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Parliamentary Human Rights Group Seminar: *Bahrain; failed political experiment, serious HR violations*

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Torture and Cruel, Inhuman or Degrading Treatment in Bahrain

1. Introduction

In May 2008 the United Nations Human Rights Council considered the human rights record of Bahrain through its Universal Periodic Review (UPR) mechanism, and it is useful to briefly examine the submissions to and outcomes from that process. REDRESS, together with the World Organisation Against Torture and the National Committee of Martyrs and Victims of Torture submitted a Written Statement to the UPR,¹ and this presentation follows from that Statement. It focuses on the Bahrain authorities' failure to ensure that allegations of torture and cruel, inhuman or degrading treatment are fully investigated and perpetrators prosecuted, and to afford survivors of torture and their families a remedy and reparation for the harm suffered.

2. Background – Ongoing Human Rights Violations

Torture was a regular feature during the 1980s-1990s in Bahrain. Despite the subsequent efforts of the Kingdom to usher in a new era of respect for the rule of law, allegations of torture and ill-treatment, particularly against opposition activists and human rights defenders, have continued. Individuals have been detained at demonstrations and public gatherings, for example, and tortured. On 17 December 2007 on Martyrs' Day aimed at paying tribute to past victims of torture, members of the Special Security Forces began a wave of arrests targeting more than 60 persons, among them over ten activists. Some defendants alleged that they were prevented from sleeping, tied up for long periods and denied medical attention. Others declared that they had been subjected to sexual assault whilst in detention. However, in their National Report to the Universal Periodic Review (UPR) in May 2008, the Bahrain Government stated:

[s]ome civil organizations and members of the Chamber of Deputies reported that the police had used undue force to deal with the events, and some claimed that persons who were arrested were subjected to torture. The Minister for Internal Affairs explained the situation before the Chamber of Deputies on 15 January 2008. Replying to a question from a member of the Chamber about human rights safeguards, he confirmed that the laws and regulations had not been broken by the police. The Minister's replies were completely transparent and honest and all the facts were placed before the Chamber. The Minister for Internal Affairs stated that the general line taken by the Ministry of the Interior was one that was based on respect for human rights. Ministry officials also confirmed that the police had not used undue force against individuals participating in the disturbances and that the persons under arrest had been referred to a legal doctor who had

¹ <http://daccessdds.un.org/doc/UNDOC/GEN/G08/138/48/PDF/G0813848.pdf?OpenElement>

certified that they had not been tortured and that their treatment had been consistent with the law [underline added].²

These comments stand in contrast to the many submissions by NGOs to the UPR, which report ongoing violence by state officials in Bahrain, in particular against human rights protestors and activists, and the continuing lack of redress for such violations:

“35. Human Rights Watch (HRW) reported that during 2006 and 2007, Bahraini authorities, citing Law 32/2006, banned meetings and on several occasions forcibly prevented or dispersed unauthorized gatherings. The National Committee for Martyrs and Victims of Torture(NCMVT) reported that in many documented cases during the last four years, citizens arrested in relation to unauthorized gatherings or protests had complained of being severely assaulted during arrest, being placed in isolation for periods from three to fifteen days, being subjected to torture or other cruel, inhuman or degrading treatment during interrogation and being kept in detention for a long period during interrogation or trial. In most cases the arrestees were accused by the police of using violence but eventually found guilty of participating in unregistered organizations. In all cases, following internal and external campaigns, the detainees were released without a trial or through royal amnesty. Detainee’s access to attorneys is often restricted in the early stages of detention; attorneys must seek a court order to confer with clients. [Other NGOs] added that the Ministry has never investigated such abuses or penalized the offenders and that it protects officials who abuse rights holders.

36. HRW noted that on September 15, 2006 police prevented an NGO from holding a public seminar on the group’s petition calling for a new constitution, on the basis that the group had not sought permission from the Ministry of the Interior. On September 22, when the group tried a second time to hold the meeting, police used rubber bullets and tear gas to disperse the gathering, reportedly wounding several people. In several instances the police used what appeared to be excessive force and inflicted severe beatings on persons they seized, sometimes amounting to torture. On May 20, 2007 police reportedly fired rubber bullets at a gathering at which opposition political figures, including members of Parliament, were speaking, injuring the leader of the opposition National Democratic Action Society. The next evening, in an incident that HRW investigated, riot police confronted a street demonstration protesting the May 20 incident and separately seized two individuals. The officers beat both of them severely, inflicting serious injuries on both, and authorities held one of them for more than a week in undisclosed locations while refusing to acknowledge to his family that he was in the State custody. [Other NGOs] added that protests against the confiscation of the Almalkia Village sea shores were quelled by anti-riot police with many casualties” [underline added].³

