

Section D – Treatment of Persons in Custody

1. Factual Background

1181. This Section examines allegations of torture and mistreatment arising out of the events of February/March 2011 in Bahrain. The Commission received 559 complaints concerning the treatment of persons in State custody. These 559 complainants included individuals who had been released from detention and individuals who remained in custody at the time of the Commission investigations. For the purposes of this Section, all of these complainants are referred to as “detainees”. All but nine of these detainees were Shia Muslims. The Commission also conducted interviews with family members and lawyers of these detainees.

1182. Forensic medical experts appointed by the Commission examined 59 of these detainees, and Commission investigators also conducted further interviews with these individuals. The 59 detainees who underwent a forensic medical examination were selected on the basis of one of the following criteria: (i) the severity of the alleged injuries and the existence of physical marks on the bodies of certain detainees; or (ii) the high profile nature of their case. In particular, the 59 selected detainees included the 14 political leaders as well as the SMC doctors who were charged with offences relating to the events of February/March 2011. The information obtained and the conclusions reached by the medical specialists are included in Annex B.

1183. The circumstances and manner of the arrests carried out in connection with the events of February/March 2011 have been examined in Section C of this Chapter.

1184. The deaths of five individuals, Mr Hasan Jassim Mohamed Maki (39)⁵⁸⁰, Mr Abdel Karim Fakhrawi (49)⁵⁸¹, Mr Zakariya Rashid Hassan Al Asheri (40)⁵⁸² and Mr Ali Isa Saqer (31)⁵⁸³, have been attributed to torture. In addition, Mr Jaber Ebrahim Alawiyat (43)⁵⁸⁴ died four days after being released from detention. These five cases have been considered in Section A of this Chapter, which dealt with deaths arising out of the events of February/March 2011.

1185. Included within the 559 complaints of torture were two high profile groups of detainees who made similar allegations of torture or mistreatment.

- a. 14 political leaders were arrested by the NSA and accused of conspiring to overthrow the regime. Seven of these individuals were arrested on 17 March 2011, and the remaining seven were arrested between 21 March and 15 April 2011. They alleged that they spent between one day and three weeks in interrogation in what is believed to be the

⁵⁸⁰ Case No. 22.

⁵⁸¹ Case No. 25.

⁵⁸² Case No. 24.

⁵⁸³ Case No. 23.

⁵⁸⁴ Case No. 26.

NSA building in Al-Qalaa (known as “the castle” or “fort”), after which time they were transferred to Al Qurain Prison and placed in solitary confinement in the same wing.

- b. 110 MoI personnel were arrested and accused of being absent from work during the events of February/March 2011 or for refusing to carry out orders of their superiors during the confrontations. These individuals primarily complained about verbal abuse consisting of insults about their family and religious sect.

1186. Only four of the individuals who alleged torture were arrested by the BDF.⁵⁸⁵ The following paragraphs outline the four cases of torture that are allegedly attributable to the BDF:

- a. 48 medical staff were arrested in consequence of the events at SMC. One of the accused medical staff was arrested at SMC at 16:00 on 17 March 2011. He spent 15 hours in an unknown police station and the following 15 days in a military location (possibly Al Qurain), where he alleges that he was tortured and forced to eat his own faeces. He was transferred to the CID of the MoI, where he alleges that he was forced to sign 30 unknown documents. On 3 April 2011, a military prosecutor interrogated him for approximately three hours. On 5 April, he was transferred to Dry Dock Detention Centre where he alleges that he was tortured for three days.⁵⁸⁶
- b. At 20:30 on 2 May 2011, unknown hooded individuals in civilian clothes arrested a former member of parliament at his home. He alleges that he was taken to an unknown place and interrogated for approximately two hours. On 5 May, he was transferred to the NSA where he alleges that he was blindfolded and subjected to verbal abuse for approximately two weeks. He claims that on 18 May he was pushed around and kicked in the back while he was being transferred to the Military Prosecution, where he was forced to sign documents while blindfolded.⁵⁸⁷
- c. A former member of parliament was arrested in Dry Dock Detention Centre at 20:30 on 2 May 2011 following a car chase. He alleges that he was slapped in the face and taken to an unknown location for three days. There he alleges that he was beaten, kicked and ordered to remain standing for prolonged periods of time while he was interrogated. On 5 May, he was transferred to the NSA where he spent 45 days in detention. He claims that he was subjected to several forms of mistreatment, including sleep deprivation, verbal abuse and

⁵⁸⁵ See Annex B.

⁵⁸⁶ See Annex B.

⁵⁸⁷ See Annex B.

beatings. He was eventually transferred to the Military Prosecution where he alleges he was forced to sign papers while blindfolded.⁵⁸⁸

