

Report of the Bar Human Rights Committee

A report on the security situation and adherence to human rights standards
in the Kingdom of Bahrain in terror suspect cases

February 2011



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES



The Bar Human Rights Committee of England and Wales (“BHRC”) is the international human rights arm of the Bar of England and Wales. It is an independent body concerned with protecting the rights of advocates, judges and human rights defenders around the world. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England & Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its agenda.

Acknowledgments

The mission to Manama, Bahrain took place between 12 and 16 October 2010 and was undertaken by Pete Weatherby, Barrister at Garden Court North Chambers, Manchester and Garden Court Chambers, London, and Sally Longworth, Project Coordinator for the BHRC and called to the Bar of England and Wales in 2010.

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The BHRC would like to thank all those who met with its representatives during their visit and contributed to the findings in this report.

Introduction

In early July 2010, the BHRC undertook a mission to observe parts of the trials of two groups of individuals accused of offences connected to protests and tyre burnings. The report of the initial mission is available online at:

http://www.barhumanrights.org.uk/docs/2010/BHRC_Bahrain_trial_observation_July2010.pdf.

The report highlighted the particular concern of the BHRC that during the arrest, detention and trial of the accused there was credible evidence that the following human rights were breached:

- The right not to be tortured or subjected to cruel, inhuman or degrading treatment as proscribed in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 ("CAT"),¹ International Covenant on Civil and Political Rights ("ICCPR")² and the Arab Charter of Human Rights ("ACHR")³ to which the Kingdom of Bahrain is party.
- The right to a fair trial as proscribed by the ICCPR⁴ and ACHR,⁵ to which the Kingdom of Bahrain is party.

Consequently, the BHRC made a series of recommendations to the Kingdom of Bahrain, including that Bahrain should:

- Set up a full independent inquiry to investigate the allegations of torture of detainees, in accordance with Article 2 of CAT.
- Institute a properly independent and impartial commission to receive and handle with individual complaints of human rights violations.
- Ratify the Optional Protocol to the CAT allowing for independent scrutiny of detention facilities and procedures.
- Ensure that all security personnel are trained to recognise and uphold international standards against torture and mistreatment of detainees.
- Ensure that all prosecutions are instituted and conducted in accordance with the domestic law and international fair trial standards.
- Ensure that all persons placed under arrest are taken to a police station as soon as possible and allowed free access to legal advice and representation, in accordance with Article 14 of the ICCPR.
- Ensure that detainees are allowed access to independent medical experts in private.
- Amend the Protecting Society from Terrorists Act No.58 (2006) ("Law No. 58 of 2006") which the UN Special Rapporteur on torture has advised provides a far too wide definition of

¹ Convention against Torture and Other Cruel, Inhumane and Degrading Treatment and Punishment G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), adopted 10 December 1984, entered into force 26 June 1987 (1984), 1465 UNTS 85, article 11, available online at: <http://www2.ohchr.org/english/law/cat.htm> (hereinafter "CAT").

² International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 UNTS 171, article 7, available at: <http://www2.ohchr.org/english/law/ccpr.htm> (hereinafter "ICCPR").

³ League of Arab States, Arab Charter on Human Rights, 15 September 1994, article 13 available online at: <http://www.unhcr.org/refworld/docid/3ae6b38540.html> (hereinafter "ACHR").

⁴ ICCPR supra n. 2, article 15.

⁵ ACHR, supra n. 3, article 7

“terrorism”, and unacceptably impedes access to lawyers and review of detention by a court.⁶

On 18 October 2010, the BHRC 2010 report was raised in the House of Lords and Lord Howell, Minister of State at the Foreign and Commonwealth Office, agreed that the UK government would consider providing technical assistance to the Government of Bahrain in implementing the report’s recommendations if so requested.⁷

The present mission took place in the context of widespread concerns from international non-governmental organisations and the international media about human rights’ violations during the arrest and detention of dissidents and protestors, including torture and inhuman and degrading treatment. The purpose of the mission was to provide an independent view on the events reported, to assess their credibility and analyse the fact pattern against the previous matters identified by the BHRC. The report therefore examines the circumstances surrounding and details of the arrests and detention of these terrorist suspects, and considers them in light of internationally recognised standards of human rights.

Twenty three of those arrested were identified by the Public Prosecutor as “leaders” of an alleged terrorist network. This figure has since risen to twenty five, and these detainees are being tried together in the main trial. The BHRC focused its investigation on these detainees and the pre-trial events. A full list of these detainees is provided at Annex A together with the charges included on the original indictment. It is to be noted that Jaafar Al Hasabi possesses dual Bahrain/British nationality and Mohammed Habib Almuqdad has dual Swedish nationality. Two of the twenty five are opposition figures living in London who are being tried in absentia. The allegations centre on the organisation of anti-Government demonstrations, including tyre-burning protests.

During the mission, the BHRC met with the Deputy Prime Minister, His Excellency Shaikh Mohammed bin Mubarek Al Khalifa, the Minister of Interior, His Excellency Shaikh Rashid bin Abdulla Al-Khalifa, the Attorney General, Dr Ali Fadhul Al Buainain, the Secretary-General designate of the Gulf Cooperation Council (GCC), General Dr Abdul Latif Al Zayani, the Head of Public Security, Major General Tariq Bin Daina, and Under-Secretary for Legal Affairs, Brigadier Mahmood Bu Hamood, and doctors and officials within the Public Prosecutors Office. The mission also met with lawyers acting for the detainees, and family members of the detainees. In addition, the BHRC met with the British Ambassador and representatives of the US Embassy, representatives of the Bahrain Human Rights Society, the recently-resigned head of the National institution of Human Rights, the Bahrain Centre for Human Rights, and the Bahrain Youth Society for Human Rights, and other human rights defenders, members of the business community, and Dr Ali Salman, General Secretary of Islamic National Wefaq Committee. All meetings were conducted in English or in Arabic with the assistance of a translator.

⁶ Office of the High Commissioner for Human Rights Press Release, ‘UN Special Rapporteur calls for further amendments to counter-terrorism legislation in Bahrain’ 25 July 2006, available at: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=7236&LangID=E>>.

⁷ Lords Hansard, 18 October 2010, Column WA100, available online at: <<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101018w0001.htm#1010188000812>>

The relevant legal framework has been set out extensively in previous reports of the BHRC and will not be repeated here.⁸ However, reference to the applicable legal requirements is made throughout the report.