However, Bahrain denies that torture continues in Bahrain, explicitly stating in their National Report to the UPR that, “...there are no cases of torture in the Kingdom”.⁴

3. Absence of Criminal and Civil Remedies for Torture, and Decree 56 of 2002

The UN Committee against Torture, in its concluding observations on Bahrain at its 34th session in 2005, listed amongst its subjects of concern:

“(f) The apparent failure to investigate promptly, impartially and fully the numerous allegations of torture and ill-treatment and to prosecute alleged offenders, and in particular the pattern of impunity for torture and other ill-treatment committed by law enforcement personnel in the past;

(g) The blanket amnesty extended to all alleged perpetrators of torture or other crimes by Decree No. 56 of 2002 and the lack of redress available to victims of torture;

² Bahrain National Report to the United Nations Human Rights Council Working Group on the Universal Periodic Review, UN. Doc. No. A/HRC/WG.6/1/BHR/1 (11 March 2008), at page 26.

³ Summary of Stakeholder Submissions to the HRC Universal Periodic Review on Bahrain, UN. Doc. No. A/HRC/WG.6/1/BHR/3 (6 March 2008) at pages 8-9.

⁴ Bahrain National Report to the Universal Periodic Review, as above, at page 22.

(h) The inadequate availability in practice of civil compensation and rehabilitation for victims of torture prior to 2001”.⁵

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

“(d) Consider steps to amend Decree No. 56 of 2002 to ensure that there is no impunity for officials who have perpetrated or acquiesced in torture or other cruel, inhuman or degrading treatment;

(e) Ensure that its legal system provides victims of past acts of torture with redress and an enforceable right to fair and adequate compensation”.⁶

Despite these recommendations, no steps have been taken to amend Decree 56 of 2002. Decree 56 purports to grant a blanket amnesty for any case (criminal or civil) to all officials who allegedly perpetrated crimes of torture and other crimes against victims or political prisoners, who were themselves granted an amnesty in relation to “offences that endangered or pose a threat to state/national security” under Decree 10 of 2001 and which fell within the jurisdiction of the State Security Court.⁷ The blanket amnesty contravenes article 89 of the Penal Code that only allows amnesty laws which do “not affect third party rights,” and counters the prohibition of torture in the National Charter. It also contrary to the UN Convention against Torture which Bahrain ratified on 5 April 1998 and the provisions relating to the survivor’s right to an effective investigation, and an effective and enforceable remedy.

During the period in which the State Security Act 1974 was in force, torture was endemic in Bahrain. The State Security Act contained measures permitting arrest and imprisonment of individuals without trial for up to three years for crimes relating to state security. Other measures, such as the establishment of State Security Courts added to conditions conducive to torture. Torture appears to have been most prevalent in the 1990s when civilians sought the return of a liberal Constitution and their Parliament by presenting two public petitions to the Emir. Individuals connected to this petition were deemed to be acting against the regime and were subsequently detained under State Security Laws, subjected to torture and a number were forced into exile.⁸

The impact of the Decree is that no alleged perpetrator has been tried for torture or ill treatment even though the practice of torture in Bahrain during the 1980s and 1990s has been well documented. On 11 December 2002, the Bahraini Public Prosecution (PP) refused to consider torture allegations made by 8 victims against a former member of the security service and 15 of his colleagues. The PP’s response was that the case was void, due to the general and particular amnesty introduced by decrees nos. 10 and 56.⁹ On 11 September 2003, the PP refused another claim of torture initiated by three Bahrainis (two men and a woman), introduced against former members of the security service.¹⁰

⁵ CAT/C/CR/34/BHR of 21/06/2005.

⁶ Ibid.

⁷ 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 that preceded the issuance of this decree.”

⁸ US Department of State, Bahrain Country Report on Human Rights Practices for 2001; Amnesty International report: “Bahrain Violations of Human Rights” p. 3; US Department of State, Bahrain Country Report on Human Rights Practices for 1996, p. 3.

⁴ Scanned images of the case (in Arabic) Case by Attorneys: Mr Ahmed Jasim Abdulla, Mr Abdulla Al-Shamlawi, Mr Mohammed Ahmed Abdulla. Mr Essa Ebrahim, Mr Mohammed Redha Bu-Hussien Against Adel Fleifel and 15 members of the security service: <http://media5.dropshots.com/photos/372092/20070904/160325.jpg>, <http://media3.dropshots.com/photos/372092/20070904/160326.jpg>

⁹ Alwasatnews paper, 12 December 2002.