- d. One detainee, a doctor, was arrested by the BDF at SMC on 17 March 2011. The BDF transferred him to persons wearing civilian clothing who were accompanied by police. The detainee alleges that his CPR card, passport, wallet, glasses and keys were confiscated, and he was then placed in solitary confinement in a location near SMC. He alleges that this is where the beatings began. On 18 March, he was interrogated and beaten in what he believes was a military air base by men in military uniform. He stayed at that location for about 10 days with no access to a lawyer or contact with his family. He was then transferred to an isolation cell in prison, where he alleges that masked military personnel interrogated him regularly for two and a half months and subjected him to physical abuse. During one of the interrogations, they brought in barking dogs. He claims that in another session, an individual began threatening him and insulting his dignity until he signed a confession to crimes he did not commit. At the end of March, he was taken to the CID where he remained for about two weeks. There he alleges that he was tortured, forced to stand for prolonged periods, deprived of sleep and threatened with sexual assault. He also claims that officials frequently placed their hands on sensitive areas of his body. He recalls that he had four interrogations and was forced to sign documents on each occasion. He alleges that they threatened him with torture until he confessed to the allegation that he had been in contact with the Iranian authorities and called for the overthrow of the Government. He claims that he was repeatedly beaten with a hose during these sessions. On 13 April, he was taken to Dry Dock Detention Centre where he still was not permitted to contact his family or a lawyer. At one point he was taken with three other doctors to a location underground in the centre of Bahrain, where they remained for three days before being taken for medical tests. The detainee and the other doctors were questioned about their ties to Iran and shown photographs of individuals with alleged ties to Iran. Their first court session was on 6 June 2011 and this is where the detainee saw his lawyers and family for the first time. The detainee alleges that he and the other doctors were subjected to physical and verbal abuse on their way to court. The detainee has since seen a psychiatrist because of severe depression and his health has deteriorated.

⁵⁸⁸ See Annex B.

a) *General Pattern of Mistreatment*

1187. The Commission received complaints that individuals who were arrested and detained as a group were subjected to similar experiences in relation to their treatment while in custody. The groups reporting similar behaviour included some of the 14 political leaders, the SMC doctors, the employees of government agencies (such as the MoI) and groups of employees arrested from the same companies.⁵⁸⁹

1188. The majority of the detainees alleged that they were subjected to verbal abuse and insults while in detention. All of the detainees, apart from one Sunni in detention in Al Qurain Prison, made allegations of routine sectarian insults, which included insults relating to Shia religious practices and their religious and political leader.

1189. Many detainees reported hearing the shouts of other detainees being tortured, which created a climate of fear.

1190. A number of detainees alleged that they were threatened with rape or death. These threats were directed to the detainee himself or to the detainee's relatives, particularly female relatives. Detainees in a number of high profile cases, such as in the killing of two police officers, alleged that they were threatened with the rape of female family members.⁵⁹⁰

1191. There were numerous allegations of sexual abuse of detainees at various locations including the NSA building, Asri, Al Naim, Al Riffa, Al Qudaibiya, Al Wista, Sitra, Hamad Town and Isa Town. Detainees in a number of high profile cases, such as in the killing of the police officers mentioned above, alleged that they were sexually abused. Two detainees alleged that hoses and other objects were inserted into their anus and that guards groped their genitalia aggressively. Some of the detainees also made allegations of sexual humiliation, which included being stripped naked.

1192. Several detainees were refused access to toilet facilities for prolonged periods, as a result of which they were forced to urinate on themselves. This treatment was particularly prevalent at the CID and at Asri prison / detention centre. There were reports that even when detainees were taken to the bathroom, they remained blindfolded and were not permitted an appropriate amount of time.

1193. The Commission received some complaints alleging that there was a lack of access to water for drinking and for washing necessary during the preparation for prayer. There were also complaints made in relation to the absence of showers and soap, as well as the unhygienic state of toilet facilities.

⁵⁸⁹ Bahrain International Circuit (Formula One), Asri Offshore Services, the University of Bahrain, MoE and the Ministry of Health, as well as other private and public companies and institutions.

⁵⁹⁰ These two detainees were convicted and sentenced to death and life imprisonment, respectively, on 28 April 2011.

1194. Some detainees complained that they were prevented from prayer for a short period, primarily during the first one or two days after their arrest. It does not appear that such deprivations were common.

1195. Almost all detainees alleged violations of due process. For example, most detainees complained about the lack of information they received about the reasons for their arrest and detention. Many detainees alleged that they did not know why they were being detained until their first court hearing. They also stated that they were not permitted access to legal representation for a number of weeks, some even as late as the day of their first hearing. Numerous detainees at Al Qurain and Juw Prisons stated that they were detained for approximately two to three months without being allowed contact with a lawyer. When they did eventually meet with their lawyer, it was only for a few minutes and often not in private.

1196. A large number of detainees alleged that they were forced to sign confessions during their interrogation.⁵⁹¹ This was particularly prevalent at the NSA and the CID. In many cases, detainees were forced to sign documents that they did not have a chance to read. The detainees alleged that they were subjected to mistreatment if they refused to sign such documents. These confessions were later used as evidence against them in their criminal trials. Many of the detainees alleged that they were told that if they confessed to certain crimes they would avoid even worse treatment.

1197. The majority of detainees also complained that they were not permitted to speak to their families at all during the initial days or weeks of their detention. In many cases, their family did not know where they were. A large number of detainees at Al Qurain and Juw Prisons stated that they were detained for approximately two to three months without being allowed any contact with their families. The detainees stated that this caused distress, anxiety and psychological damage. After this initial period without family contact, the detainees were permitted telephone calls and family visits, but these were infrequent.

1198. A large number of detainees alleged that they were denied access to health care, which was particularly distressing for those with chronic diseases and pre-existing injuries. Detainees stated that they were taken to hospital for treatment and they were beaten and verbally abused during transfer and in the treatment facilities. This pattern was particularly common to detainees who were treated at BDF Hospital and the MoI Hospital in Al-Qalaa. It seems that the majority of the NSA detainees who required medical attention were sent to BDF Hospital, while MoI detainees in need of medical attention were sent to the MoI Hospital.