Prior to the mission, the BHRC sent letters to the King of Bahrain requesting to meet with those detainees referenced in the BHRC 2010 July trial observation report, and the current detainees. A letter was also sent to the Chair of the Bahrain Bar Society requesting a meeting. No replies were received to those letters. The BHRC reiterated its request to have access to the detainees to the Attorney General. However, this was not granted.

Following the mission, the BHRC sent letters to the Minister for the Interior, the Attorney-General and the Deputy Prime Minister in an attempt to constructively engage with them regarding the concerns highlighted in this report. Prior to publication, the BHRC sent a draft of this report to the Government of Bahrain for comment and received a formal response from the Ministry of Social Development. A summary of this response in English and the original Arabic document will be published alongside the BHRC's report on the BHRC's website. In its response, the Ministry welcomed the interest of the BHRC in the situation in Bahrain, but felt that the mission had been misinformed concerning various issues.

⁸ See further BHRC Report on Hearing Observation of Human Rights Defenders in Bahrain, 2009 and BHRC Report on Hearing Observation: A Report of Hearings in (1) the Adary Park case and (2) the Ma'ameer case, August 2010, available online at: www.barhumanrights.org.uk/reports.php (hereinafter "BHRC 2010 Bahrain report").

Overview of the situation in Bahrain

On 13 August 2010, Dr Abduljalil Al Singace, a spokesperson for the opposition Haq movement, was arrested on his return to Bahrain from London. Whilst in the UK, Dr Al Singace had attended a seminar at the House of Lords on 5 August 2010, hosted by Baroness Falkner, which considered alleged human rights abuses in the Kingdom of Bahrain. Pete Weatherby, who conducted the July 2010 trial observation on behalf of the BHRC, was one of a number of speakers who addressed the seminar. Reports in a Bahraini newspaper linked the arrest of Dr Al Singace to the 5 August 2010 seminar.⁹ On 9 November 2010, Lord Howell told the House of Lords that the British Ambassador to Bahrain had stressed to the Minister for the Interior that allegations of mistreatment of detainees should be fully investigated, and further that he had “expressed concern to a number of Bahraini Ministers at reports that Mr Al-Singace’s arrest may have been connected with statements he made in the House of Lords in August 2010”.¹⁰ Lord Howell reiterated these statements on 25 November 2010, and noted that the British Embassy was closely monitoring the trial.¹¹

The arrest of Dr Al Singace heralded the start of a crackdown on those alleged to be supporters of opposition movements, and protestors.¹² The BHRC received reports that approximately 300 people were detained following the arrest of Dr Al Singace in August 2010. However, the exact number of those arrested remains unclear. BHRC has been informed that further arrests took place in October, and thereafter, and the total number may be more than 400. The majority of detainees are associated with civil society activism and are members of the Shi’a community.

The wave of arrests coincided with the campaign period for parliamentary elections, which took place on 23 October 2010. A number of opposition groups had called for a boycott of the elections, asserting that they were undemocratic as they could have little or no impact on the composition or operation of the government. This period was marked by continuing protests some of which involved tyre burning, which further contributed to the atmosphere of tension.¹³

Following the initial arrests, the government issued a decree dissolving the Board of Directors and appointing an administrator to the Bahrain Human Rights Society (BHRS), an independent non-governmental organisation with a long history, widely regarded as moderate and independent, was taken under government control by decree.¹⁴

On 28 August 2010, the BHRS held a press conference and issued statements condemning all types of violence, including tyre burning and that instigated by the authorities, and calling for the rights of the detainees to be respected in accordance with the provisions of the Constitution. On 29 August, reports appeared in the media that the BHRS had, amongst other things, given reasons in support of

⁹ Al Watan, page 1 and others, published 15 August 2010, available online at: <http://www.alwatannews.net/>.

¹⁰ See Lords Hansard, 9 November 2010, Column WA50, available online at: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101109w0001.htm#10110965000656>.

¹¹ See Lords Hansard, 25 November 2010, Column WA 369, available online at: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101125w0001.htm>.

¹² See BHRC 2010 Bahrain report, supra n. 8, p. 3.

¹³ See, for example, Keer, S. Fresh violence ahead of Bahrain poll, Financial Times, 15 September 2010, available at: <http://www.ft.com/cms/s/0/c955f762-c0a8-11df-94f9-00144feab49a.html#axzz16DsqqBBUD>.

¹⁴ Amnesty International, Bahrain: Government Action Against Bahrain Human Rights Society Undermines Basic Freedoms, Public Statement AI Index: MDE 11/006/2010, issued 8 September 2010, available online at: <http://www.amnesty.org/en/library/asset/MDE11/006/2010/en/bab05c59-c296-47bd-a85b-76df1b370b45/mde110062010en.html>.

the tyre burning. The Minister for Social Development appeared on Bahrain television on 2 September stating that the BHRS had legal and administrative irregularities. The BHRS attempted to arrange a meeting with the Minister regarding these statements. These attempts failed and the BHRS was notified that the Board of Directors had been dissolved and a new administrator appointed. The order dissolving the BHRS was dated 8 September and published on 9 September.

On 23 September, the Ministry of Social Development stated that the reason for the takeover was that the BHRS had conducted secret training of "Gulf Nationals". However, the Society has maintained that the Government was fully aware of its training, not least because the BHRS had applied to the Ministry of Social Development and subsequently the Ministry of Immigration for visas for attendees, with the agenda for the training attached. A "no objection" letter was issued by the Ministry of Social Development and two visas subsequently issued by the Ministry of Immigration. The training also received some local press coverage.

In this context, during the mission the BHRC attempted to contact the National Institution of Human Rights (NIHR), the state-sponsored body set up to oversee the human rights situation in the Kingdom in accordance with the Paris Principles.¹⁵ Regrettably this proved difficult. The NIHR did not have a website at the time, nor did it appear to be functioning.

The NIHR was set up by Royal Decree 49 of 2009 and has 23 members appointed by the King, to serve four year terms from April 2010. During its mission, the BHRC did manage to speak with the first President of the NIHR, Salman Said Ali Kamal Al Din, who had been appointed to the post in May 2010 by the King, but had resigned in September. Mr Al Din is a veteran and highly respected human rights activist who was an ex-Vice President of the Bahrain Human Rights Society. It is clear that, despite the independence and autonomy of functioning emphasised in the Paris Principles, the Government appointed members to the Institute without consultation with Mr Al Din and its make-up was heavily pro-Government. The BHRC understands that to date Mr Al Din has not been replaced.

