that have been made. Key among these are:

¹⁷⁷ BICI Follow-up Report, above n.7, p. 45. See also Ministry of Interior, ‘BICI Implementation’, 1 December 2012, http://www.policemc.gov.bh/en/BICI_Report.aspx.

¹⁷⁸ BICI Follow-up Report, above n.7, pp. 46-47. A copy of the form is also included at p. 387 (Appendix 19).

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*, p. 395-400.

¹⁸¹ *Ibid.*, pp. 50-51.

¹⁸² This has been confirmed by reports of other human rights organisations and was suggested to be the case by lawyers REDRESS and IRCT spoke to.

- **Access to lawyers immediately after arrest, and at any event before the beginning of questioning; any interrogation without a lawyer present should be inadmissible in Court.** At the time of REDRESS and IRCT's visit, lawyers reported that although they now generally had access to detainees, a number of factors hampered this access. Often, they were called in the middle of the night to attend questioning, and if they did not pick up the call until the next morning questioning would go ahead without them at 3am or 4am. Sometimes they would be called to police stations but made to wait for hours before questioning began. This was felt to be a deliberate attempt to frustrate their access. One individual interviewed by REDRESS and IRCT said that when in February 2012 he had refused to answer questions without a lawyer present he was taken outside of the interrogation room and beaten by police. Since that time there have been a significant number of reports of individuals not being given access to a lawyer for periods of up to a number of weeks.¹⁸³ To ensure such access, any interrogation conducted without a lawyer present should be inadmissible in Court.
- **Prompt access to effective, independent and impartial medical examinations if requested.** A number of factors hinder effective medical examinations. Although on some rare occasions forensic reports have recorded evidence of torture and ill-treatment (see above), medical check-ups of detainees are performed by the Interior Ministry's doctors, and the failure of court-ordered medical reports to record evidence of torture in a number of high profile cases¹⁸⁴ has led to a serious lack of trust in the integrity of reports produced by these doctors. The authorities must allow access to suitably qualified independent medical practitioners to perform examinations immediately upon request of a detainee or his or her lawyer to ensure confidence in the reports produced. Similarly, forensic reports in criminal investigations are prepared by doctors from an agency under the control of the Attorney General.¹⁸⁵ It is therefore equally crucial to allow independent autopsies to be performed where deaths have been recorded in the custody of, or allegedly at the hands of, law enforcement officials. A further issue raised by one doctor was that forensic medicine is not taught generally in Bahraini medical schools, and that the only qualified personnel within Bahrain are therefore those employed by the General Directorate for Material Evidence, under the direction of the Attorney General. According to that doctor, only one of those forensic experts is a Bahraini citizen, while the others are non-citizens and therefore do not have security of residence status, which jeopardises their independence and impartiality.

Re-organising the system of medical check-ups and forensic investigation in Bahrain should therefore also be addressed as a matter of urgency. This requires, in the short-term, training a sufficient number of Bahraini nationals in relevant forensic medicine disciplines in accordance with the Istanbul Protocol (on torture and ill-

¹⁸³ For example, in the case of Ahmed Humaidan, referred to above, the case of Hussein Abdullah Ali Mahmood al-Ali, reported by Amnesty International (allegedly held for more than five weeks without access to a lawyer); Amnesty International, above n.91, p. 16; and the case of a 16 year old detained in an adult prison in December 2012 (reported by Amnesty International): Amnesty International, 'Bahrain: Child held without charge in adult prison', 19 December 2012, <http://www.amnesty.org/en/news/bahrain-child-held-without-charge-adult-prison-2012-12-19>.

¹⁸⁴ See, for example, the case of Jaafar Al-Hasabi, referred to above at p. 15 and see further Human Rights Watch, 'No Justice in Bahrain: Unfair Trials in Military and Civilian Courts', February 2012, pp. 57-58, <http://www.hrw.org/sites/default/files/reports/bahrain0212webwcover.pdf>.

¹⁸⁵ Meeting between REDRESS and IRCT with the Senior Advocate General and Chief Prosecutor, 2 May 2012.

treatment)¹⁸⁶ and the Minnesota Protocol (on extra-judicial executions).¹⁸⁷ In the long-term it requires the creation of general forensic medical education in Bahrain. As a matter of urgency there should be the creation of independent and sufficiently resourced forensic medical services outside the organisational structure of the Public Prosecution and Interior Ministry, with guarantees of tenure for its staff (whether foreign or Bahraini nationals) coupled with monitoring and evaluation of its activities. In addition, the law must provide for prompt and effective access to a doctor of their choice for detainees and in all cases of death involving state agents, and allow entry to foreign medical experts at the request of alleged victims of torture and ill-treatment and their families.

- **The repeal of the Counter-terrorism Act, and reform of the Criminal Procedure Code to shorten the period of time before which a person must be brought before a Judge to 24 hours.** Twenty-four to 48 hours is the generally accepted period of time within which a person should be brought before a judge,¹⁸⁸ and given Bahrain's history of the use of torture and ill-treatment no longer period than 24 hours should be accepted.
- **The establishment of a suitably qualified and independent body to monitor places of detention, which is empowered to make recommendations that will result in improvements.** Bahrain is not yet a party to the Optional Protocol to the Convention Against Torture, which establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and ill-treatment.¹⁸⁹ The Subcommittee on Prevention of Torture created under the OPCAT has a mandate both to visit places of detention in signatory countries, and to advise on the establishment of effective domestic mechanisms of prevention. If the government of Bahrain is committed to preventing torture and ill-treatment there is no conceivable reason why it should not become party to the Optional Protocol to the Convention Against Torture, to assist it to establish and maintain such a body.

The right to complain, investigations, accountability & reparation

UNCAT requires that States investigate, prosecute and adequately punish all acts of torture and ill-treatment.¹⁹⁰ It also requires States to ensure in their legal system that a victim of torture obtains redress, and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.¹⁹¹ These requirements are mirrored in other human rights treaties and instruments, including the ICCPR.¹⁹²

¹⁸⁶ United Nations manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, known as the Istanbul Protocol (1999).

¹⁸⁷ United Nations manual on the effective prevention and investigation of extra-legal, arbitrary and summary executions, known as the Minnesota Protocol (1989).

¹⁸⁸ The Human Rights Committee has held that although the word "promptly" in Article 9 must be interpreted on a case by case basis, the time before an individual is brought before a judicial authority "should not exceed a few days": Communication No. 373/1989, *L. Stephens v. Jamaica* (Views adopted on 18 October 1995), in UN doc. GAOR, A/51/40 (vol. II), p. 9, para. 9.6. See also ECtHR, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A, No. 145, pp. 31-32, paras. 58-62.

¹⁸⁹ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199; entered into force on 22 June 2006.

¹⁹⁰ UNCAT, arts. 12, 5 and 7.

¹⁹¹ UNCAT, art. 14.

¹⁹² See eg. Human Rights Committee, General Comment No. 31, above n.150, para. 16.