1199. The Commission received 110 complaints from MoI personnel who were detained in connection with the events of February/March 2011. These detainees primarily complained about verbal abuse consisting of insults to their family and religious sects. Of the 110 complaints received from MoI

⁵⁹¹ There were allegations that this took place at Asri, Al Naim, Al Riffa, Al Qudeibia, Al Wista, Sitra, Hamad City and Isa Town.

personnel, only 19 concerned allegations of physical abuse. One of these cases was an individual detained at Hamad Town (Roundabout 17) who awoke after a period of unconsciousness with severe injuries, including deep cuts in his upper left lip and left ear, burn marks on his arms, hands and legs, and apparent rubber bullet marks on his face and other parts of his body. There were also lashes on his body, which appear to have been made with whips, and other marks on his back and other parts of his body. When the Commission investigators met with MoI personnel at Dry Dock Detention Centre, it was discovered that the detainee had been taken to Juw Prison one day earlier.

1200. The detainees believe that the security forces acted with impunity and there is no accountability for the treatment that they were subjected to. In some cases, when the detainees were released they were told simply to “forget about what happened”.

1201. The Military Prosecution informed the Commission in writing that the first complaint they received about mistreatment was on 26 July 2011 and related to verbal abuse only. On 8 August 2011, detainees first made complaints to the Commission about mistreatment while being held at the NSA and after being transferred to Al Qurain Prison. On 10 August, the detainees refused to cooperate with the military investigation committee on the basis that investigations should be conducted by the Public Prosecution and not the Military Prosecution. The 14 high profile political detainees refused to cooperate with the Military Prosecution and indicated that they would only answer to a prosecution brought by the Public Prosecutor.

1202. On 22 October 2011, the Military Prosecution submitted a letter to the Commission, which denied that any torture had taken place at Al Qurain Prison. The letter also asserted that only two of the 14 political detainees had previously claimed that they were tortured before being transferred from the custody of the NSA to the BDF. The Military Prosecution referred these individuals to BDF Hospital for medical examinations. The Commission received these medical reports, which confirmed that when the two detainees were transferred from the NSA to BDF custody there was evidence of bruises and inflammation on their bodies. The Military Prosecution also provided evidence that medical treatment was provided for the 14 political leaders at a total cost of USD63,000 between April and October 2011. After the detainees’ allegations of mistreatment in Al Qurain Prison and the death of three detainees in Dry Dock Detention Centre, the Military Prosecution replaced the administration at Al Qurain Prison and ordered that the 14 political leaders as well as the individuals charged with murder or attempted murder of police officers be transferred from Dry Dock Detention Centre to Al Qurain Prison.

b) *Specific techniques of mistreatment*

1203. In addition to the general pattern of mistreatment described above, the Commission heard consistent allegations that authorities used certain specific techniques when conducting interrogations. Detainees alleged that these

techniques were used to facilitate the extraction of information and, in some cases, confessions. Many of these techniques were used on a daily basis over a period of weeks or even months. The alleged interrogation techniques included the following:

a. **Blindfolding and handcuffing**

Almost all the detainees stated that they were blindfolded and handcuffed for extended periods of time, particularly in the centres of interrogation. The Commission identified similar marks on detainees' noses and wrists. It was alleged that these marks were caused by severe tightening of blindfolds and handcuffs. Some of the detainees claim that they now experience decreased sensation in their hands as a result of the tightness of the handcuffs and the length of time that they were restrained. The Commission noted that the majority of the handcuffs were plastic, which can be easily tightened.

b. **Forced standing**

Most of the detainees alleged that they were forced to stand for prolonged periods on a daily basis. In some cases, detainees stated that they were forced to stand on one leg and sometimes with their hands up. Detainees were allegedly forced to stand in the middle of the room and sometimes against a wall.

c. **Severe beatings**

Detainees alleged that they were subjected to beatings during arrest, in vehicles and in detention centres. Beatings allegedly took place on a daily basis and were inflicted on the whole body (particularly the back, head, limbs and torso) by kicking and punching or by using cables, sticks and other objects. Detainees reported that the beatings were often performed by individuals wearing plainclothes and with their faces masked. In almost all instances, detainees were blindfolded and were therefore unable to identify the persons responsible for the beatings. The Commission received reports from some detainees alleging that they were sometimes able to see under their blindfold after they were pushed onto the floor.

In many cases, beatings were also alleged to have taken place in hospitals. Detainees complained about beatings to all parts of their bodies, particularly the back and the head. Many detainees also complained about receiving beatings on existing injuries sustained during the protests. This was particularly prevalent among those detainees who were arrested after receiving treatment at SMC.

d. **Use of electro-shock devices and cigarettes**

A small number of detainees alleged that electro-shock devices

were used during interrogation sessions.⁵⁹² There were also reports of cigarettes being used to inflict burns on detainees.

e. **Beating of soles of feet (*falaqa*)**

The technique known as *falaqa*—beating on the soles of the feet—was allegedly used on some detainees. Such beatings were reportedly inflicted using a rubber hose. A number of detainees also made allegations that they were suspended in painful positions for prolonged periods of time (reverse hanging).

f. **Verbal abuse**

All detainees alleged that they were subjected to some form of verbal abuse during detention. The majority of detainees were Shia and the alleged insults frequently related to Shia practices and religious or political figures. There were reports of the following insulting terms being used: *ibn/bint al muta'aa* (son/daughter of a temporary marriage); *rafidi/a* (deserters); *safawi/a* (relating to the Safavid dynasty); filth; animal; spy; and traitor. In addition, detainees alleged that insults relating to female family members were often used during interrogations.