Following the mission, the BHRC received a communication from the NIHR. In this, the NIHR welcomed the Committee's work in Bahrain and indicated that the NIHR is, in fact, now functional. The NIHR highlighted that its work so far has included the monitoring of the 2010 elections, receiving complaints regarding human rights violations in the Kingdom, issuing a report into conditions at Jaw prison, mediating between the BHRS and the Ministry for Social Development, observing high profile public interest trials, and drafting the outline of a national human rights strategy. Time will tell whether the Institution can be an effective participant in the promotion of the rule of law and protection of human rights in Bahrain. As noted below, the work of the NIHR is not easily visible. However, the BHRC welcomed the offer of the NIHR to meet with the BHRC in the near future and engage in constructive dialogue on these important issues.

BHRC also received reports from opposition parliamentarians and officials of difficulties experienced by journalists in covering the elections. One prominent example was the refusal of permits to Al Jazeera journalists to cover the elections and there was particular concern that the local media had been required to print a Government-friendly version of a US State Department statement in September which had urged Bahrain not to choose between democracy and security.¹⁶ A number of

¹⁵ Principles relating to the Status of National Institutions, A/RES/48/134 adopted by General Assembly resolution 48/134 of 20 December 1993, available online at: <<http://www2.ohchr.org/english/law/parisprinciples.htm>>.

¹⁶ See Philip J. Crowley, Daily Press Briefing, Bahrain, available online at: <<http://www.state.gov/video/?videoid=609836175001>>.

websites had been closed down, and there were concerns that local media editors were exercising self-censorship.

The appointment of the administrator to the BHRS generated international outcry, particularly so close to the election, for which the BHRS would normally act as monitors. At the same time the international media published widespread reports regarding allegations that the detainees had been seriously mistreated, held incommunicado for prolonged periods, and refused proper access to lawyers and doctors.¹⁷ The widespread reports of mistreatment of detainees and the interference with the activities and administration of the BHRS raised serious doubts regarding respect for the rule of law and it was against this canvas that the latest BHRC mission took place. In February 2011, the BHRC was informed that the Ministry of Social Development had reversed the takeover of the BHRS.

Circumstances of the arrests

The circumstances under which the arrests took place drew the attention of the international community and prompted concerns as to whether the advances made in Bahrain relating to human rights since the turn of the century would be reversed.¹⁸ It was notable that many people who spoke to BHRC were reminded of the period of severe repression up until 1999, during which there were widespread and serious human rights abuses, and feared that the significant steps the Bahrain system had taken towards the protection of human rights would count for nothing.

BHRC met with numerous family members, many of whom were present at the time of the arrests, in addition to defence lawyers who were able to recount their clients' own accounts of the events. The vast majority of the arrests took place in the early hours of the morning, between 2am and 5am, during the time of Ramadan.

Family members stated the arrests were conducted by plain-clothed officials whom those interviewed by the BHRC identified as from the National Security Agency (NSA) together with uniformed police officers. The plain clothed officials did not present identification as to which body they were attached. Both the police and plain clothed officials were armed with hand guns, and both marked and unmarked vehicles were used. The number of officials ranged from approximately 5-20 persons. None of the accounts given to the BHRC of arrests indicated that physical violence had taken place either by the police or other officials or the accused persons.

¹⁷ See, for example, Ian Black, Britain urged to act over Bahrain torture claims, *The Guardian*, 7 September, 2010, available online at: <http://www.guardian.co.uk/world/2010/sep/07/bahrain-torture-claims-shia-arrests> ; Amnesty International, Bahrain: Allegations of Torture and Ill-Treatment Must Be Independently Investigated, Public Statement AI Index: MDE 11/004/2010 issued 2 September 2010, available online at: <http://www.amnesty.org/en/library/info/MDE11/004/2010/en> ; Human Rights Watch, Bahrain: Pursue Torture Allegations, News Release, 1 September 2010 available online at: <http://www.hrw.org/en/news/2010/09/01/bahrain-pursue-torture-allegations>.

¹⁸ See, for example, Cambanis, T. Crackdown in Bahrain Hints of End to Reforms, *New York Times*, 27 August 2010, available at: <http://www.nytimes.com/2010/08/27/world/middleeast/27bahrain.html?pagewanted=all>; and Amnesty International, Bahrain intensifies crackdown on activists and clerics, 17 August 2010, available online at: <http://www.amnesty.org/en/news-and-updates/bahrain-intensifies-crackdown-activists-and-clerics-2010-08-18>.

In none of the cases investigated by the BHRC was an arrest or search warrant presented during the arrest procedure. In one instance, the police were described as having “a piece of paper” with them. However, this was not shown to the witness and they were unable to verify if this was either an arrest warrant or a search warrant, in breach of Bahrain’s criminal procedure.¹⁹ Under Bahrain criminal law, the required authorisation must be obtained from the Public Prosecutor in terms of an order for arrest for it to be lawful.²⁰

Under Article 9 of the ICCPR, no one shall be subject to arbitrary arrest. The term “arbitrary” has been held to mean action that is unjust or incompatible with the principles of justice and human dignity.²¹ To avoid the title of “arbitrariness”, the arrest must be conducted in such a way as prescribed by law i.e. it must be lawful.²² This requirement is protected by Article 19(b) of the Constitution of the Kingdom of Bahrain which states:

“No person shall be arrested, detained, imprisoned, search or compelled to reside in a specific place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the law and under the supervision of the judicial authorities.”

The BHRC was told that no ‘arrest order’ was presented at the time of any of the arrests. Under Article 9(2), of the ICCPR anyone arrested shall be informed at the time of arrest of the reason for his/her arrest.²³ BHRC was informed that in none of the cases considered was the reason for the arrest communicated to the individuals, despite this being requested.

In a number of cases, a search of the premises was conducted and a number of items taken. These were described in the majority as electronic equipment, such as laptops, mobile phones, memory sticks and CDs, as well as papers and books. In one instance, the BHRC was told that the contents and keys of a car were taken. In some instances, the officials returned several days later to conduct a search of the house and did not do so on the night of the arrest. During these second visits, again no search warrant was presented.

Following the arrests in the early hours, a number of families attempted to trace detainees at the local police station. In all instances, they were told that there was no one at the station by that name. Some also tried to locate their relatives at the central police station, but received the same retort. Some of the families wrote several times to the Public Prosecutor asking to see the detainees, without reply.

It is apparent that normal and widely known processes of notifying families of the whereabouts of detainees were not followed in these cases. This causes serious concern that human rights standards relating to arrest and detention have been violated. It is a principle of both domestic and

¹⁹ Article 141, Bahrain Code of Criminal Procedure.

²⁰ Ibid.