To ensure that this is possible, UNCAT further provides that any individual who alleges they have been subjected to torture has the right to complain to and to have their case promptly and impartially examined by the competent authorities. The Convention further requires that steps are taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of their complaint or any evidence given.¹⁹³ The Committee Against Torture, in its General Comment No. 3 of 2012, has given detailed guidance about how these obligations interrelate, and the steps States should take to ensure that redress is provided to victims of torture and ill-treatment.¹⁹⁴

As described above, until 2011, allegations of torture and ill-treatment were not seriously investigated in Bahrain and there was a long-standing culture of impunity.¹⁹⁵ Although torture was included as a crime in the Penal Code, albeit not clearly in line with article 1 UNCAT,¹⁹⁶ no known prosecutions had been brought. Bahraini law did not provide clear or specific remedies for torture or ill-treatment: the only option under Bahraini law was for victims of torture to institute civil proceedings,¹⁹⁷ but given the unwillingness of judges to address complaints of torture in criminal cases, and the existence of the amnesty law, victims or their lawyers did not see this a realistic avenue for redress. This was borne out by the actual practice as the few cases that had been brought on behalf of victims of torture were dismissed.¹⁹⁸

Because of the commonplace reliance on ‘confessions’ obtained by torture in criminal trials, the criminal justice system as a whole has been deeply implicated in the use of torture and ill-treatment.¹⁹⁹ In many cases the public prosecution had failed to respond appropriately to allegations of torture and ill-treatment.²⁰⁰ It was also commonplace for judges (with some notable exceptions²⁰¹) to refuse to hear or enquire into complaints of torture raised by defendants at their trials.²⁰² Court-ordered medical examinations have been carried out by doctors attached to the prosecutor’s office, with the prosecution arguing that it is the “*sole body with the technical expertise necessary to identify injuries*”.²⁰³ The resulting medical reports have in a number of cases been challenged as inadequate by those on trial who were nevertheless unable to be examined by a doctor of their choice.²⁰⁴

¹⁹³ UNCAT, art. 13.

¹⁹⁴ Committee Against Torture, General Comment No. 3, UN Doc. CAT/C/GC/3 (2012).

¹⁹⁵ See, for example, the Committee Against Torture’s concluding observations on Bahrain in 2005 (UN Doc. CAT/C/CR/34/BHR of 21 June 2005), where it noted with concern “[t]he apparent failure to investigate promptly, impartially and fully the numerous allegations of torture and ill-treatment and to prosecute alleged offenders, and in particular the pattern of impunity for torture and other ill-treatment committed by law enforcement personnel in the past” (para. 6(f)).

¹⁹⁶ Penal Code art. 208. Note, however that torture was not defined.

¹⁹⁷ Criminal Procedure Code art.22; Civil Law, promulgated by Legislative decree no.19 of 2001, art. 158.

¹⁹⁸ See above, p. 13.

¹⁹⁹ See Human Rights Watch, above n. 40, pp. 3, 5, 14; Human Rights Watch, above n.184, p. 6.

²⁰⁰ Human Rights Watch, above n. 40, pp. 3, 5, 14.

²⁰¹ *Ibid.*, p. 4.

²⁰² For example, in Mr Al Hasabi’s case (referred to at p. 15 above), allegations of torture made by the defendants were not recorded in the minutes of the session and the judge only indicated that the “defendants are showing me their legs” (<http://www.frontlinedefenders.org/node/13947>), additionally, not all defendants were permitted to show their injuries to the judge (<http://bahrainrights.hopto.org/en/node/3695>), see further Human Rights Watch, above n. 184, p. 59; BICI Report, para. 1241.

²⁰³ Human Rights Watch, above n. 184, p. 57. HRW notes that previously, when Ministry of Health doctors had provided court-ordered medical reports, these had in some instances corroborated allegations of torture and ill-treatment: see at pages 58-59. See also Human Rights Watch, above n.40, p. 55 where it refers to reports by both public prosecution doctors and health ministry doctors which supported allegations of torture and ill-treatment.

²⁰⁴ *Ibid.*

During the mass arrests of March to June 2011, and subsequent military and other trials, these issues were magnified as thousands were arrested and put on trial without guarantees of due process on the basis of evidence often alleged to have been obtained by torture.²⁰⁵ The BICI found that the lack of accountability of officials within the security system in Bahrain had “led to a culture of impunity, whereby security officials have few incentives to avoid mistreatment of prisoners or to take action to prevent mistreatment by other officials”.²⁰⁶ The Commission also said that it had “received evidence indicating that, in some cases, judicial and prosecutorial personnel may have implicitly condoned this lack of accountability”.²⁰⁷

Recommendations of the Commission

The BICI made specific and far-reaching recommendations about the introduction of accountability mechanisms for torture and ill-treatment and other serious crimes committed by security personnel. In relation to crimes committed during 2011, this included the establishment of a national independent and impartial mechanism to determine the accountability of those in government who had committed unlawful or negligent acts resulting in deaths, torture and mistreatment of civilians, with a view to bringing legal and disciplinary action against them.²⁰⁸ It was stressed that this should include those in the chain of command, military and civilian, who are found to be responsible under international standards of superior responsibility.²⁰⁹ The BICI also recommended that all allegations of unlawful killings, torture and similar treatment be investigated by an independent and impartial body, following the Istanbul Principles, and that the investigations should be capable of leading to the prosecution of the implicated individuals, both direct and at all levels of responsibility, with a view to ensuring that punishment be consistent with the gravity of the offence.²¹⁰ The Commission also recommended that the government compensate and provide remedies to the families of those killed and for all victims of torture, ill-treatment or prolonged incommunicado detention.²¹¹

Looking forward, the Commission recommended the introduction of legislation requiring the Attorney General to investigate claims of torture and ill-treatment, to use independent forensic experts, and to provide for remedies for anyone claiming retribution for making a complaint.²¹² In addition, it recommended the establishment of a standing independent body to examine all complaints of torture or ill-treatment, excessive use of force or other abuses at the hands of the authorities.²¹³ It further recommended the establishment of an oversight mechanism for the Ministry of the Interior, which could enforce police professional standards, carry out training, receive individual or organisational complaints, protect complainants, and carry out independent investigations, as well as disciplinary and criminal proceedings.²¹⁴

²⁰⁵ BICI Report, above n.5, paras. 1196, 1203, 1230, 1241.

²⁰⁶ *Ibid.*, para. 1698.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*, para. 1716.

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*, para. 1722(a).

²¹¹ *Ibid.*, paras. 1722(j) and 1722(k).

²¹² *Ibid.*, para. 1719.

²¹³ *Ibid.*, para. 1722(b).

²¹⁴ *Ibid.*, para. 1717.

Implementation by the Government

On the day the report was released King Hamad issued a statement accepting its criticisms of the government and promising implementation of its recommendations. A National Commission was tasked with overseeing implementation and delivered its final report to the King on 20 March 2012.²¹⁵ To carry out investigations into unlawful deaths and allegations of torture and ill-treatment, it set up what was termed the ‘Special Investigations Unit’, within the Public Prosecution. This was made up of existing staff from the public prosecution who were sent on specific training on human rights and investigation using the Istanbul Protocol.

In February 2012, the government also created the office of the Ombudsman, outside the Ministry of Interior, and a new Internal Affairs Department in the Ministry of Interior with internal responsibility for first order disciplinary review.²¹⁶ Nawaaf Almaawdah was appointed to the role in August 2012.²¹⁷ It has been reported that a decree to be issued shortly will expand the ombudsman’s authority to visit and monitor detention centres and to investigate police misconduct even in the absence of an individual complaint.²¹⁸

Laws were also adopted to include a definition of torture in the Penal Code (although the definition is not entirely in line with that under the UNCAT, as it does not apply to the full range of prohibited purposes and only applies to persons in detention),²¹⁹ to criminalise retaliation against those making a complaint,²²⁰ to provide the possibility of victims and witnesses giving evidence by videoconference from overseas or if there were safety or psychological concerns, and for measures to be taken to ensure the protection of victims and witnesses.²²¹

The government also announced measures to implement the Commission’s recommendations on reparation for families of victims of unlawful killing and victims of violations during the period March to June 2012. The first of the measures announced was the establishment of a National Fund for the Compensation of Victims. However, to access this Fund, conviction of the perpetrator was required.²²² Separately, the government announced that it would set up specialised courts to hear cases of compensation resulting from events of 2012.²²³ As a third measure Ministry of Justice and Islamic Affairs launched the ‘Civil Settlement Initiative’, the professed aim of which was for applicants to “*settle their claims quickly and in a consensual manner*”.²²⁴ The initiative was aimed at families of deceased victims and those who were injured last year and who would otherwise have to rely on civil court judgment against the state to obtain redress.