g. **Sleep deprivation**

The majority of detainees complained of being awakened during the night by loud noises (such as banging against the cells), by cold water or by beatings. The detainees complained that the time allotted to sleep was limited. This was a particularly common complaint received from detainees at Asri prison / detention centre.

h. **Threats of rape**

Some detainees alleged that they or their families were threatened with rape. Furthermore, some detainees were allegedly told that their relatives were in another room and that they were going to be raped unless they provided information as requested.

i. **Abuse of a sexual nature**

Two detainees alleged sexual abuse in the form of a black hosepipe being inserted into their anus. There were also a number of complaints of sexual assault including touching and grabbing of genitals. Some individuals claimed to have witnessed others being sexually assaulted, but the alleged victims of such assaults denied these claims.

j. **Hanging**

Some of the detainees alleged that they were suspended above the floor by cables and ropes during interrogation, resulting in severe injuries to their wrists. This allegation was most prevalent among

⁵⁹² A total of 13 complainants alleged that they were tortured with electro-shock devices.

individuals detained in Asri prison / detention centre and the NSA building (basement) in Al-Qalaa.

k. Solitary confinement

The Commission received complaints of the excessive use of solitary confinement during detention. This complaint was especially prevalent among the 14 political leaders detained in Al Qurain Prison. It was also alleged that detainees were forbidden from engaging in conversations with other detainees in the same cellblock.

l. Exposure to extreme temperatures

Many detainees made allegations that they were exposed to extreme variations in temperature. This was often coupled with the soaking of clothing and bedding.

m. Other humiliating and degrading techniques

Several detainees made allegations of other degrading and humiliating treatment. This included forcing detainees to salute posters of the leadership of Bahrain and Saudi Arabia and to kiss and lick the boots of security forces. There were also reports of guards spitting in the faces and food of the detainees. In addition, many detainees were allegedly stripped of some or all of their clothing before being subjected to beatings.

1204. Detainees also made allegations that they were subjected to abuse with dogs, mock executions and being forced to take pills without knowing what they contained. These allegations were particularly prevalent among the 14 political detainees. One of the accused medical staff alleged that he was forced to eat his own faeces.

c) Procedures of the Commission's investigation team

1205. The Commission conducted individual and group interviews with a number of complainants/detainees who alleged that they had been mistreated while in State custody. Interviews were conducted at the Commission's office in Manama and in various prisons and detention centres (Al Qurain, Dry Dock, Juw and Isa Town (women)). The initial contact with the detainees was either made on an individual basis or through NGOs or associations. Among the NGOs and associations coordinating contact with detainees were the BCHR, the Bahrain Society for Human Rights, Bahrain Transparency and Al Wefaq. In addition, the Commission met with detainees' family members and lawyers.

1206. The Commission documented the facts and allegations that were reported by each of these individuals. The Commission also compiled supplementary documentation including photographs and medical evidence of injuries.

1207. Each of the interviews lasted between 30 and 60 minutes. In some cases, the Commission investigators conducted a group interview where there was evidence that a group of individuals had been arrested and detained together. For example, a group interview was conducted in relation to the employees arrested at the Bahrain International Circuit.

1208. The Commission then selected 59 detainees for examination by forensic experts. As noted earlier in this Section, these 59 detainees were selected on the basis of either (i) the severity of the alleged injuries and the existence of physical marks on the detainee's body, or (ii) the high profile nature of their case. The Commission conducted further interviews with these 59 detainees.

d) *Challenges Faced by the Investigation*

1209. The Commission faced a number of limitations in the conduct of its investigation. The Commission was aware that there was a degree of fear among the alleged victims and witnesses of torture. This may have resulted in individuals being reticent about providing information to the Commission or even refusing to provide information altogether. On some occasions, complainants expressed their unwillingness to share all the information relating to their detention because they were afraid of reprisals. In some cases, witnesses were able to provide evidence thus obviating the need for the alleged victim to provide information.

1210. The Commission investigators learned that detainees often lacked vital information concerning their detention. Almost all of the detainees stated that they were blindfolded. Consequently, many were unable to provide the names of their interrogators or the locations at which they were detained. Detainees also often lost perspective of time during their detention, and this made it difficult for them to provide accurate information in relation to the periods of time spent at any particular detention facility.

1211. The Commission also faced difficulties in relation to the number of detainees requiring an interview. The Commission visited the three main male prisons/detention centres (Dry Dock, Juw and Al Qurain), but these visits were subject to time constraints and were sometimes conducted on a group basis. The majority of detainees at these locations complained about torture and the forced signing of confessions.

e) *Forensic Evidence*

1212. Clinical examinations were conducted of 59 detainees who made allegations of torture and mistreatment. The examinations included taking a factual description of the alleged events as well as a physical and psychological examination. These examinations were performed by four medical experts experienced in the documentation of torture and other forms of mistreatment or trauma. The medical experts examined each individual for between one and three hours. The physicians utilised the *Istanbul Protocol*, which is the international standard for the documentation of torture, as a guide

for conducting these evaluations.⁵⁹³ Verbal informed consent was obtained from each individual, and they were informed that the findings of the medical examination would be included in the Commission's Report. Examinations were performed in a private room with Arabic interpreters for non-English speakers. Validated psychological instruments, which included the Harvard Trauma Questionnaire and the Beck Depression Inventory, were used during each evaluation. The medical experts took photographs of relevant clinical findings. When available, medical records were reviewed.