¹⁰ This case was put forward by Attorneys Dr Hassan Radhi and Mrs Jaleela Al-Sayyed: <http://media3.dropshots.com/photos/372092/20070904/160329.jpg>, <http://media4.dropshots.com/photos/372092/20070904/160330.jpg>, <http://media5.dropshots.com/photos/372092/20070904/160331.jpg>

Many civil society organisations have highlighted the need for reparations for past violations of human rights:

*“20. As the National Committee for Martyrs and Victims of Torture (NCMVT) noted, in 2006, it, in cooperation with the Bahrain Center for Human Rights, other NGOs, and members of the national Assembly formed ‘The Coalition for Truth, Equity and Reconciliation’. However, despite the urgent need to form a national committee for truth and reconciliation as demanded by civil society organizations, [NGOs] reported that the Government claims that there is no need for such a committee because they have addressed the issue of the victims of the past”.*¹¹

However, the Bahraini government refuses to recognise this need, arguing that they have addressed the issue of the victims of the past era in the general amnesty declared by the king in 2000.¹² In particular, the NCMVT (the National Committee for Martyrs and Victims of Torture) noted that in 2007, “...there were no known instances of officials being punished for human rights abuses committed. Controversy continued over impunity for alleged torturers which the government maintained was granted by the 2001 general amnesty”.¹³

4. The Legality of Amnesties under International Law

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

The International Criminal Tribunal for the former Yugoslavia noted in the *Celibici* and *Furundzija* cases that torture is prohibited by an absolute non-derogable general rule of international law.¹⁴ It held that amnesties for torture were null and void and cannot be afforded international recognition. The Committee against Torture has stressed that “In order to ensure that the perpetrators of torture and ill-treatment do not enjoy impunity, the State party shall ensure the investigation and, where appropriate, the prosecution of all those accused of having committed such acts.”¹⁵ The Inter-American Court of Human Rights, in the *Barrios Altos Case* (14 March 2001) held that amnesties are prohibited as contravening human rights of a non-derogable nature and that self-amnesty laws lead to victims being defenceless and to the perpetuation of impunity, and, for this reason, were manifestly incompatible with the letter and spirit of the Convention.

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

The Human Rights Committee dealt with the issue as early as 1978 in relation to Chile's amnesty law and has since made similar observations in regard to amnesty laws passed by several countries. In General Comment 20, the Human Rights Committee stated that “Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including

¹¹ Summary of Stakeholder Submissions to the Universal Periodic Review, as above, at page 5.

¹² NCMVT Submission to UPR, available at <http://www.upr-info.org/Reports-for-the-review.2.html> at page 5.

¹³ NCMVT Submission to UPR, as above, at page 4.

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

¹⁵ Conclusions and recommendations of the Committee against Torture, Kyrgyzstan, A/55/44, paras.70-75, 18 November 1999.

compensation and such full rehabilitation as may be possible.”¹⁶ The Committee has also consistently criticised states that have sought to impose amnesties for serious breaches.¹⁷

The Vienna Declaration and Programme of Action called on states "to abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law".¹⁸ Amnesties are also incompatible with the *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*¹⁹ and the *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity* (Impunity Principles).²⁰

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

5. The 2008 Universal Periodic Review on Bahrain

(a) Stakeholder Submissions:

Many of the NGO submissions to the UPR highlighted ongoing violations of the prohibition of torture, particularly targeted against human rights activists and defenders, and the culture of impunity for the perpetrators that results from Bahrain's amnesty laws. Some of the submissions were summarised as follows:

“Amnesty International (AI) continued to express concerns in relation to Bahraini legislation which does not explicitly prohibit the use of torture and ill-treatment by the police, and which does not give a clear and comprehensive definition of torture. Grave concerns have been expressed at Decree 56/2002 which contains a blanket amnesty for alleged perpetrators of torture. HRW highlighted that Bahrain should clarify publicly that Decree 56/2002 does not apply to grave crimes such as torture. Similarly, AI recommended that the government amend legislation to explicitly prohibit the use of torture and ill-treatment, and amend Decree 56/2002 to ensure it does not provide a blanket amnesty for alleged perpetrators of torture. Additionally, AI raised concerns about the lack of specific legislation making redress available to victims of torture and recommended the enactment of legislation in this regard.

According to the Asian Centre for Human Rights (ACHR), security forces continue to practice torture as a part of law enforcement. Despite classifying torture as a penal offence, instances of

¹⁶ Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7): 10/03/92. CCPR General comment 20 (General Comments).

¹⁷ For example: Comments on Uruguay, U.N. Doc. CCPR/C/79/Add.19 (1993); Concluding Observations on the Second Periodic Report of El Salvador CCPR/C/79/Add.34 (1994); Nineteenth Annual report of the Human Rights Committee A/50/40 (1995) Nineteenth Annual report of the Human Rights Committee A/50/40 (1995); Preliminary Observations of the Human Rights Committee: Peru CCPR/C/79/Add.67 (1996); Concluding Observations: France, May 1997 CCPR/C/79/Add.80; Concluding Observations of the Human Rights Committee: Lebanon. 01/04/97. CCPR/C/79/Add.78. (Concluding Observations/Comments); and Concluding Observations on the Fourth Periodic Report of Chile (1999), CCPR/C/79/Add.104; Concluding observations of the Human Rights Committee: Argentina. 03/11/2000. CCPR/CO/70/ARG; Concluding Observations on the second periodic report of the Congo: Congo. 27/03/2000. CCPR/C/79/Add.118; Concluding observations of the Human Rights Committee: Croatia. 30/04/2001. CCPR/CO/71/HRV para 10-11.