²¹⁵ BICI Implementation report, above n. 7.

²¹⁶ Bahrain News Agency, ‘HM King Hamad receives BICI’s report and delivers keynote speech’, 23 November 2011, <http://www.bna.bh/portal/en/news/481652>.

²¹⁷ Webpage: Ministry of Interior, ‘Ministry of Interior’s Ombudsman’, http://iaa.bh/downloads/3-Ministry_of_Interior_Ombudsman.pdf.

²¹⁸ Human Rights Watch, ‘Bahrain: No progress on reform’, 28 February 2013, <http://www.hrw.org/news/2013/02/28/bahrain-no-progress-reform>.

²¹⁹ BICI Implementation Report, above n.6, pp. 32-33 and Appendix 3.

²²⁰ *Ibid.*

²²¹ *Ibid.*, pp. 32-33 and Appendix 9.

²²² See Decree 30/2011 On the Establishment of a National Fund for the Compensation of Victims, and Decree 13/2012 on the regulation of the National Fund for Compensation of Incident-Affected Victims.

²²³ See BICI Follow-up Report, above n.7, p. 202.

²²⁴ *Ibid.*, p. 57 and Appendix 24.

Problems in implementation

Although the reforms have led to some investigations and prosecutions, it is evident that Bahrain has substantially failed to implement the recommendations of the BICI concerning investigations, accountability and reparation for victims of violations committed during 2011.²²⁵ Similar failings have occurred in the responses to allegations of torture and ill-treatment, which have arisen since that time.

Concern in relation to Bahrain's compliance with its duty to hold perpetrators of torture and ill-treatment accountable relate to the number of cases where investigations have not been started, the limited number of prosecutions, the low level of most of the officials who have been prosecuted, the types of charges which have been brought, the failure of some prosecutions and the lack of sufficient information provided to victims in relation to the prosecutions. On reparation, some lawyers told REDRESS and IRCT that victims' families felt the government was trying to buy their silence without providing a proper remedy, and victims themselves expressed a lack of confidence in the measures proposed.

Outcomes of investigations and prosecutions

REDRESS was informed by the Senior Advocate General in December 2012 that the Special Investigations Unit was investigating 205 cases relating to alleged violations committed during 2011. Eighty-three of these were received from complainants directly, and 122 referred by the Ministry of Interior and National Security Agency. By December, 14 cases of torture and ill-treatment, and six cases concerning deaths had been referred to the Courts.²²⁶

In August 2012, investigations had reportedly resulted in charges being brought against 22 state officials (although it was not reported on what charges).²²⁷ In September 2012 the public prosecution brought charges against a further seven police officers in relation to allegations of torture and ill-treatment of a number of medical doctors detained in 2011 (although only two are being tried for torture).²²⁸

More recently, it has been reported that one of the officials who had been charged in two separate trials is a member of the royal family, Sheikha Noura bint Ibrahim Al Khalifa. The first trial, which began in October 2012, concerns the use of torture, force and threats against doctors Zahra Al Sammak and Kholoud Al Durazi to force a confession.²²⁹ The second trial, which began in July 2012, concerning the ill-treatment of poet and activist Aayat Al

²²⁵ For a summary of assessments of the level of implementation see Katzman, above n.9, pp. 12-13. See also POMED, 'One Year Later: Assessing Bahrain's Implementation of the BICI Report', November 2012, <http://pomed.org/one-year-later-assessing-bahrain-implementation-of-the-bici-report/>; Amnesty International, above n. 91; Human Rights Watch, above n. 218.

²²⁶ Letter from Senior Advocate General, Abdulrahman Alsayed Mohamed Ahmed to REDRESS, dated 12 December 2012.

²²⁷ Human Rights Watch, 'Bahrain: Act on UN Human Rights Commitments', 19 September 2012, available at: <http://www.hrw.org/news/2012/09/19/bahrain-act-un-human-rights-commitments>.

²²⁸ Al Jazeera, 'Bahrain charges police officers with torture', 18 September 2012, available at: <http://www.aljazeera.com/news/middleeast/2012/09/201291812655610450.html>. The two defendants facing the "most serious" charges were referred to the High Criminal Court over the "use of torture and threats against six medic detainees, for the purpose of forcing a confession"; while five officers were charged with offences before the Lower Criminal Court.

²²⁹ The National, 'Bahraini princess who works as police officer on trial for torture: senior official', 1 February 2013, <http://www.thenational.ae/news/world/middle-east/bahraini-princess-who-works-as-police-officer-on-trial-for-torture-senior-official#ixzz2NnWD7fy0>.

Qormozi, does not involve charges of torture although the alleged conduct would appear to reach that threshold.

However, during a mission conducted in Bahrain in February 2013, Human Rights Watch was informed by the interior minister, Shaikh Rashid, that *“internal investigations had found wrongdoing or misconduct only by police officials up to the rank of battalion commander. Beyond that rank, he said, internal investigations had assigned no blame for wrongdoing, and no commanders or other ranking officials had been reprimanded, reassigned, demoted, suspended, or terminated”*.²³⁰ Furthermore, although the head of a unit has been prosecuted in relation to torture of medical doctors, he has not been charged under principles of command responsibility for other widespread violations carried out by his unit.

According to the information available to REDRESS and IRCT, trials to date have resulted in the following:

- In September 2012 a first lieutenant of the Ministry of the Interior was convicted and sentenced to seven years imprisonment for *“assault leading to death”* of an unarmed protester. The protestor had been shot at least three times while running away from police.²³¹ However, two other accused officers standing trial on the same charges for the deaths of two other individuals (both unarmed protesters, one who was shot in the head at close range, and one shot at least three times in the thigh at close range²³²) were acquitted. The Public Prosecution filed an appeal, but the acquittal was confirmed in February 2013.²³³
- One corporal was convicted in June 2012 of *“unintentionally causing permanent disability to a victim”*, and sentenced to five years imprisonment.²³⁴ It has been reported that on 9 November 2012 the sentence was reduced to three years imprisonment, and suspended.²³⁵
- A police officer tried on charges of using force to extract a confession (from Nazeeha Saeed, France 24 and Radio Monte Carlo correspondent), was acquitted in October 2012 (the Public Prosecution has filed an appeal).²³⁶ Having reported on pro-democracy demonstrations held at Bahrain’s Pearl Roundabout in the spring of 2011, Ms Saeed was called into a Bahraini police station for questioning. There, she was blindfolded, kicked, punched, and slapped. Her hair was pulled, she was

²³⁰ Human Rights Watch, above n.225.

²³¹ Concerning the death of Hani Abdel Aziz in 2011. Middle East Online, ‘Bahrain policeman sentenced to 7 years for killing protester’, 27 September 2012, <http://www.middle-east-online.com/english/?id=54606>. See also: ‘Bahrain: Impunity for protesters’ killers: acquittal of 2 policemen and a light sentence for the third’, <http://abna.ir/data.asp?lang=3&id=353196>; report of the BICI Inquiry, above, paras. 945-949. That the charge was ‘beating leading to death’ was confirmed in the letter from Senior Advocate General, Abdulrahman Alsayed Mohamed Ahmed to REDRESS, dated 12 December 2012.