²¹ A v Australia, Human Rights Committee, Complaint 560/1993, Views Adopted 30 April 1997, UN doc. CCPR/C/59/D/560/1993. See, also, Gangaram Padray Case, Order of the Court of November 27, 1998, reprinted in 1998 Annual Report of the Inter-American Court of Human Rights [531], OEA/Ser.L/V/III.43, doc. 11 (1999).

²² Article 9(2) ICCPR, supra n. 2.

²³ See further of the Body of Principles for the Protection of All Persons Under Any Form of Detention adopted by General Assembly resolution 43/173 of 9 December 1988, Principle 10, available online at: <<http://www2.ohchr.org/english/law/bodyprinciples.htm>> (hereinafter the “1988 Principles”).

international law that detainees have the right to inform their families of their detention. Principle 16 of the 1988 Principles states that:

“Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.”²⁴

This right is not absolute and there can only be delay for a reasonable period, but only where the exceptional needs of the investigation so require.²⁵ In a number of the instant cases, families did not hear anything regarding the detainees, their well-being, their location, or the charges they faced, for over a month. This was unacceptable under both international and domestic law.

Clearly, the detention of individuals accused under terrorism legislation is a matter of national interest and has received widespread coverage in Bahrain’s national press. On 27 August, the Public Prosecutor issued an order that no information about the arrests or detainees was to be published in the media which was not supplied by the Public Prosecutor.²⁶ During the BHRC’s meeting with the Attorney General, it was highlighted that the Public Prosecutor enjoys the status of a member of the judiciary, and thus any such orders are binding. These orders constitute a severe restriction on the freedom of the press and publication, as enshrined by Article 24 of the Constitution, and also have implications for the fair conduct of the subsequent trial and the presumption of innocence.

Access to legal representation

There can be no dispute that all Governments must take threats to national security very seriously, and may take appropriate lawful action to maintain the safety of the nation. However, the importance of cases involving threats to national security - to the general population, the State, and the individual accused - requires that the highest standards of due process are maintained throughout the investigation and trial, and the utmost regard is paid to the protection of individual rights. Any lapse in the preservation of these standards in the process draws into question the credibility not only of the Government’s actions but also the accusations themselves. In the current context the Government characterises the allegations as terrorism: the detainees and their supporters say the charges are purely political. Only a fair and open trial can determine which is correct. It is because of these factors that the BHRC was particularly concerned with the issues surrounding the detainees’ access to their legal representatives.

The right of access to legal representation and the presumption of innocence are rights guaranteed by the Constitution in Bahrain, as well as international law. The BHRC was informed that defence

²⁴ See further Principle 44(3) and 92 of the Standard of Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations 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) of 31 July 1957 and 2076 (LXII) of 13 May 1977, available online at:

<<http://www2.ohchr.org/english/law/treatmentprisoners.htm>> (hereinafter “Minimum Rules 1977”).

²⁵ C.f. Minimum Rules 1977, supra n. 24 Principle 92.

²⁶ It is noteworthy that one of the detainees is a prominent blogger and some of the charges against the 25 detainees relate to the dissemination of anti-Government views.

lawyers were given no private access to their clients from the time of the arrests in August and September until their first appearance in court on 28 October. Indeed the only time the detainees were allowed to see their own lawyers was during the interrogations by the Public Prosecutors, after they were alleged to have made confessions to security officials of the NSA. This was verified by a variety of sources, and was not challenged by the Attorney General. When the lawyers were finally permitted to meet with their clients in private, by order of the Court on 28 October, they were only allowed 30 minutes with them.

The BHRC met with several of the lawyers who represented the central group of 25 detainees. The majority had been instructed by family members very shortly after the arrests took place. In such circumstances, the defence lawyers wrote to the Public Prosecutor informing them whom they were instructed to represent, requesting a copy of the Public Prosecutor's file, and access to their clients. In all cases, the defence lawyers were not notified of the location of their client until the Public Prosecutor conducted an interrogation, and in every case, at least two weeks after the arrest. The Attorney General informed the BHRC that the NSA/police are permitted five days under the Law No. 58 of 2006 to conduct an initial investigation, following which they must send their file to the Public Prosecutor for review. If the Public Prosecutor considers there is sufficient evidence to continue the investigation, the accused can be detained for a further 10 days, before formal interrogation by the Public Prosecutor. According to the Attorney General, during this period, the suspect's legal representative is not permitted access to their client, although this is not express in the terms of Article 27 of Law No. 58. It is apparent that Law No. 58 of 2006 was construed to give the NSA, police and Public Prosecutor far wider powers of detention and to suspend the normal rights of access to lawyers under Bahraini criminal procedure law which requires access to lawyers as soon as is practicable.

As has been noted previously by the BHRC, this period of incommunicado detention is extremely concerning. This form of detention has been considered a violation of international law, in and of itself.²⁷ Indeed shorter periods of incommunicado detention have been held by the UN Human Rights Committee to be a violation of Article 10 of the ICCPR.²⁸ Access to a lawyer is one of the most basic safeguards of a suspect's rights, and one of the most effective. The risk of ill-treatment and torture is substantially heightened by the lack of access to lawyers, and independent supervision of the detention facilities or conditions of detainees. The lack of such safeguards removes any effective means to challenge the legality of detention, and is therefore in breach of international law.²⁹

Defence lawyers were notified of and permitted access to the interrogations conducted by the Public Prosecutor in the course their investigations.³⁰ However, in many of the cases, notice of the interrogations was very short; often no more than half an hour. To ensure lawyers were available, the defence acted as a team for the interrogations. Such short notice brings into question the commitment to uphold the detainees' right to a defence, as enshrined by Article 20(c) of the Constitution, and the provisions of the Code of Criminal Procedure.

The interrogations were the first time the defence lawyers saw their clients and this was the first time they learned of the nature and substance of the allegations against them. In the cases investigated by the BHRC, the defence lawyers were not allowed to speak with their clients before or

²⁷ See for example, *El-Megreisi v Libyan Arab Jamahiriya*, Communication No. 440/1990, Views adopted 24 March 1994, UN doc. CCPR/C/50/D/440/1990.

²⁸ *Lucía Arzuaga Gilboa v. Uruguay*, communication No. 147/1983 (CCPR/C/OP/2) para. 14. See further, *Miguel Angel Estrella v. Uruguay*, communication No. 74/1980 (CCPR/C/OP/2).

²⁹ See Article 9(4) ICCPR supra n. 2; Principle 32 1988 Principles, supra n. 23.