1213. The medical experts noted that 33 detainees had significant physical marks or symptoms, which the detainees alleged had been caused by mistreatment. The experts identified 19 different methods of mistreatment. The most common were beatings, forced standing for prolonged periods, use of excessively tight handcuffs, exposure to extreme temperatures, head traumas and the use of electric shocks. The experts concluded that physical findings on 32 detainees were highly consistent with mistreatment and traumatic events. The experts also concluded that 15 detainees had significant psychological symptoms or impairments as a result of the alleged mistreatment. Of these 15 detainees, 13 required follow-up treatment. The experts also concluded that the physical findings on 34 detainees were highly consistent with beatings and blunt trauma. In addition, the physical findings on 19 detainees were highly consistent with and even virtually diagnostic of injuries caused by firearms. The physical findings on 22 detainees were highly consistent with the use of painful handcuffs, while the physical findings on 20 other detainees were highly consistent with exposure to extreme temperatures. The experts also found in a number of cases that scars on different parts of the body were consistent with a sound bomb injury as described by the detainee, but these scars were non-specific (ie could be produced by different causes). Three cases were highly consistent with cigarette burn scars on different parts of the body.

1214. Ten detainees exhibited injuries that were non-specific and could be produced by different causes. In these cases, injuries exhibited a low level of consistency with torture. However, the experts noted that the absence of relevant external injuries does not exclude the possibility of torture because of the time period between the alleged incidence of torture and the medical examination.

1215. In five cases, the experts concluded that the injuries exhibited a poor consistency with torture. However, the experts noted that the absence of relevant external injuries does not exclude the possibility of torture because of the time period between the alleged incidence of torture and the medical examination.

1216. Seven cases of alleged mistreatment were not supported by any physical evidence. However, the experts noted that the absence of physical evidence of torture does not exclude the possibility of torture because of the

⁵⁹³ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN High Commissioner for Human Rights (9 August 1999).

time period between the alleged incidence of torture and the medical examination.

1217. In four cases, the experts concluded that the injuries detected were non-specific lesions and had no correlation with torture. However, the experts noted that the absence of external injuries does not exclude the possibility of torture.

1218. In one case, the medical expert concluded that the increased levels of creatinine kinase enzyme and the various small contusions detected on the body suggested that the detainee had been subjected to trauma by an instrument with localised striking surface and moderate momentum. The expert also concluded that the detainee's positive lesions displayed a moderate level of consistency with torture, and that the rounded dark brown areas scattered over most of the body were probably caused by electro-shock devices. However, the expert could not exclude dermatological disease as a possible cause of these injuries.

2. Applicable Law

a) *International Law*

1219. Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides:

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

1220. Article 7 of the ICCPR provides: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 8(1) of the Arab Charter essentially mirrors this prohibition.

1221. Article 10(1) of the ICCPR provides: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 20(1) of the Arab Charter essentially mirrors this prohibition.

1222. Furthermore, article 9(1) to (4) of the ICCPR provides:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance

with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

1223. Article 14 of the Arab Charter sets out a similar series of provisions.

1224. There are also a number of non-binding international documents that are highly pertinent in this area, including the UN Declaration on Torture,⁵⁹⁴ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,⁵⁹⁵ the Standard Minimum Rules for the Treatment of Prisoners,⁵⁹⁶ the Istanbul Principles,⁵⁹⁷ the Code of Conduct for Law Enforcement Officials,⁵⁹⁸ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁵⁹⁹ These can play a useful role in interpreting the international obligations identified above.

b) National Law

1225. Article 19 of the Constitution of Bahrain, which guarantees the personal freedoms of all citizens, provides:

- a. Personal freedom is guaranteed under the law.
- b. A person cannot be arrested, detained, imprisoned or searched, or his place of residence specified or his freedom of

⁵⁹⁴ UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by GA res 3452 (XXX), 9 December 1975.

⁵⁹⁵ Adopted by GA res 43/173 (1988), 9 December 1988.

⁵⁹⁶ Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV), 31 July 1957 and 2076 (LXII), 13 May 1977.

⁵⁹⁷ Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Principles), GA res 55/89, Annex (2000), 4 December 2000.

⁵⁹⁸ Adopted by GA res 34/169 (1979), 17 December 1979.

⁵⁹⁹ Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

residence or movement restricted, except under the provisions of the law and under judicial supervision.

- c. A person cannot be detained or imprisoned in locations other than those designated in the prison regulations covered by health and social care and subject to control by the judicial authority.
- d. No person shall be subjected to physical or mental torture, inducement or undignified treatment, and the penalty for such treatment shall be specified by law. Any statement or confession proved to have been made under torture, inducement or such treatment, or the threat thereof, shall be null and void.⁶⁰⁰

1226. Bahrain approved a National Action Charter following a national referendum on 14 and 15 February 2001. The Charter strictly prohibits torture and other forms of cruel, inhuman or degrading treatment. Chapter One, Part 2(3) of the Charter provides:

No person shall in any way be subjected to any kind of physical or moral torture, inhumane, humiliating or indignant treatment. Any confession or utterance obtained under torture, threatening or persuasion shall be null and void. In particular, an accused shall not be subjected to any physical or moral harm. Law ensures punishment of those who commit an offense of torture, a physically or psychologically harmful act.

1227. Article 208 of the Bahrain Penal Code penalises any public official who was involved, whether directly or indirectly, in the threat or use of torture or force to obtain information or confessions. Article 208 provides:

A prison sentence shall be the penalty for every civil servant or officer entrusted with a public service who uses torture, force or threat, either personally or through a third party, against an accused person, witness or expert to force him to admit having committed a crime or give statements or information in respect thereof.