²³² Concerning the deaths of Ahmed Farhan Ali Farhan and Ali Ahmed Abdulla Moumen. See the report of the BICI Inquiry, above, at paras. 921-9.

²³³ Letter from Senior Advocate General, Abdulrahman Alsayed Mohamed Ahmed to REDRESS, dated 12 December 2012.

²³⁴ Human Rights Watch, ‘Bahrain: Act on UN Human Rights Commitments’, 19 September 2012, <http://www.hrw.org/news/2012/09/19/bahrain-act-un-human-rights-commitments>; BBC, ‘Three Bahrain policemen face murder trial’, 27 June 2012, <http://www.bbc.co.uk/news/world-middle-east-18606537>.

²³⁵ Marc Owen Jones, ‘Friday 9th in Bahrain: The Crackdown Escalates’, 9 November 2012, <http://marcownjones.wordpress.com/2012/11/09/today-in-bahrain-the-crackdown-escalates/>.

²³⁶ BNA, ‘Public Prosecution Appeals Court Rulings of 2 Cases in which Public Security Officers Were Involved’, 29 October 2012, available at: <http://www.bna.bh/portal/en/news/531061>.

whipped with plastic tubing, had a shoe forced into her mouth and her head dunked into a toilet. An unknown, caustic liquid said to be urine was poured onto her face, she was repeatedly insulted and mentally abused and asked to make a false confession. Three independent medical reports, two of which were from Bahraini government doctors, corroborate Ms Saeed's account of the torture she suffered while in custody.²³⁷ Saeed alleges that other named officials were directly involved in her torture,²³⁸ but these individuals have not been prosecuted. She also alleges that on appeal "*the Prosecution has made no effort to convince the Court that the court of first instance had erred in its acquittal ...*"²³⁹ Ms Saeed has made a communication to two UN special procedure mandate holders alleging the failure of the Bahraini government to conduct an impartial investigation into her abuse and hold accountable those police officers responsible for it.²⁴⁰

- Two officers were reportedly sentenced in June 2012 to three months imprisonment for mistreatment.²⁴¹
- On 30 December 2012, two officers from the National Security Agency were convicted of the manslaughter of Abdulkarim Fakhrawi, co-founder of Al-Wasat newspaper, and were sentenced to seven years imprisonment.²⁴² He had died after being repeatedly hit with a toilet seat by the officers, although the officers were not charged with the more serious offence of torture leading to death.²⁴³ Judges had previously sent the case back to the public prosecution for failure to investigate it properly.²⁴⁴
- On 31 January 2013, a police officer of the security unit in the Al-Daih area was sentenced to seven years imprisonment for the fatal shooting of Ali Abdulhadi al-Mushaima, the first person to die during the protests in February 2011.²⁴⁵
- On 26 February 2013, two police officers were acquitted of the shooting death of a protester, Fadhil al Matrook.²⁴⁶ Al Matrook had been shot in the back, and the BICI had attributed his death to the use of excessive force by police officers,²⁴⁷ but the Court found that the police officers had acted in self-defence.

²³⁷ Press Release: 'Journalist Nazeeha Saeed calls on UN Special Rapporteurs to investigate Bahraini authorities' failure to hold accountable those who tortured her', 11 January 2013, www.bahrainrights.org/en/node/5598.

²³⁸ Committee to Protect Journalists, 'Bahrain acquits officer on charges of torturing a journalist', 24 October 2012, <http://cpj.org/2012/10/bahrain-acquits-officer-on-charges-of-torturing-a.php>.

²³⁹ Press Release: 'Journalist Nazeeha Saeed calls on UN Special Rapporteurs to investigate Bahraini authorities' failure to hold accountable those who tortured her', 11 January 2013, www.bahrainrights.org/en/node/5598.

²⁴⁰ *Ibid.*

²⁴¹ Al Jazeera, 'Bahrain charges 15 police officers with abuse', 3 July 2012, <http://www.aljazeera.com/news/middleeast/2012/07/201273131258783118.html>.

²⁴² Al Wasat, '20 death cases among 28 cases for Bahrainis have been documented in BICI report and have not been referred yet to courts', 2 February 2013, www.alwasatnews.com/ipad/news-734899.html.

²⁴³ Shafaqna.com, 'Judgments in Fakhrawi's case of torture to death lack seriousness', 1 January 2013, <http://shafaqna.com/english/countries/bahrain/item/10906-judgments-in-fakhrawis-case-of-torture-to-death-lack-seriousness.html>.

²⁴⁴ Noor Zahra, 'Seven years jail for murder duo', *Gulf Daily News*, 31 December 2012, <http://www.gulf-daily-news.com/Print.aspx?storyid=344716>.

²⁴⁵ Reuters, 'Bahraini court jails policeman for protester death' 1 February 2013, <http://news.yahoo.com/bahraini-court-jails-policeman-protester-death-agency-082536575.html>.

²⁴⁶ BBC News, 'Bahrain police acquitted in protester death cases', 27 February 2013, <http://www.bbc.co.uk/news/world-middle-east-21601016>.

²⁴⁷ BICI Report, above n... para. 905.

- On 12 March 2013, two police officers were convicted of torturing to death Ali al-Saqr, whose death on 9 April 2011 the BICI attributed to torture at the Dry Dock Detention Centre.²⁴⁸ The cause of death was recorded as “hypovolemic shock resulting from several traumas”.²⁴⁹ They were sentenced to ten years imprisonment. Three other officers were acquitted of failing to report the crime, and all five were acquitted on the same day for the murder of Zakeriya Asheeri, who also died in 2011 while in detention.²⁵⁰

By early February 2013, of the 28 cases of unlawful death recorded in the BICI report, only eight had reportedly proceeded to trial.²⁵¹ This is in contrast to the much more numerous and speedy convictions of opposition activists and others, often for long periods, including life imprisonment.²⁵²

Notably, in the above cases, despite the findings of the BICI that torture was used systematically, no person has been convicted of “torture” under Article 208 of the Penal Code. Instead, where deaths have resulted, the charge of “assault resulting in death” has been used. In addition, those convicted have not been subject to Article 75 of the Penal Code, which specifies that the fact that a defendant is a public employee and the crime is carried out in the course of his or her public duties is an aggravating circumstance leading to a doubling of the applicable maximum period of imprisonment.²⁵³

In relation to other deaths and alleged beatings at the hands of law enforcement officials during 2012 and 2013, investigations have been announced but, to REDRESS’ and IRCT’s knowledge, have only resulted in one prosecution (the recently instigated charges in the case of Salah Abbas Habib referred to above at page 26). No transparent investigations or prosecutions have resulted in relation to the deaths of Yousif Ahmed Muwali and Muntadher Saeed Fakhar (referred to at page 19 above), or 22-year old citizen journalist, Ahmed Ismail (killed in March 2012).²⁵⁴ No independent medical examinations were allowed in any of these cases. Investigations into the deaths of two children, Hossam Al Haddad and Hussein al-Ni’ma, in August and September 2012, respectively, resulted in no charges being brought after the investigations concluded that the officers involved had acted in lawful self-defence.²⁵⁵ Two officers were reportedly taken into custody in relation to the death of Hussain Aljazeera, who died in February 2013 from injuries to the abdomen received at close range from bird shot.²⁵⁶ At the time of writing there had been no reported arrests relating to the death of his relative, Mahmood Aljazeera (20), who died after being hit on the same day in the head by a tear gas canister fired by police.