³⁰ This is a requirement under articles 133-135 of the Bahrain Code of Criminal Procedure.

during the interrogations, and they were required to sit at the back of the room, and not next to their clients. As a result they were unable to communicate with their clients in any meaningful way. Access was generally not allowed to clients during breaks in the interrogations or at the end. In one instance, the Public Prosecutor did permit access, but only in the presence of a NSA officer. The lawyer raised this with the Public Prosecutor, but he was told that it was necessary for security purposes. As such, none of the lawyers were able to privately consult with their clients at any stage of the process.³¹ In one case, the BHRC was told that the lawyer requested a copy of the interrogation record. No copy was given to the lawyer. During this interrogation, a medical report was referred to. The lawyer again requested a copy of this report orally and later in writing, but without success.

It is a critical element of the right to a fair trial that the defendant knows the case against him/her,³² and is able to and has adequate time to prepare a defence in consultation with legal representation of their choice.³³ This is a critical aspect of the realisation of the right and application of the principle of equality of arms. The requirement that the reasons for the detention should be communicated to the defendant can also be found in the 1988 Principles.³⁴ Without access to their lawyers, it is highly questionable how those detained under such conditions are able to prepare a defence. Furthermore, under Article 20 of the Constitution, the necessary guarantees for the proper exercise of the right to defence are to be guaranteed at all stages of the investigation. Access to documents and other evidence, including all the evidence which the prosecution plans to rely on in court and exculpatory material, has been recognised by the Human Rights Committee as an element in the provision of "adequate facilities" for the preparation of a defence.³⁵

The defence lawyers also raised concerns with the mode of questioning put to the detainees. The vast majority of questioning was said to pertain to the beliefs of the detainees and connections with other individuals. However, it is asserted by the lawyers that records of the confessions signed by the detainees related to specific events, such as the organisation of tyre burning protests, which were not specifically raised during the interrogations. In one instance, the lawyer present requested the Public Prosecutor to ask his client, for the record, whether he had been subjected to torture or mistreatment. This request was refused. As the defendants did not have private access to their lawyers and were unable to take their advice in confidence, there is a clear breach of Principle 21 of the 1988 Principles, which states that it is prohibited to "take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person."

Some interrogations took place very late at night for prolonged periods. Whilst regular breaks do seem to have been permitted, it was not clear to the BHRC why the unusual timing of the interrogations was necessary. Such conditions were likely to impair the defendant's decision-making capacity³⁶.

³¹ See further Principle 18(4) 1988 Principles supra n. 23.

³² Article 14(3)(a) ICCPR supra n. 2.

³³ Article 14(3)(b) ICCPR supra n. 2.

³⁴ Principle 11(2), 1988 Principles supra n. 23. See also Principle 12.

³⁵ See Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), para. 33 available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>>.

³⁶ See Principle 21(2) 1988 Principles supra n. 23.

The validity of the confessions obtained in these interrogations has been challenged by the defence during the trial proceedings on the basis of allegations of torture and mistreatment, and lack of access to lawyers.³⁷

The BHRC raised these concerns with the Attorney General. The Attorney General stated that there is no time in many cases for the lawyers to privately consult with their clients. He stated that defence lawyers were present during the interrogations of their clients. Specifically, 10 of the 25 central detainees had been interrogated with a lawyer present. The remaining detainees either had not been interrogated at that stage or did not have a lawyer, in which case they would be provided with a list of lawyers at court. In relation to the period of incommunicado detention, it was stated that this is permitted under the provisions of the 2006 Act.

The BHRC was informed that on 11 October, a statement was published in a number of local newspapers indicating that the Public Prosecutor had told one of the defence lawyers that they were allowed access to their clients. This was after the interrogations had taken place and the first family visits allowed. The Attorney General expressed surprise that the defence lawyers had not visited their clients, and had filed a petition in the High Criminal Court. The Petition had indicated that the lawyers had been denied access to their clients, in contravention of Bahraini and international law. On 17 October, the Court rejected the Petition on the basis of lack of jurisdiction and did not pronounce on the merits of the Petition.

Several of the detainees are stated to have made confessions during the police/NSA interrogations. The confessions were signed without the presence of or advice from their legal representatives. It is clear from this investigation and the previous trial observations conducted by the BHRC that confessions make up the majority, and are often the sole evidence for the Prosecution's case. However, such confessions are surrounded by allegations of mistreatment and torture and in a context where independent scrutiny of the procedure, either through proper access to lawyers or independent observers, is completely lacking. The Constitution of Bahrain provides that any "statement or confession proved to have been made under torture, inducement, or such treatment, or threat thereof, shall be null and void".³⁸

It is a basic principle of customary international law, and the international human rights treaties referred to above, that the burden of proof in criminal charges lies on the prosecution, and before conviction there must be evidence proving beyond reasonable doubt that the accused person committed the crime in question.³⁹ The instant cases appear to rely solely on uncorroborated confessions made by the accused person, in circumstances which are highly questionable.

At the commencement of the trial on 28 October all but one of the defendants made express allegations of serious mistreatment, in open court to the judge. Initially the judge ordered that five of the defendants be examined by independent medical experts, but it has become apparent from subsequent trial sessions that no proper investigation has been conducted and the court has rejected the defence allegations of mistreatment.

³⁷ See below.

³⁸ Article 19(d), Constitution of the Kingdom of Bahrain, 14 February 2002, available at: <<http://www.unhcr.org/refworld/docid/48b54f262.html>> (hereinafter "Constitution of the Kingdom of Bahrain").

³⁹ See, for example, Human Rights Committee, General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14), 13 April 1984, 21st Session, para. 7, available online at: <<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/bb722416a295f264c12563ed0049dfbd?Opendocument>>

Conduct of family visits

Following the interrogations by the Public Prosecutor, the families of the detainees have been permitted visits. At the time of the BHRC's investigation, some of the families had visited the detainees three times at weekly intervals. The visits took place at Dry Dock prison in Manama, although it was not ascertained that this is where the detainees were being held. Only immediate family members are permitted access. Visits last between 10 and 30 minutes, averaging between 15 and 20 minutes. Security officials are present in the room at all times. Their number ranges between 5 and 10 persons, both male and female, generally not in uniform.

A considerable number of the families spoken to by the BHRC stated that immediately prior to the visit, they were told by the security officials present not to talk about the charges, lawyers, allegations of torture, what kind of care they are receiving in prison or other matters related. Conversations were thus heavily restricted. Any deviance from these instructions resulted in the visit being halted immediately by the security officials present. The BHRC heard several accounts of this taking place. On two occasions when this happened, the families reported that they heard shouting from the room immediately after they left. Whilst families are permitted physical contact with the detainees in greeting them, they are not permitted to sit next to the detainees or speak privately. The detainees are sat approximately 2 metres away from the families, divided by a table.⁴⁰

The right of detainees to be visited by and to correspond with family members is required by international prison standards,⁴¹ but the BHRC again notes with concern that these visits were allowed only after a period of 15 days of incommunicado detention. Again, this heightens the risk of ill-treatment, and adds to conditions of detention which could be deemed an affront to personal dignity.

