

arising out of the same conduct, thus resulting in punishment equivalent to that of felonies. This, in the view of the Commission, is disproportionate to the objectives and interests that these articles seek to protect.

1290. The Attorney General has not dropped these charges nor has he requested the Court of Appeals to reduce the sentences. The Commission has been informed that at the next hearing the Attorney General will request the Court of Appeals to reduce the sentences to time served. This means that the longest penalty will be a few months imprisonment, but the validity of the convictions will not be affected. Consequently, such persons will be deemed to have a past criminal conviction with all attending personal and professional consequences.

#### **4. Recommendations**

1291. The Commission recommends that all persons charged with offences involving political expression, not consisting of advocacy of violence, have their convictions reviewed and sentences commuted or, as the case may be, outstanding charges against them dropped.

### **Section F – Allegations of Enforced Disappearances**

#### **1. Introduction**

1292. The Commission received 169 reports from individuals making allegations relating to enforced disappearances. In addition, Al Wafaq National Islamic Society (Al Wafaq) submitted a report to the Commission which suggested that approximately 1,000 individuals were subjected to enforced disappearance. The Al Wafaq report contained a list of 500 names which allegedly related to victims of enforced disappearance. The mandate of the Commission to investigate these allegations of enforced disappearances is contained in article 9(7) of Royal Order No. 28 of 2011, which provides that the Commission’s report shall contain an “[e]xamination of allegations of disappearances”.

#### **2. Factual Background**

1293. The 169 reports received by the Commission included allegations that persons were arrested and detained without acknowledgement or in facilities the location of which was not disclosed to the detainees or their families. These individuals were subsequently released or held in police custody or detention centres. The majority of the reports were provided by individuals who either were still detained or had recently been released from detention. The periods of time during which it is alleged that the locations of the detainees were unknown ranged from one day to a few weeks and, in a few cases, months. The Commission also received reports of cases in which the very fact of the detention was not known to the families for a period ranging from days to two weeks and in which the individuals were subjected to legal proceedings or investigations in unknown locations. In addition, all of the 169

reports contained allegations that the detainees were physically mistreated and deprived of the protections of the law.

1294. The MoI and the NSA provided the Commission with a list of names of individuals arrested and detained during the events of February and March 2011. The Commission was able to cross-reference the 169 reports of enforced disappearance with the names on the list of arrests and/or detentions provided by the GoB. The Commission was not made aware of any ongoing case in which the location or status of a detainee was unknown to his family or legal representatives.

1295. On 26 September 2011, Al Wefaq National Islamic Society submitted a report to the Commission which suggested that approximately 1,000 individuals were subjected to enforced disappearance. The Al Wefaq report contained a list of 500 names which allegedly related to victims of enforced disappearance. The report claimed that the 500 individuals were arrested by security forces (MoI and NSA) and kept in custody for periods ranging between one day and a few weeks without access to their families or lawyers and that they were deprived of legal protections. Investigators compared the 500 names contained in the Al Wefaq report with the Commission's database and the vast majority of the names were found to fall into one of the following categories: detainees; former detainees; and victims of arbitrary arrest. The Commission did not receive any additional evidence from Al Wefaq that the individuals whose names were contained in the report were subjected to enforced disappearance as defined by international law.

1296. The Commission conducted investigations into the 169 reports of enforced disappearance and the circumstances surrounding each case. The MoI and the Office of the Attorney General informed the Commission that these were cases of arrest pursuant to criminal charges arising out of the unrest of February and March and that every individual arrested was prosecuted before a court of law. The Government also told the Commission that all detainees had access to their families on a weekly basis.

### **3. Applicable law**

1297. The Commission is of the opinion that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms. The enforced disappearance of persons is incompatible with the Universal Declaration of Human Rights and major international human rights instruments.

1298. The UN Declaration on Enforced Disappearance,<sup>632</sup> the International Convention for the Protection of All Persons from Enforced Disappearance 2006<sup>633</sup> and the Rome Statute of the International Criminal Court 1998<sup>634</sup>

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<sup>632</sup> UN Declaration on Enforced Disappearance, GA res 47/133 (1992), 18 December 1992.

<sup>633</sup> International Convention for the Protection of All Persons from Enforced Disappearance 2006, UN Doc.A/61/488, adopted by GA res A/RES/61/17 (2006), 20 December 2006, entered into force 23 December 2010.

<sup>634</sup> Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002.

provide an international legal framework for the assessment of alleged enforced disappearances. The Kingdom of Bahrain is not a party either to the International Convention for the Protection of All Persons from Enforced Disappearance 2006 or the Rome Statute of the International Criminal Court 1998.

1299. Article 1 of the UN Declaration on the Protection of All Persons from Enforced Disappearance contains the following statements, among others, regarding enforced disappearance:

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.
2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

1300. The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the UN General Assembly on 20 December 2006. The Convention entered into force on 23 December 2010 and there are currently 90 signatories and 30 parties. Article 1 provides that no one shall be subjected to enforced disappearance and that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

1301. Article 2 defines “enforced disappearance” as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”. The definition sets out the following fourfold requirement in order to establish an enforced disappearance:

- a. There must be detention/deprivation of liberty;
- b. Such detention/deprivation of liberty must be carried out with the authorisation, support or acquiescence of the State or by its agents;

- c. Such detention/deprivation of liberty must be followed by a refusal to acknowledge the detention or a concealment of the fate or whereabouts of the disappeared person.
- d. Finally, the disappeared person must be placed outside the protection of law.

1302. The Rome Statute of the International Criminal Court provides that the systematic practice of enforced disappearance constitutes a crime against humanity when committed in the context of an attack against a civilian population. Article 7(2)(i) defines enforced disappearance and acknowledges a temporal element by requiring removal from the protection of the law “for a prolonged period of time”<sup>635</sup>.

1303. The international instruments noted above are not directly applicable to Bahrain. However, the Commission has used the definitions contained in those instruments as a frame of reference in its assessment of allegations of enforced disappearance.

#### **4. Findings and Conclusions**

1304. The Commission cannot find that acts and omissions that would comprise a breach of the general international human rights law prohibition against enforced disappearance took place during the relevant period. Nevertheless, the Commission is able to determine that the GoB concealed or withheld from detainees and/or their families information about the detained persons’ whereabouts for periods ranging from days to weeks. The Commission is unable to conclude that the Government refused ultimately to acknowledge the fact of any particular detention. The Commission notes that the majority of detentions were carried out pursuant to arrest warrants issued by the Military Prosecutor General. This suggests, but by no means in itself establishes, that even if the cases were not disqualified *ratione temporis* from categorisation as enforced disappearances, the detained persons were not placed entirely outside the protection of the law, although as described in other parts of this Chapter arrested and detained persons did not fully benefit from their legally protected rights.

1305. The facts considered in the context of this Chapter are, however, relevant to issues of prolonged arbitrary detention addressed in Chapter VI, Section D.

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<sup>635</sup> Rome Statute of the International Criminal Court, art 7(2)(i): “‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”