²⁴⁸ *Ibid.*, para. 996.

²⁴⁹ *Ibid.*, para. 992.

²⁵⁰ Al Arabiya, ‘Bahrain police jailed for torturing protesters to death’, 12 March 2013, available at: <http://english.alarabiya.net/en/News/2013/03/12/Bahrain-police-jailed-for-torturing-protesters-to-death-.html>.

²⁵¹ Al Wasat, ‘20 death cases among 28 cases for Bahrainis have been documented in BICI report and have not been referred yet to courts’, 2 February 2013, available at: www.alwasatnews.com/ipad/news-734899.html.

²⁵² See generally Human Rights Watch, above n.184.

²⁵³ Although this has now reportedly been invoked in the April 2013 prosecution of a Special Security Forces policeman for the death of Salah Abbas Habib, see above n.127.

²⁵⁴ FIDH, above n.83, pp. 12-13.

²⁵⁵ FCO, ‘Quarterly Updates: Bahrain’, 30 September 2012, above. See the government’s response to a communication to UN Special Procedures mandate holders in relation to these deaths at [https://spdb.ohchr.org/hrdb/22nd/Bahrain_21.12.12_\(9.2012\)_Trans.pdf](https://spdb.ohchr.org/hrdb/22nd/Bahrain_21.12.12_(9.2012)_Trans.pdf).

²⁵⁶ BBC, ‘Bahraini dies after being struck by tear gas canister’, 22 February 2013, <http://www.bbc.co.uk/news/world-middle-east-21547109>; Human Rights Watch, above n.218.

During their visit, and since, REDRESS and IRCT have heard criticisms from lawyers and victims alike about the process adopted when they made a complaint of torture or ill-treatment during 2012. One lawyer said that he had attended the questioning of a complainant, which lasted for many hours and in which the complainant was interrogated as if she were a defendant. Another complainant whose case proceeded to trial said that their lawyer had not been provided with any of the evidence in the case until the day before the trial.

Many of those who said that they had made a complaint had been contacted once or twice a number of months after the complaint was made, but had heard nothing further. This was the case, for example, concerning former al Wefaq MP Jawad Fairouz who, on 27 September 2011, sent a detailed complaint concerning torture and ill-treatment inflicted on him during three months of detention in 2011 to a number of Bahraini authorities. He has told REDRESS and IRCT that nothing has come of his complaint. Rather, on 7 November 2012, he was convicted by the Lower Criminal Court of participating and inciting others to participate in an illegal gathering on the basis of evidence obtained during that period of detention, and sentenced to a 15 months suspended sentence of imprisonment. The day prior to this, while he was on a short trip outside Bahrain, his nationality was unilaterally revoked by the authorities, and he has now been left stateless, in breach of relevant principles of international law.²⁵⁷

Again, a major issue raised by civil society, lawyers and victims alike with the investigation and accountability mechanisms was a lack of trust in the institutions tasked with carrying them out. The special investigations unit is staffed with members of the same public prosecution office which was responsible for politically motivated prosecutions before, during and after the 2011 protests – many of which relied on evidence obtained by torture.²⁵⁸ It is also the same office responsible for prosecutions of leading figures from opposition and human rights organisations on freedom of speech-related charges during 2012. In no cases of suspicious deaths and alleged torture or ill-treatment has it allowed independent medical examinations. Although there may be individuals within the organisation who are committed to properly investigating cases, any such investigation now seems almost inevitably to be tainted by mistrust.

Similarly, there is a lack of trust in the judiciary as an impartial and independent body able to provide accountability, as it was also deeply implicated in past violations, and continues to be the final arbiter in politically motivated prosecutions today. As discussed above, during the 2000s, after the reforms introduced with the new Constitution, lawyers tried to bring a civil suit for torture but were rebuffed by the Courts.²⁵⁹ Lawyers still report judges refusing to hear or record evidence of torture or ill-treatment made by detainees, and a refusal to order independent medical reports. Some of their clients remain imprisoned for long periods of time (and in one case sentenced to death) for crimes allegedly committed during 2011,

²⁵⁷ Kareem Fahim, 'In Crackdown, Bahrain Revokes the Citizenship of 31 People', *New York Times*, 7 November 2012, <http://www.nytimes.com/2012/11/08/world/middleeast/bahrain-revokes-citizenship-of-31-people-in-bid-to-quell-dissidents.html>; BBC News, 'Bahrain revokes 31 opposition activists' citizenship', 7 November 2012, <http://www.bbc.co.uk/news/world-middle-east-20235542>. On 23 November the OHCHR made the following statement on the revocation: "*The High Commissioner regrets the decision taken by Bahraini authorities on 7 November to revoke the nationality of 31 citizens for "having undermined state security". Such a decision may leave around 16 of them stateless. She urges the Government to reconsider this decision, which stands in clear violation of article 15 of the Universal Declaration of Human Rights, which states that, "everyone has the right to a nationality" and, "no one shall be arbitrarily deprived of his nationality"*": <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12828&LangID=E>.

²⁵⁸ On this point see Amnesty International, above n.91, p. 5.

²⁵⁹ See above, p. 13.

where the whole trial process has been tainted by allegations of torture and ill-treatment.

One senior lawyer said that he thought the only way forward was for the allegations to be investigated and tried by a truly independent body, staffed by individuals from outside Bahrain. In his view, events had polarised society in such a way that no person within Bahrain – whether from the government and its agencies or from the opposition – would be seen as impartial enough to carry out a proper investigation and prosecution. The desirability or feasibility of such an approach to investigation and accountability was not discussed more broadly with others during the mission, but there are precedents for international mechanisms of this sort, which could be drawn on if such a mechanism was to be considered further.²⁶⁰

The right to complain?

An issue repeatedly raised by government officials in response to allegations of torture and ill-treatment reported by REDRESS and IRCT during 2012 was the fact that victims needed to make complaints in order for the issue to be investigated, and that government agencies welcomed such complaints and would investigate them thoroughly. One official informed us that there was a special hotline to which complaints could be made. No lawyers, victims or activists that we asked about the hotline had heard of it before, but when we suggested to one person that they could try using it they did so and their complaint was recorded.²⁶¹

That complaints are necessary and welcome has been the position adopted by the government in relation to more recent incidents, such as the video footage of a man holding a baby being slapped on the face twice by a police officer (referred to above), which circulated in November 2012. After a video of a similar incident was posted online, Bahrain's interior minister issued a statement in which he "*condemned the behaviour of policemen seen recently in videos circulating on social media*" and asked those recording such incidents to report them to police.²⁶²

However, official responses are widely perceived to be contradictory. As pointed out by an opposition activist,²⁶³ it was odd for the government to encourage witnesses who record abusive police behaviour to come forward less than two weeks after jailing a leading rights activist for documenting injuries suffered by a protester on Twitter.²⁶⁴ The interior ministry's official statements were also undermined by a series of comments made by Bahrain's police chief, Tariq al-Hassan, on his personal twitter account. As pointed out by Mohamed Hassan in a post for Global Voices,²⁶⁵ the head of police suggested that such video recordings of police brutality were part of a plot:

²⁶⁰ For example the international criminal tribunals for the Former Yugoslavia and Rwanda, and hybrid tribunals in East Timor, Sierra Leone and Cambodia.