When asked of the physical condition of the detainees, the BHRC received a variety of accounts. Several families commented that the detainees seemed disturbed and reluctant to speak. During the first visit, a number of family members identified that the detainees had lost weight, and in one case appeared to have a yellow tone to his skin. The BHRC received reports that detainees had black eyes, hand-cuff and other marks evident around their wrists, and marks on the legs and round the ankles, as well as more serious reports of limbs being in plaster. In one case, family members reported that the skin of the detainee's feet was severely discoloured. These accounts raise extremely serious questions concerning the treatment and supervision of detainees.

During discussion with the Attorney General, it was stated that a number of detainees had suffered injuries following an escape attempt. BHRC was informed that there had been a confrontation with the prison authorities. This was documented in a report by the doctor at the detention centre, who attended some of the detainees. This report has not been shared with the defence. The doctor was present at the meeting between BHRC and the Attorney General, and he asserted that some of injuries were caused during the escape, but none of the injuries suffered by the detainees were consistent with torture or mistreatment. Without independent supervision of facilities, including providing the opportunity for the defence to adequately challenge the assertions in the doctor's report, the allegations of mistreatment remain unverifiable. Such assertions plainly require proper

⁴⁰ Actual measurements were not available.

⁴¹ Note Principle 19 1988 Principles *supra* n. 23.

investigation and in particular independent medical scrutiny, both of the records and the detainees themselves.

Allegations of torture

As noted above, the BHRC was not permitted access to the 23 detainees, and as such were unable to verify allegations of torture and mistreatment. However, the BHRC received reports from a variety of credible sources regarding mistreatment, which in many circumstances would amount to torture, relating to all 23 detainees. At the hearing on 28 October 2010 the detainees themselves recounted what they alleged had been done to them, in open court. Complaints included:

- Beatings, particularly to the legs and ears;
- Handcuff marks around the wrists;
- Beating of soles of feet;
- Sleep deprivation;
- Sensory deprivation through the use of blindfolds;
- Stress positions;
- Being kept naked for prolonged periods;
- Hanging by wrists – in the “falaqa” way (where the hands and feet are tied and the detainee is hung on a bar, and the soles of the feet are beaten);
- Broken rib in one case and broken leg in another;
- In extreme examples, sexual abuse.

Such actions are absolutely prohibited under international law⁴² and the constitutional and procedural law of Bahrain.⁴³ Investigation of such allegations is the responsibility of the Public Prosecutor, and ultimately for the Court to determine. The circumstances surrounding the arrest and access to legal representation raise substantial queries as to whether the 25 are able to receive a fair trial. Credible and pervasive allegations of mistreatment and torture, which are dismissed as fabrication by the Public Prosecutor, completely undermine the rule of law, unless subjected to thorough and credible independent scrutiny. The BHRC raised the need for these allegations to be thoroughly investigated during its meetings with officials and other organisations have continued to raise these concerns with Ministers and the government.⁴⁴

⁴² Article 7 ICCPR supra n. 2, article 11 CAT supra n. 2, article 13 ACHR supra n. 3.

⁴³ Article 19(d) Constitution of the Kingdom of Bahrain, supra n. 39; Article 61, Bahrain Code of Criminal Procedure.

⁴⁴ See Bahrain Human Rights Monitor, The Bahraini Minister of Justice Responds to Bahrain Human Rights Monitor's Queries about the Alleged Torture and Ill-Treatment of the Detainees, 20 December 2010 available online at: <<http://www.bahrainmonitor.org/in-news/s-024-01.html>>.

Proceedings to date

The trial of the 25 defendants commenced on 28 October 2010 at the High Criminal Court in Manama. At the time of publishing, there have been further hearings on 11 November, 25 November, 9 December, 23 December 2010, 6 January, 13 January and 26 January 2011. The BHRC has received detailed reports of these hearings. A full report of a trial observation by Frontline Defenders on the proceedings of 11 November has also been published.⁴⁵

On 28 October, the charges were presented to the detainees, who all pleaded not guilty. The charges of “attempt to overthrow the government” and “contacting international organisations” were withdrawn. The lawyers for the defence raised their concerns of lack of access to their clients and were granted 30 minutes to consult their clients in private. All but one of the detainees told the court that they had been tortured and mistreated during detention and that confessions were coerced. The defence lawyers submitted that in light of these allegations, a fresh investigation into the charges in accordance with Article 176 of the Code of Criminal Procedure should be conducted. At the end of proceedings, the Court granted the defence submissions that all the detainees be moved to the Dry Dock prison and that lawyers be allowed to meet with the detainees and given access to the documents relating to the case. The Dry Dock prison is under the jurisdiction of the Ministry of the Interior, as opposed to the National Security Apparatus. Further, five of the accused were to be examined by doctors.⁴⁶ It is unclear as to where the defendants are currently being held.

On 11 November, the defence lawyers again raised issues of access to their clients, which had been delayed by 10 days following the court order. A number of detainees had also alleged further torture and mistreatment following the hearing on 28 October. The defence therefore requested proceedings to be halted until a thorough investigation could be carried out into these fresh allegations. In addition, the defence had been provided with only one copy of the court file, thereby making it impossible to prepare for trial. The defence repeated the allegations of mistreatment and torture. The defence also argued that the reports in the media relating to the trial amounted to defamation, not only of their clients, but also the defence lawyers, one of whom had been pictured with the caption “terrorist” underneath. As noted above, the Public Prosecutor has placed considerable restrictions on what can be published in the media about the case.⁴⁷ The application for the adjournment was refused on the basis that any issues ought to have been dealt with at the meetings with clients, which the judge ordered during the previous proceedings, as was the defence application to address the court on their argument that insufficient record had been taken of the marks of torture displayed during previous proceedings in the court record. The judge enquired as to why the detainees had not been subjected to medical examination and heard submissions from both the prosecution and defence on the adequacy of the doctor connected to the Public Prosecution Office. In conclusion, the Court ordered that defence lawyers were to be given daily access if they so desired and for 22 copies of the court file to be made and distributed to the defence. The court did not comment on the reporting restrictions or in relation to the request for the torture allegations to be investigated. The case was adjourned until 25 November 2010.