The penalty shall be life imprisonment should the use of torture or force lead to death.⁶⁰¹

1228. Article 232 of the Penal Code provides:

A prison sentence shall be the penalty for any person who uses or threatens to use torture or force, either personally or through a third party, against an accused person, witness or expert to make

⁶⁰⁰ Based on an English translation provided by the Research and Information Center of the Kingdom of Bahrain Shura Council. See <http://www.shura.bh/EN/INFORMATIONCENTER/Pages/Documents.aspx> accessed 16 November 2011.

⁶⁰¹ Based on translation provided by the Bahraini MJIA. See <http://www.moj.gov.bh/en/default.asp?action=category&ID=355> accessed 16 November 2011.

him admit the commission of a crime or give statements or information in respect thereof.

The punishment shall be imprisonment for at least six months if the torture or use of force results in harming the integrity of the body.

1229. In addition, Article 61 of the Bahrain Code of Criminal Procedure provides:

No one shall be arrested nor imprisoned except by an order of the legally competent authority. He shall be treated in such a manner as to maintain his human dignity and shall not be subjected to any bodily or psychological harm.

Every person who is arrested shall be informed of the reasons for his arrest. He shall have the right to contact any of his relatives to inform him of what has happened and to seek the aid of a lawyer.

3. Findings and Conclusions

1230. The information received from different sources, particularly from interviews with individuals claiming to have suffered mistreatment and other forms of physical and psychological abuse while in state custody, indicates clear patterns of behaviour by certain government agencies. Not all of the detainees were subjected to all of the techniques described above. There was a more discernible pattern of mistreatment with regard to certain categories of detainees, including some of the medical personnel arrested in connection with the events at SMC⁶⁰² and the 14 political leaders held at Al Qurain Prison. In many of these cases, the purpose of mistreatment was to obtain statements or confessions incriminating the detainee in question. In other cases, the purpose was to obtain statements from the detainee with a view to using the statements against other individuals. Mistreatment was also used for the purposes of retribution and punishment.

1231. Three government agencies, namely the MoI, the NSA and the BDF, were involved in interrogating detainees in relation to the events of February/March 2011. The facilities in which interrogations took place included, but were not limited to, Al Adliya (CID/MoI), Al-Qalaa (NSA) and the following police stations: Al Asri; Hamad Town (Roundabout 17); Al Wusta; Al Riffa; Al-Qudaibiya; Samaheej; Al Naim; Nabih Saleh; Al-Bodayia; and Sitra. As of November 2011, most detainees were held in either Al Qurain Prison (BDF), Dry Dock Detention Centre (MoI), Juw Prison (MoI) or Isa Town Detention Centre for women (MoI).⁶⁰³

1232. Many detainees reported mistreatment at the hands of state agents at these facilities. Detainees at Al Qurain Prison (BDF) reported that their mistreatment ceased and conditions improved dramatically after 10 June 2011,

⁶⁰² See Chapter V on Events at Salmaniya Medical Complex.

⁶⁰³ A detention centre for women at which there have been no allegations of torture.

but detainees at other facilities continued to report incidents of mistreatment after that time.

1233. A large number of detainees among the 179 held by the NSA reported instances of mistreatment, including torture and other forms of cruel, inhuman or degrading treatment, at the hands of that agency. Among these complainants are the 14 political leaders who were subsequently transferred to the custody of the BDF (at Al Qurain Prison) between 20 March and 13 April 2011. The BDF reported that upon their arrival, these detainees were examined by a medical doctor who noted that some of them had marks of physical abuse. Some of these detainees, however, alleged that they continued to suffer mistreatment at Al Qurain Prison until 10 June. This mistreatment stopped after the Military Attorney General brought the matter to the attention of the BDF Commander-in-Chief who, according to the Military Attorney General, ordered the Military Attorney General to take control of the detention facility and ensure that no further mistreatment took place. He also instructed the Military Attorney General to investigate claims of torture. Accordingly, Al Qurain Prison came under the control of the Military Attorney General. The 14 high level political detainees stated to Commission investigators that they suffered no mistreatment from 10 June onwards.

1234. The most common techniques used on detainees included the following: blindfolding; handcuffing; enforced standing for prolonged periods; beating; punching; hitting the detainee with rubber hoses (including on the soles of the detainee's feet), cables, whips, metal, wooden planks or other objects; electrocution; sleep-deprivation; exposure to extreme temperatures; verbal abuse; threats of rape to the detainee or family members; and insulting the detainee's religious sect (Shia).

1235. As detailed in Chapter VI, Section C on Manner of Arrests, most detainees were arrested by security forces without presentation of an arrest warrant and without being promptly informed of the reasons for their arrest. The present Section shows that many detainees were then held for weeks or even months with limited, if any, access to the outside world. In particular, there was no access to the courts to challenge the lawfulness of detention. Detainees were denied access to lawyers, sometimes for long periods and sometimes even until the day of the trial. In addition, the GoB withheld from detainees and/or their families information about the detainee's whereabouts for periods ranging from days to weeks. In a few cases, the GoB failed to acknowledge even the fact of detention for periods of up to two weeks.