²⁶¹ When we later inquired as to how the complaint progressed, we were told that the victim had been too afraid to continue the complaint process and later decided to withdraw the complaint.

²⁶² 'HE Minister condemns policemen's actions in online, videos', 25 December 2012, http://www.policemc.gov.bh/en/news_details.aspx?type=1&articleId=16038.

²⁶³ And reported in a New York Times blog by Robert Mackey: Robert Mackey, 'Bahrain detains officer for slapping man', 28 December 2012, <http://thelede.blogs.nytimes.com/2012/12/28/officer-detained-for-slapping-bahraini-man/>.

²⁶⁴ See reports of the arrest of Said Yousif al-Muhafda: Liam Stack and Robert Mackey, 'Bahrain Jails Activist for Covering Protests on Twitter', <http://thelede.blogs.nytimes.com/2012/12/19/bahrain-jails-activist-for-covering-protests-on-twitter/>.

²⁶⁵ Mohammed Hassan, 'Bahrain police 'slap' video goes viral', 25 December 2012, <http://globalvoicesonline.org/2012/12/25/bahrain-police-slap-video-goes-viral/>.

Attempts to defame the ministry of interior and its staff [are] part of a fierce war by known and exposed persons and organizations after their previous plans have failed.

Those organizations and their followers use derogatory terms towards policemen to demean their personalities and incite hat[red] towards them among the people young and old.

They set up ambushes for policemen based on scenarios prepared by media professionals working in known media channels in other countries and then filmed and released when needed.

These traitorous fakers publish those scenes and exaggerate them as they are instructed and the way that fits the goals of those countries and theirs.²⁶⁶

During its mission to Bahrain, REDRESS and IRCT were met with three main responses to the question of whether individuals alleging torture or ill-treatment had made a complaint to police. The first was that they had made a complaint (in one notable case referred to above, on no less than five occasions), but that no action had been taken. The second was that they did not want to make a complaint because they had already been in trouble with the police and did not want to attract any further attention to themselves, particularly if they had cases ongoing. The third was that they had absolutely no trust that the police would do anything, and that reporting it would therefore be a waste of time.

It is very difficult for the government to assert that it provides individuals with the right to complain of torture and ill-treatment amid continued prosecutions of individuals, including journalists and members of human rights organisations, related to their coverage of protests and cases of alleged violations. Even then, until trust is restored in the police, criminal justice and judicial systems, it is difficult to see how that right will be effective in practice, unless a truly independent complaints mechanism is introduced.

A failure of reparation

International human rights law, including the UNCAT, provides that victims of torture and ill-treatment are entitled to an effective remedy and reparation.²⁶⁷ Such reparation should include measures of restitution (restoring what was taken away), compensation, rehabilitation, satisfaction (measures recognising that a wrong was done) and guarantees of non-repetition (general measures aimed at preventing the violation occurring again in the future).²⁶⁸ For torture, a judicial remedy is always required.²⁶⁹ Simply providing compensation or other social services to victims will not satisfy victims' right to redress on its own. A judicial remedy is fundamental to victims' need for acknowledgment, recognition and justice.

Victims' rights comprise the procedural right to access justice, and the substantive right to compensation, rehabilitation or other forms of reparation. These two aspects are part of a whole. Ultimately the process of seeking redress is to restore the dignity of the victim and this includes his or her moral integrity in terms of acknowledgment of the harm as well as the physical, psychological or social aspects of harm caused. The two components reflect this integrative approach – an approach endorsed by the Committee Against Torture in its

²⁶⁶ *Ibid.*

²⁶⁷ UNCAT, Art. 14; ICCPR, Art 2(3), see also Human Rights Committee, General Comment No. 31, above n. 150, para. 16.

²⁶⁸ See Committee Against Torture, General Comment No. 3, UN Doc. CAT/C/GC/3 (2012), para. 6.

²⁶⁹ *Ibid.*, para. 30.

recent General Comment No. 3 on Article 14, where it emphasised “*the importance of victim participation in the redress process, and that the restoration of the dignity of the victim is the ultimate objective in the provision of redress*”.²⁷⁰

The limited measures introduced through the reforms after the BICI (see above from page 41) appeared to have the potential, if implemented across the board, to provide some degree of remedy and redress for victims. They should have allowed for investigations and prosecutions, civil claims, and the provision of compensation. However, in practice, in relation to reparation for violations committed during 2011 resulting in deaths, the government has relied on the civil settlement initiative to provide compensation to families of victims.²⁷¹ Lawyers of families involved said that many were reluctant to accept compensation, as they were concerned both that the amount awarded was a limited set amount which would waive their right to further compensation, and that it would mean foregoing their rights to other forms of reparation.²⁷² Some families refused the compensation, but in at least one case found that it was deposited against their wishes in the bank account of a family member.²⁷³ Such provision of compensation against the wishes of the family, entirely divorced from an investigation of what happened and a remedial process in which the family is consulted and involved, clearly runs counter the rights of victims and the aims of reparation.

Similarly, although victims of other rights violations could lodge applications for monetary compensation through the settlement initiative,²⁷⁴ as shown above, this process has been almost entirely divorced from the provision of a remedy for the violation and other forms of reparation. Furthermore, there has been a failure to provide services or resources for the rehabilitation of victims of torture and ill-treatment, as required by Article 14 of UNCAT. During our visit to Bahrain, members of civil society from different groups stressed the urgent need for the provision of rehabilitation by independent providers to thousands of victims of torture in the country. The only independent rehabilitation centre in the country, the Al-Karama Centre run by the Bahrain Human Rights Society, was closed down in September 2010.²⁷⁵

Victims and their lawyers have been cautious in approaching the judicial system for civil redress both because such claims have not been successful in the past, and because of the perception of ongoing bias in the judicial system in favour of the government. We were told that lawyers had filed a civil claim in 2005 concerning excessive use of force in a demonstration during 2004, but that this had been unsuccessful. The lawyers we spoke to suggested that such an action was destined to fail because the courts required a very high standard of proof (essentially requiring a criminal conviction), and there was the very real potential for evidence to be manipulated by the state defendant. Criminal complaints filed by the lawyers during the 1990s and 2000s had also been unsuccessful. The lawyers did not see that anything had changed in the judicial system to mean that new civil cases would

²⁷⁰ *Ibid.*, para. 4.

²⁷¹ As at November 2012 it was reported that USD2.6 million had been distributed: Foreign and Commonwealth Office’s written evidence to the Foreign Affairs Committee’s Inquiry into the UK’s relations with Saudi Arabia and Bahrain, 19 November 2012, para. 42, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/writtev/bahrain/sab40.htm>.

²⁷² Meeting between IRCT and REDRESS and lawyers, Manama, 29 April 2012.

²⁷³ Al Wasat, ‘20 death cases among 28 cases for Bahrainis have been documented in BICI report and have not been referred yet to courts’, 2 February 2013, available at: www.alwasatnews.com/ipad/news-734899.html. This was reported to be the case in relation to the victim Hassan Maki.

²⁷⁴ Meeting between IRCT and REDRESS and Minister of Justice, 2 May 2012.

²⁷⁵ Press Release: ‘IRCT: To the government of Bahrain: ensure that victims of torture are able to access rehabilitative services’, 24 September 2010, <http://www.bahrainrights.org/en/node/3426>.

succeed.