⁴⁵FrontLine, Report on the Front Line Hearing Observation: Human Rights Defenders in Bahrain, November 2010, available online at: <<http://www.frontlinedefenders.org/files/Front%20Line%20Bahrain%20HRD%20Trial%20Observation%20Report.pdf>>.

⁴⁶ See further Amnesty International, Bahrain: Fair trial and freedom of expression must be guaranteed, Public Statement AI Index: MDE 11/009/2010 issued 9 November 2010, available online at: <<http://www.amnesty.org/en/library/info/MDE11/009/2010/en>>.

⁴⁷ See above.

Access to the court room on 25 November was reportedly restricted to just one relative for each accused and their lawyers. The defence raised further points regarding difficulties in accessing their clients, as well as the objectivity of the medical examinations. Again, the defence raised arguments regarding the conditions of detention and the suspension of the case until a thorough and credible investigation into the allegations of torture had been conducted. The next hearing was ordered for 9 December, when prosecution witnesses would be heard.

On 9 December all the defence lawyers withdrew from the case after their demands for an impartial inquiry into the allegations of torture and mistreatment were not met. The court adjourned the case and indicated that new lawyers would be appointed. The BHRC received reports that the scheduled family visits were subsequently cancelled.

However, at the hearing of 23 December, the detainees refused to accept the representation of the appointed lawyers and insisted on being represented by their initial defence team. The case was again adjourned until 6 January 2011 and a new team of defence lawyers appointed.

During the session of 6 January, the lawyers requested to hear the opinion of the defendants regarding granting the power of attorney to defend them. Again, the defendants refused to accept them. The lawyers highlighted that under Article 20(e) of the Constitution, anyone accused of an offence must have a lawyer to defend him with his consent. Nineteen of the twenty three appointed lawyers withdrew from the case.

After a further adjournment until 13 January, a third group of lawyers were appointed. During this session, the appointed lawyers asked for a constitutional ruling on whether they can be forced to take on the trial despite the defendants' rejection of them as legal representatives. A further five lawyers withdrew from the case. The trial was postponed again until 26 January. A delegation from the Arab Lawyers Union dispatched a fact-finding mission to Manama to investigate this judicial crisis.

The Prosecution opened its presentation of evidence on 26 January. According to reports received by the BHRC, the detainees refused to remain in the court room and were removed.

Reports of further torture and mistreatment have been made during all of the periods the case has been adjourned. Disciplinary action has subsequently been initiated against the 25 appointed lawyers who withdrew from the case. Jamila Al Salman, Head of the Bahrain Bar Society has condemned such disciplinary proceedings, asserting that Article 20 of the Bahrain Constitution requires that lawyers can only represent defendants "by consent".⁴⁸

Proceedings have currently been postponed, due to Dr Al Singace being hospitalised because of heart problems.

⁴⁸ Sandeep Singh Grewal, Lawyers to be disciplined next week, Gulf Daily News published 17 January 2011, available online at: <<http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=296328>>.

Conclusions

The tense atmosphere in which the BHRC's mission took place has affected all levels of the subsequent trial of the twenty five detainees and the serious failures to uphold the due process rights of the detainees at the early stages of investigation has resulted in irreparable damage to the subsequent trial. In light of this, the BHRC shares the concerns of other individuals and international bodies that the progress made by the Kingdom of Bahrain in the promotion and protection of human rights is being undone.

Foremost in this, the BHRC remains very concerned at the widespread and persistent allegations of mistreatment and torture of political detainees. Whilst these allegations cannot be fully verified because of a lack of access to the detainees, the allegations are credible, in light of a body of evidence in support from the detainees' accounts to the court, from the lawyers and families, and from medical evidence of injuries.

If the allegations are untrue it remains singularly within the Government's hands to demonstrate such. The Government of Bahrain has not accepted the recommendations of many bodies, including the BHRC, to set up an independent investigation into the allegations and for independent doctors to be allowed access to the detainees or for the Public Prosecutor to provide the medical records of the doctor to the defence.

BHRC notes that the holding of detainees incommunicado is contrary to international law, and it is unacceptable that the detainees were only allowed to see their lawyers in private, for the first time, at the court hearing on 28 October. In the case of Dr Al Singace, this was two and a half months after his arrest. The failure to allow an independent medical review of the detainees is also unacceptable, and the combination of these factors tends to support the allegations of mistreatment.

It is alleged that confessions have been forced by torture and mistreatment by security officials prior to interrogation by the Public Prosecutor. However, there are also worrying reports that mistreatment continued after that stage, and indeed continued after the trial commenced. Such accounts are compounded by the difficulties faced by the defence lawyers in gaining access to their clients and information of the charges against them. The interrogations occurred without the detainees being allowed access to legal advice, or sight of the allegations. It remains far from clear what the full case against the 25 accused is. There seems to be little evidence beyond the alleged confessions, and the accusations appear to be focused around the organisation of tyre-burning protests and dissemination of anti-Government propaganda, rather than activities which are properly to be characterised as "terrorism". The BHRC reiterates the concerns of the UN Special Rapporteur regarding Law No. 58 of 2006 under which the central 25 detainees are being held and urges the Government of Bahrain to reconsider the overly broad definition of terrorism, at variance with the principle legality.

In respect to the allegations of mistreatment of Jafaar Al Hasabi, BHRC notes that he is a dual British national. There has been limited consular access, complicated by the dual nationality status. The BHRC notes that the prohibition of torture is a jus cogens rule of customary international law. Lord Howell, Minister of State for Foreign and Commonwealth Affairs, has indicated that the government has this issue well in mind with the Ambassador monitoring the situation, and press reports have

noted that the Foreign Secretary himself has raised the issue with the Bahraini government.⁴⁹ It is therefore disturbing that Mr Hasabi's predicament continues without proper access or investigation.

Evidence as to the arrests indicates that detainees were taken without proper explanation, but without the violence which was alleged to have accompanied earlier 'security' arrests. However, BHRC is particularly concerned at the lack of information given to detainees and family members who have typically not known where their loved ones are being held for several weeks. Thereafter, normal visiting rights have been seriously curtailed, and visits have taken place in a highly restricted and intimidating atmosphere.

Accounts of the current progress of the trial continue to raise concerns that the fair trial guarantees enshrined in Bahraini and international law are not being fully upheld. Although the judge had initially allowed the detainees to air their allegations of mistreatment and torture, and ordered that they be given private access to their lawyers, it appears that the court has now indicated that there will be no further investigation into the background of the confessions. Without this a fair trial will not be possible. The extreme measures the defence lawyers took in withdrawing from the case is an indication of this.