1236. These practices represent multiple violations of the prohibition of arbitrary detention, as laid down in article 9 of the ICCPR and article 14 of the Arab Charter. The Commission notes that the GoB deposited a derogation from article 9 of the ICCPR with the UN Secretary-General on 28 April 2011, although the State of National Safety was declared on 15 March.⁶⁰⁴ It is clear that measures involving denial of access to courts and lawyers for periods of

⁶⁰⁴ See <http://treaties.un.org/doc/Publication/CN/2011/CN.261.2011-Eng.pdf> accessed 19 November 2011.

weeks can never be considered “necessary measures” that would be protected by such derogations.⁶⁰⁵

1237. In addition, it is generally accepted that prolonged incommunicado detention may itself violate the prohibition of cruel, inhuman or degrading treatment or punishment. Where the family of a detainee is denied information as to the fact of detention or the whereabouts of the detainee, the anguish that family members suffer may render them, too, victims of violations of the same prohibition. The Commission notes that it is precisely when individuals are detained without access to the outside world, especially when they are denied access to lawyers and courts, that they are most vulnerable to torture or other prohibited mistreatment.⁶⁰⁶

1238. The physical and psychological treatment described above evidences a deliberate practice of mistreatment on the part of the NSA and the MoI. In some cases this practice was aimed at extracting confessions and statements by duress, while in other cases such mistreatment was intended for the purposes of retribution and punishment. On the basis of the Commission’s investigation and particularly the forensic medical reports, it finds that 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.⁶⁰⁷

1239. Many of the detainees expressed the view that the security forces acted with complete impunity and that there was no prospect of accountability for the treatment that the detainees suffered. In some cases, detainees reported that when they were released they were told simply to “forget about what happened”. Some detainees told the Commission that they informed a judge or Military Prosecutor about their mistreatment during their trial. In one case, the detainee alleged that the Military Prosecutor “did not believe him”.⁶⁰⁸ In another case, the detainee reported that the Military Prosecutor assured him that the beatings would stop, but the beatings nonetheless continued as soon as the detainee left the courtroom; moreover, upon his return to Dry Dock Detention Centre, the detainee was told that he would be beaten more severely

⁶⁰⁵ See *Aksoy v Turkey* (21987/93) 1996-VI ECHR 2260.

⁶⁰⁶ See Human Rights Committee, *Aber v Algeria* (2007) UN Doc CCPR/C/90/D1328/2004, para 7.6; see also UN Commission on Human Rights resolution 8/8 (18 June 2008), para 7 (c): “Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can itself constitute a form of such treatment.”

⁶⁰⁷ The UN Committee Against Torture has outlined its interpretation of the term “systematic torture” in the following terms: “The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors that the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation, which in practice allows room for the use of torture, may also add to the systematic nature of this practice.” See UN Doc. A/48/44/Add.1, para 39 (November 1993).

⁶⁰⁸ Annex B.

if he complained about his mistreatment again.⁶⁰⁹ A third detainee stated that, in court, he witnessed another detainee complaining about attempts of rape and mistreatment, and that detainee was dismissed by the judge and then beaten afterwards.⁶¹⁰

1240. The Commission notes a number of statements by detainees consistently showing that those inflicting mistreatment expected impunity. The Commission is of the view that the lack of accountability of officials within the security system has 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. In the light of this culture of impunity, the Commission acknowledges the immense courage that was required for the victims of torture and mistreatment to report their experiences to Commission investigators.

1241. The Commission received evidence indicating that, in some cases, judicial and prosecutorial personnel may have implicitly condoned this lack of accountability. For example, during the trial of the SMC doctors before the National Safety Court, the defendants filed a motion in which they alleged that they had been tortured while in detention and that their confessions had been obtained by torture. In its judgment of 29 September 2011, the Court rejected the defendants' motion and ruled that it could consider the confessions as part of the totality of the evidence in the case. All of the defendants were convicted. The judgment was appealed before a civilian appellate court.⁶¹¹ At the first appeal hearing on 23 October 2011, the Attorney General amended the charges and withdrew the prosecution's reliance on the confessions. The next appeal hearing is scheduled for 28 November 2011. The Commission acknowledges that the situation has been remedied with respect to the 20 medical staff who were previously convicted by the National Safety Court. However, the fact that the National Safety Court acted in this manner is a subject of great concern to the Commission.

1242. The Commission notes that many of the forms and techniques of abuse described in this Section were also reported to have been employed in Bahrain during the 1990s. In 2005, the UN Committee Against Torture identified a number of "subjects of concern" in regard to Bahrain's compliance with its obligations under the CAT.⁶¹² These included the following:

- a. The large number of allegations of torture and other cruel, inhuman or degrading treatment or punishment of detainees committed prior to 2001;
- b. Reports of incommunicado detention of detained persons following the ratification of the Convention and prior to 2001, for extended periods, particularly during pre-trial investigations;

⁶⁰⁹ Annex B.

⁶¹⁰ Annex B.

⁶¹¹ Case No. 516 of 2011, High Court of Appeals.

⁶¹² UNCAT Report on Bahrain, UN Doc. CAT/C/CR/34/BHR (21 June 2005), para 6.

- c. The inadequate access to external legal advice while in police custody, to medical assistance and to family members, thereby reducing the safeguards available to detainees; and
- d. The apparent failure to investigate promptly, impartially and fully the numerous allegations of torture and mistreatment and to prosecute alleged offenders, and in particular the pattern of impunity for torture and other mistreatment committed by law enforcement personnel in the past.

1243. The recent recurrence of many of the violations identified by the Committee Against Torture may indicate that prison officials are being guided by a similar set of practices, or even policies, as existed in the past. This indicates a systemic problem, which can only be addressed on a systemic level.