In all, the system in place in Bahrain to provide reparation for human rights violations committed during 2011 has focused on the provision of monetary compensation for a limited number of incidents without acknowledgment of what happened and why. Victims had no involvement in setting up the processes after BICI, and very limited involvement in their operation, and they have not been responsive to their needs. Reparation for human rights violations committed during other periods has been non-existent, as the courts have not proved to be a suitable forum to uphold victims' rights. Seriously addressing these issues requires political will to uncover the truth of what has happened, effective involvement of victims in processes of remedy, and the creation of mechanisms that victims can trust to vindicate their rights. A failure to do so is likely to lead to a continuing sense of grievance among many, this being one of the factors that has contributed to cycles of uprising and repression.²⁷⁶

²⁷⁶ For the observation the ill-will in many Shia communities resulting from the fact that grievances about torture and ill-treatment had not been addressed in 2005 see International Crisis Group, above n.33, p. 2.

F. FUNDAMENTAL: ENTRENCHING THE RULE OF LAW AND RESPECT FOR HUMAN RIGHTS

As demonstrated by the shortcomings in reforms implemented to date discussed above, there are serious underlying issues which must be addressed in order to succeed in effectively combating torture and ill-treatment in Bahrain. A broader reform process is required, allowing for the accommodation of difference and the alleviation of mistrust, while entrenching the rule of law and respect for human rights. While the traditional strategies of safeguards and accountability for torture and ill-treatment are important, on their own, they are destined to fail. Bahrain has already seen reform processes which had an initial positive impact on the prevalence of torture and ill-treatment during the 2000s slip back sharply on the basis of a change of executive approach.

The government of Bahrain must therefore go beyond the recommendations of the BICI to entrench the rule of law. This requires a culture shift towards allowing critical engagement with governmental institutions and actions, and creation of real checks and balances on executive power, including deep reform of the public prosecution and judiciary, lifting of restrictions on civil society, and democratic representation. The full range of these issues go beyond the scope of this report, but below we set out a number of areas which we suggest should be addressed as a matter of urgency for sustainable change to occur.

- **Release prisoners of conscience and reform of laws under which they were convicted.** The arrest and conviction of leading opposition and trade union figures is intrinsically tied to restrictions on freedom of speech, assembly and association, and past patterns of arbitrary arrest, detention and torture.²⁷⁷ The BICI found that many of those currently being held had been subjected to torture and ill-treatment.²⁷⁸ The upholding of their sentences in January 2013 by the Court of Cassation and their continued detention amounts to an ongoing very public violation of international human rights standards.²⁷⁹ Until prisoners of conscience are released, and laws under which they are held repealed, there will not be trust in the government's commitment to reform, and any ostensible efforts to reshape its institutions, including the public prosecution and judiciary.
- **Review again convictions of all those sentenced to imprisonment following arrest during 2011, where allegations of torture have been raised.**²⁸⁰ Concerns are not limited to the conviction of individuals for offences concerning freedom of speech. Given the widespread use of torture and ill-treatment following arrests made in March to June 2011, serious concerns remain about a number of convictions during that period, including for violent offences, which in some cases have led to the imposition of the death penalty.²⁸¹ REDRESS and IRCT heard evidence from families and lawyers about

²⁷⁷ See generally Human Rights Watch, above n. 184, pp. 12-16; Amnesty International, above n.91, pp. 30-32.

²⁷⁸ BICI Report, above n.5, paras. 1230, 1233.

²⁷⁹ See, eg. Amnesty International, 'Bahrain: Still paying a heavy price for freedom', 14 February 2013, <https://www.amnesty.org/en/news/bahrain-still-paying-heavy-price-freedom-2013-02-13>; Amnesty International, 'Bahrain: Release all prisoners of conscience', 8 November 2012, <http://www.amnesty.ca/get-involved/take-action-now/bahrain-release-all-prisoners-of-conscience>; Human Rights Watch, 'Bahrain: No progress on reform', 28 February 2013, <http://www.hrw.org/news/2013/02/28/bahrain-no-progress-reform>.

²⁸⁰ See Human Rights Watch, above n. 184, p. 37.

²⁸¹ See, eg. Bahrain Center for Human Rights, 'Bahrain: Court Upholds Death Sentence Based on Coerced Confessions', 10 February 2013, <http://www.bahrainrights.org/en/node/5642>, concerning the case of Ali Yousef Abdul Wahab Al-Taweel, sentenced to death for the murder of a policeman. See further Amnesty International, 'Flawed reforms: Bahrain fails to achieve justice for protesters', April 2012, p.33,

torture and ill-treatment inflicted on individuals who remain in prison for serious crimes, including murder, and serious flaws in the evidence used to convict them. All of the allegations of torture and ill-treatment in these cases must be investigated as a matter of priority, and where evidence is tainted convictions should be overturned, and those responsible held accountable.

- **Reform laws and halt prosecutions against free speech and assembly.** Despite asserting that all individuals held on free speech charges who were arrested in 2011 had been released, as discussed above, high profile prisoners of conscience remain imprisoned, and there have been a series of further arrests and prosecutions for free speech offences during 2012, notably of Nabeel Rajab,²⁸² Zainab Al Khawaja,²⁸³ and Said Yousif Al al-Muhafda,²⁸⁴ and journalists Ahmed Rahdi (imprisoned for 128 days²⁸⁵) and Ahmed Humaidan.²⁸⁶ One particularly concerning law, which has been used in such prosecutions, is Article 168 of the Penal Code, which authorises a fine and up to two years in prison for anyone who wilfully disseminates false news knowing that it might result in harm to national security or the public order or safety if the dissemination amounts to direct incitement to violence.²⁸⁷ Many others were arrested throughout the year on charges of “*illegal gathering*.” Some examples of cases may be seen in communications made to UN Special Procedure mandate holders alleging restrictions of freedom of speech and assembly, imprisonment for “*illegal gathering*” and excessive use of force in controlling protests.²⁸⁸ Thirty-one critics of the regime outside Bahrain were also unilaterally stripped of their citizenship in November 2012, in violation of international law.²⁸⁹ Such actions do not build trust in a state governed by human rights and the rule of law, and continue to undermine the legitimacy of the public prosecution and courts.
- **Lift restrictions on civil society.** A key check on governmental power is a strong and active civil society. However, the response to the protests of 2011 was a shutting down of political opposition and the already tightly controlled civil society, with (as described above) the arrest of prominent opposition figures, human rights activists, lawyers, and trade union officials. Despite commitments to reform following the adoption of the BICI report, severe restrictions on freedom of speech and freedom of association have continued. Some of the previously existing civil society organisations have either had

<http://www.amnesty.org/ar/library/asset/MDE11/014/2012/ar/a23b192e-c518-49e1-8a97-c11e4789f06f/mde110142012en.pdf>.

²⁸² See summary of communication to the UN Special Procedures, and the government’s response, at Human Rights Council, ‘Communications Report of Special Procedures’, A/HRC/22/67, 20 February 2013, p. 52, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-67_EFS.pdf. See also OMCT and FIDH, ‘Sentenced to two years in prison for advocating and exercising the right to peaceful assembly’, February 2013, <http://life.fidh.org/BAHRAIN-Sentenced-to-two-years-in-12878>.

²⁸³ Human Rights Council, *ibid.*, p. 115; Amnesty International (2012), ‘Bahrain: Reform Shelved, Repression Unleashed’, above n. 91, p. 25.

²⁸⁴ Al Muhafda was acquitted of charges of spreading false information on Twitter in March 2013, although by that time he had spent one month in detention. For other arrests see Amnesty International, *ibid.*, p. 25.

²⁸⁵ Committee to Protect Journalists, ‘Attacks on the Press in 2012: Bahrain’, <http://www.cpj.org/2013/02/attacks-on-the-press-in-2012-bahrain.php#more>.