¹⁸ See The Vienna Declaration and Programme of Action, Section II, para. 60, at www.unhcr.ch/huridocda/huridoca.nsf/Sym.../A..CONF.157.23.En?OpenDocument.

¹⁹ Adopted on 16 December 2005 by the United Nation's General Assembly at its 60th session, through Resolution 147 (A/Res/60/147).

²⁰ E/CN.4/2005/102/Add.1.

torture have been noted. Security forces also indulge in unrestrained and indiscriminate use of force than is usually necessary to maintain law and order. ACHR added that victims of police beating reported that the Riot Fighting Forces (RFF) shot them with rubber bullets from a distance of only 3 meters although they could have been easily arrested.²⁷ The NCMVT stressed the need to follow up on all recommendations adopted by United Nations Committee Against Torture in 2005.

According to Front Line Defenders of Human Rights Defenders (FL), human rights defenders continue to face high levels of insecurity and are victims of various forms of repression, such as arbitrary arrest, judicial proceedings based on false or unfounded charges of 'encouraging hatred of the state and distributing falsehoods and rumours, threats, physical assaults, ill-treatment, torture and numerous other acts of harassment by the authorities and government security forces.' ACHR and FIDH/BCHR/BHRS echoed similar concerns. According to FL, many human rights defenders are constantly under surveillance by the authorities. AI added that human rights defenders have also been charged in the past with crimes such as "insulting the judiciary", "defamation and slander of a family court judge", and other charges which are believed to be politically motivated.

[A number of NGOs] noted some of the prominent human rights defenders who have been victimized...[and] also noted cases of other activists being harassed by the police to the extent of being physically attacked during protests or while in custody.....

FL urged the authorities to prioritize the protection of human rights defenders in Bahrain and to: conduct an independent inquiry into the source of threats, ill treatment, torture, and all forms of intimidation and harassment directed towards all those human rights defenders mentioned in its report; and ensure that all human rights defenders in Bahrain are free to carry out their human rights activities free from persecution. FL also recommended that Bahrain invite the United Nations Special Representative for Human Rights Defenders to visit the country.

...

19. During the year, the National Committee of Martyrs and Victims of Torture (NCMVT) reported there were no known instances of officials being punished for human rights abuses committed. [Other NGOs] added that the judiciary (both courts and public prosecution) has refused to examine cases lodged by victims of State abuses, thereby highlighting the need for securing the independence of the judiciary towards the ruling establishment. According to HRW, decree 56/2002 confers immunity from investigation or prosecution of individuals, including government officials, for offences committed prior to 2001 and the Government has cited this decree on several occasions as the basis for refusing to undertake criminal investigations against former officials who were the subject of complaints by citizens, alleging that those officials had subjected them to torture. HRW indicated that such use of Decree 56/2002 is inconsistent with Bahrain's obligations as a State Party to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. NCMVT also raised this issue".²¹

(b) Outcome Report of the Working Group:

Unfortunately however, the Outcome Report of the Working Group on the UPR made only passing reference to Bahrain's obligations under the Convention against Torture and no reference at all to Decree 56 or to the resulting impunity for acts of torture. The only (limited) reference in this regard came from Jordan, which "...requested more information on the way in which [Bahrain] has proceeded to guarantee monotheism and freedom of expression. While welcoming Bahrain's achievements, [Jordan] called on Bahrain to follow the example of other countries, for instance in the area of impunity".²²

(c) Bahrain's Views on the Conclusions:

²¹ Summary of Stakeholder Submissions to the Universal Periodic Review, as above, at pages 3-4.

²² Outcome Report of the Working Group on the Universal Periodic Review on Bahrain, UN Doc. No. A/HRC/8/19 (22 May 2008).

In its Views on the Conclusions/ Recommendations, Bahrain made general statements of intent to improve the human rights situation in Bahrain, without specifically making any specific reference to the amnesty laws or commitment to amending Decree 56.²³

6. Conclusion: Issues of Concern

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

Only if these issues are dealt with will the cycle of impunity be broken, past and present victims afforded some degree of justice for what they have suffered, and future violations be prevented.

²³ Addendum to the Outcome Report: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, UN. Doc. No. A/HRC/8/19/Add.1 (16 June 2008).