1244. The Commission acknowledges a report of the Ministry of Foreign Affairs, transmitted by the Ministry to the Commission on 2 September 2011, which sets out the GoB's response to the 2005 recommendations of the UN Committee Against Torture.⁶¹³ The report communicates the following assurances from the GoB:

- a. The amnesty for "state security crimes" established under Decree Law No. 10 of 2001 and Decree No. 56 of 2002 does not apply to persons having violated the provisions of the Penal Code forbidding torture;
- b. Decree Law No. 10 of 2001 and Decree No. 56 of 2002 did not affect any prosecutions already in progress for violations of Penal Code provisions forbidding torture;
- c. Civil remedies are available to victims of torture;
- d. Royal Decree Law No. 30 of 2011, issued on 20 September 2011, adds to the civil remedies an offer of "redress to victims of torture as well as other crimes", such redress to include monetary compensation and, as appropriate, moral and other remedies (restitution, rehabilitation, satisfaction and guarantees of non-repetition);
- e. Royal Decree Law No. 30 of 2011 waives the requirement of proof that a public official committing torture was acting in the course of his official duties; and
- f. Decree Law No. 30 of 2011 extends standing to include not only direct victims of torture but also their immediate family members and dependents.

1245. During the period from 20 July to 30 September 2011, the Chairman of the Commission and the Chief Investigator provided the Minister of Interior, the head of the NSA, the Attorney General and the Military Attorney

⁶¹³ CAT/C/CR/34/BHR, 21 June 2005.

General with various accounts of mistreatment, torture and other forms of cruel, inhuman or degrading treatment or punishment. These officials took steps to stop these practices, and after 10 June 2011 the Commission received reports that mistreatment had stopped at Al Qurain prison, and conditions in all detention centres had improved significantly. The Chairman of the Commission urged all of the above individuals to commence investigations into these allegations in order to hold those who engaged in such practices accountable. The Commission was informed⁶¹⁴ by the MoI that it has received 132 claims of mistreatment, that it has investigated 84 of these claims, of which 10 resulted in prosecution. The NSA has commenced a general investigation. The Commission was not, however, informed of the outcome of the remaining investigations and is therefore unable to assess whether they were effective and whether the persons responsible were held accountable.

4. Recommendations

1246. The Commission recommends that all allegations of torture and similar treatment be investigated by an independent and impartial body, following the Istanbul Principles.⁶¹⁵ The investigation should be capable of leading to the prosecution of the perpetrators, both direct and at all levels of responsibility.

1247. In the light of the “pattern of impunity” for torture and mistreatment in the past, the appropriate prosecution should be initiated with a view to ensuring punishment consistent with the gravity of the offence.⁶¹⁶

1248. All victims of torture or mistreatment should receive compensation.⁶¹⁷

1249. All victims of prolonged incommunicado detention should receive compensation.

1250. In connection with the two preceding paragraphs, the Commission welcomes Royal Decree No. 30 of 2011 establishing the National Fund for the Reparation of Victims on 22 September 2011.

1251. The State should never again resort to detention without prompt access to lawyers, and without access to the outside world for more than two or three days. In any event, all detention should be subject to effective monitoring by an independent body.

⁶¹⁴ This information was provided to the Commission on 22 November 2011.

⁶¹⁵ Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Principles), UN General Assembly resolution 55/89 (2000), Annex, 4 December 2000.

⁶¹⁶ The UN Committee Against Torture has previously expressed its “concern” about Bahrain’s “apparent failure to investigate promptly, impartially and fully the numerous allegations of torture and mistreatment and to prosecute alleged offenders, and in particular the pattern of impunity for torture and other mistreatment committed by law enforcement personnel in the past”. See UNCAT Report on Bahrain, UN Doc. CAT/C/CR/34/BHR (21 June 2005), para 6(f).

⁶¹⁷ GA res 40/34 (1985), 20 November 1985.

1252. There should be audiovisual recording of all official interviews with detained persons.

1253. The burden of proving that treatment complies with the prohibition of torture and other mistreatment should be on the State.⁶¹⁸

1254. To ensure future compliance with the Code of Conduct for Law Enforcement Officials,⁶¹⁹ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,⁶²⁰ the security forces should be trained in the human rights dimensions of detention and interrogation, and in particular the obligation to refuse to participate in any actions involving torture and other prohibited mistreatment.

1255. The judiciary and prosecutorial personnel should be trained on the need to ensure that their activities contribute to the prevention and eradication of torture and mistreatment.

Section E – Detention and Prosecution in connection with Expression, Association and Assembly

1. Factual Background

1256. Among the approximately 1,300 persons arrested and whose cases the Commission has examined, a number were arrested pursuant to articles 165, 168, 169 and 179 of the Bahrain Penal Code on the basis of “spreading false rumours” or on the basis of public positions they had taken, either at demonstrations or in other ways.

1257. Several persons were arrested and charged with the possession and/or distribution of material calling for the fall of the regime. These individuals provided statements to the Commission in which they outlined the following allegations, for example:

- a. A complainant stated that she was arrested on 1 April 2011 and charged with possession of material that calls for/supports the fall of the regime. The charges included possession of images and text messages on her mobile phone that call for the fall of the regime. The complainant alleged that the police officers who arrested her also verbally abused and degraded her. She stated that she was taken to Roundabout 17 police station where she was beaten, refused access to toilet facilities and made to stand in the sun for hours. She remained there for one month before being transferred to Isa Town Detention Centre for Women. She was sentenced to six months imprisonment.

⁶¹⁸ Human Rights Committee, General Comment 32 (2007), para 41: “[T]he burden is on the State to prove that statements by the accused have been given of their own free will”.

⁶¹⁹ Adopted by General Assembly resolution 34/169 of 17 December 1979.

⁶²⁰ Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.