²⁸⁶ See above, p.20.

²⁸⁷ Human Rights Watch, ‘Bahrain: No Progress on Reform’, 28 February 2013, <http://www.hrw.org/news/2013/02/28/bahrain-no-progress-reform>.

²⁸⁸ See communications and the Government’s responses at Human Rights Council (2013), ‘Communications Report of Special Procedures’, UN Doc. A/HRC/22/67, 20 February 2013, pp. 31, 67, 115, 125, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-67_EFS.pdf.

²⁸⁹ See above, n.257.

leading members detained and prosecuted,²⁹⁰ had members defamed in the media,²⁹¹ or their operation otherwise interfered with.²⁹² This is made possible by restrictive laws, such as Law no. 21 of 1989 on Associations, which makes the prior explicit approval of the Ministry of Human Rights a requirement for any association activity.²⁹³ In February 2013, Human Rights Watch reported that the Social Development Ministry has submitted a further and even more restrictive draft law to the government to regulate nongovernmental organisations.²⁹⁴ The restrictions imposed on human rights defenders in practice, including in relation to training activities for the documentation of torture and ill-treatment in line with the Istanbul Protocol, run counter to the UN Declaration on Human Rights Defenders.²⁹⁵ A series of conditions placed on international human rights organisations wishing to visit Bahrain has undermined the effectiveness of their monitoring activities. This has included limiting the number of international organisations allowed to visit the country, restricting visas to five business days only, and curtailing the types of human rights activities that non-governmental organisations are authorised to carry out. These restrictions must be lifted to allow the free exercise of rights of expression and assembly, and voices that can credibly challenge official abuses of power.

- **Vetting of police, military, intelligence officials, public prosecutors and judges alleged to have been responsible for or complicit in torture or ill-treatment.** Crucial to establishing respect for human rights and the rule of law, not to mention the prevention of torture and ill-treatment, is a fundamental reform of a security and criminal justice system, which is perceived to be deeply implicated in past violations. Given this, training on international human rights is important but insufficient if not complemented by other measures; vetting of officials who have participated in human rights violations is required to rebuild legitimate institutions that have the trust of the population.²⁹⁶
- **Ensure unhindered access to health care.** Fearing questioning or arrest if they approach any government run hospital or clinic for treatment for any injury that might be construed as connecting them with demonstrations or activities in opposition to the regime, many of the individuals interviewed by IRCT and REDRESS sought treatment in private clinics or in private homes. Treatment in such places, without full access to proper health facilities and, where necessary, referral to hospital treatment, may seriously put at risk the immediate, as well as long-term health of the individuals. There is a corresponding fear amongst health workers that they too may be questioned or arrested for providing treatment to individuals who may be construed as taking part in activities in opposition to the regime. Health-care ethics and applicable international law dictate that treatment and care should be provided without discrimination to any individual based solely upon their medical needs, and without fear of reprisals against

²⁹⁰ Such as the prosecution of former leaders of the Bahrain Teachers Association, Mahdi 'Issa Mahdi Abu Dheeb and Jalila al-Salman: Amnesty International, 'Bahrain Teachers now prisoners of conscience', 15 October 2012, <http://www.amnesty.org/en/appeals-for-action/JalilaAndMahdi>.

²⁹¹ See Amnesty International, above n.91, pp. 22-23.

²⁹² For example, the election of the Board of Directors of the Bahraini Bar Association in November 2011 was annulled by the Ministry of Human Rights in December 2011.

²⁹³ See FIDH, above n.83, p. 17.

²⁹⁴ Human Rights Watch, 'Bahrain: No progress on reforms', 28 February 2013, <http://www.hrw.org/news/2013/02/28/bahrain-no-progress-reform>.

²⁹⁵ See Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN General Assembly Resolution 53/144, 8 March 1999.

²⁹⁶ See OHCHR, 'Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework', 2006, <http://www.unrol.org/files/RuleoflawVettingen.pdf>.

the health professionals providing such treatment or against the sick and wounded seeking treatment. The authorities have an obligation to respect and protect medical institutions and personnel who are caring for the wounded and sick.

- **Enhance the independence and capacities of the forensic medical service.** Training on international standards for the documentation of torture and ill-treatment (the Istanbul Protocol) should be introduced into the medical curriculum. In cases of allegations of torture, ill-treatment and other forms of violence forensic medical evaluations and reports complying with these international standards must be made in prompt, independent and impartial manner.

G. THE ROLE OF INTERNATIONAL ACTORS

Bahrain's allies

The Bahrain government has shown that it will respond to serious criticism on its human rights record, particularly from its allies, as demonstrated by the decision to set up the BICI. However, it has equally referred to statements and policies of its allies that support Bahrain, when seeking to justify continuing human rights violations. For example, on 11 November 2012, shortly after the Bahrain government imposed a complete ban on protests (strongly criticised by UK FCO Minister Burt²⁹⁷) and revoked 31 citizens' nationality, the official news agency reported that "*British Ambassador in Bahrain condemns acts of violence in Bahrain; asserts cooperation with Bahrain in combating terrorism*".²⁹⁸ The news agency referred to the Ambassador's condemnation of violence, as well as the UK's ongoing cooperation in domestic security matters and trade agreements.²⁹⁹

For Bahrain's allies, painting a picture of gradual progress on human rights³⁰⁰ is liable to be misconstrued and counterproductive, given that reforms have been piecemeal and superficial, and there are clear indications that the human rights situation is again deteriorating.

Bahrain's allies have an important part to play in responding to ongoing concerns with a view to strengthening respect for human rights, and the UK in particular has a historical responsibility to do so. Their foreign policy should reflect a principled and coherent policy on human rights and, and should not let security and economic interests overshadow this. Policy-makers should be more vocal and transparent about tying future engagement to meaningful progress on upholding human rights in general, and to the effective operation of mechanisms of accountability and reparation for victims of violations.

The role of international expertise

REDRESS and IRCT are concerned that the Government of Bahrain has deflected mounting criticism on its human rights record by bringing in international expertise to assist in implementing reform in the justice and security sectors. However, there has not been sufficient scrutiny built in to the process to allow the experts involved to regularly follow up on the practical effect and implementation of their proposals or recommendations. Effective follow-up on implementation is an issue that should be addressed and specifically included in any future international cooperation on reforms to the security and justice sectors, and scrutiny of alleged human rights violations.

²⁹⁷ FCO, 'Foreign Office Minister concerned at ban on protests in Bahrain', 30 October 2012, available at: <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=828585982>.

²⁹⁸ Bahrain News Agency, 'British Ambassador in Bahrain condemns acts of violence in Bahrain; asserts cooperation with Bahrain in combating terrorism', 11 November 2012, available at: <http://www.bna.bh/portal/en/news/532630>.

²⁹⁹ On a more recent example see also Andy McSmith, 'Is the Foreign Office facing both ways over trouble with Bahrain?', *The Independent*, 28 March 2013, <http://blogs.independent.co.uk/2013/03/28/is-the-foreign-office-facing-both-ways-over-the-troubles-in-bahrain/>.

³⁰⁰ See for example 'Foreign Secretary discusses progress on political dialogue with Crown Prince of Bahrain', 12 October 2012, available at: <http://ukinbahrain.fco.gov.uk/en/news/?view=News&id=821501882>; FCO, 'Quarterly Updates: Bahrain', 30 September 2012 and 30 June 2012 available at: <http://fcohrdreport.readandcomment.com/the-arab-spring/case-study-bahrain/quarterly-updates-bahrain/>.