In respect to the BHRS and the NIHR, the BHRC notes that there is an apparent tension in the Bahraini Government as to how the protection of human rights should be approached. On the one hand, the State has embarked on a crackdown on opposition activists, the appointment of an administrator over the BHRS, and has effective control of the NIHR set up expressly in compliance with the Paris Principles, contrary to its independence and autonomy. On the other hand, human rights activists generally enjoy a greater degree of freedom than elsewhere in the region, the King selected a respected activist to head the NIHR, and Ministers and senior officials are prepared to engage with international organisations in respect of concerns regarding human rights violations.

BHRC particularly notes the high-level access to which it has been accorded. The BHRC urges the Government of Bahrain to integrate the protection human rights at all levels of the State to ensure effective realisation and enjoyment of those rights within Bahraini society. It is of note that at a recent conference, Shaikh Rashid asserted: "We have laws that ensure protection of human rights, but we need to raise awareness about them."⁵⁰ In light of the interest shown in the mission, and the expressions of commitment to human rights standards, BHRC hopes that the realisation of these commitments will be reinforced by positive actions and the failings of the current system for ensuring transparency and accountability are addressed.

⁴⁹ Rupert Neate, Hague Acts on Bankers held in Bahrain, The Telegraph, 28 November 2010, available online at: <<http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/8165045/Hague-acts-on-bankers-held-in-Bahrain.html>>.

⁵⁰ Basma Mohammed, Rights push call to Arab nations, Gulf Daily News, published 15 December 2010, available online at: <<http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=293860>>.

Recommendations

The BHRC notes the Recommendations in the BHRC 2010 Bahrain Report and urges the Government of Bahrain to address these. It further recommends that the Bahrain Government;

- Institutes a credible independent investigation into the allegations of human rights violations addressed in the body of this report;
- Immediately provides the detainees with full fair trial rights, including unfettered access to lawyers of their choice and independent doctors, full knowledge of the prosecution's case against them so as to enable them to prepare a proper defence, and suspends the trial until the full independent investigation into the alleged mistreatment is completed;
- Reviews Law No. 58 of 2006 in accordance with the recommendations of the UN Special Rapporteur to ensure the internationally recognised standards of detention and fair trial are upheld, including removing provisions which allow for detainees to held incommunicado and prohibiting access to legal representation.
- Reviews the structure and constitution of the NIHR with a view to ensure it is compliant with the independence and autonomy requirements of the Paris Principles.

The BHRC also welcomes the Ministry of Social Development's decision to remove the administrator to the BHRS.

Annex A

The alleged charges included in the order constitute breaches of:

- Articles 44, 45, 92, 134/1, 165, 168(n), 172, 178, 179, 220/1, 277/1, 277 (bis), and 281 (bis) of the Penal Code, amended by Laws 21/1999 and 14/2008;
- Articles 1, 2(3), 3, 6/1 and 3, 22, and 24 of Law 58/2006 on the Protection of Society from Terrorist Acts; and
- Article 1/7, 10, 3/103, and 203 of Law 4/2001 on the Prohibition and Suppression of Money Laundering and Funding for Terrorism, amended by Law 54/2006.

Relevant period: July 2009 – 11 August 2010

Under the original referral order, the Public Prosecutor charged the following:

Charge	Applicable defendant
1. Established a group in violation of the law—the first defendant administered the group—for the purpose of advocating the obstruction of constitutional provisions and laws, preventing the public authorities from performing their jobs, infringing on personal liberties and the public and private rights of citizens, and harming national unity. Terrorism was one of the methods to achieve these ends. Namely, they composed the aforementioned group and extended it with the funds necessary to execute their plans to create turmoil and disturbances; spread chaos through riots, sabotage, and arson; and resist the authorities, with the aim of undermining security and the public order and destabilizing the country.	1. Abd al-Jalil 'Abdullah Yusuf al-Sinkis 2. Muhammad Habib al-Saffaf 3. Hasan `Ali Hasan Mushayma` 4. Sa`id `Abd al-Nabi Muhammad Shihabi 5. Sa`id Mirza Ahmad `Ali (Sa`id al-Nuri) 6. Muhammad Sa`id Musa al-Sahlawi 7. `Abd al-Hadi `Abdullah Mahdi Hasan Jum`a al-Mukhudar 8. `Abd al-Ghani `Isa `Ali `Isa al-Khanjar 9. `Abdullah `Isa al-Mahrus (Mirza al-Mahrus) 10. Ja`far Ahmad Jasim al-Hassabi
2. Joined the group established in violation of the law—defendants 2 to 10 held leadership positions in it—for the purpose of advocating the obstruction of constitutional provisions and laws, preventing the public authorities from performing their jobs, infringing on personal liberties and the public and private rights of citizens, and harming national unity. Terrorism	11. `Ali Hasan `Abdullah `Abd al-Imam 12. Sayyid `Aqil Ahmad `Ali Mahfuz 13. al-Hurr Yusuf Muhammad Sabikh 14. Ahmad Jawad Ahmad Jawad al-Firdan

<p>was one of the methods to achieve these ends. Namely, they joined the aforementioned group with full knowledge of its methods in order to execute its plans to create turmoil and disturbances; spread chaos through riots, sabotage, and arson; and resist the authorities, with the aim of undermining security and the public order and destabilizing the country.</p>	<p>15. `Ali Jawad Ahmad Jawad al-Firdan 16. `Abd al-Amir Yusuf `Ali Malullah 17. Salman Naji Salman 18. `Abd al-Amir Ja`far Rashid al-`Aradi 19. Hasan Hamad Salih al-Haddad 20. Mahmud Ramadan Muhammad Sha`ban 21. Suhayl Mahdi Salih `Ali 22 Husayn `Umran Husayn `Umran 23. `Abd al-Hadi `Abdullah al-Saffar 24. Ahmad Jamshir Fayruz 25. Ibrahim Tahir Muhammad al-Shaykh</p>
<p>3. Collected and gave funds to the group named in charges one and two with the full knowledge of its engagement in terrorist activity.</p>	<p>1. Abd al-Jalil `Abdullah Yusuf al-Sinkis 2. Muhammad Habib al-Saffaf 3. Hasan `Ali Hasan Mushayma` 4. Sa`id `Abd al-Nabi Muhammad Shihabi 5. Sa`id Mirza Ahmad `Ali (Sa`id al-Nuri)</p>
<p>4. Participated in assemblies in public places involving more than five persons with the purpose of undermining public security and committing the crimes of assault on assets and properties, and assault on police officers with the use of force and violence. In the execution of the planned purpose of the assembly, of which they had full knowledge, the following crimes were committed:</p> <p>a. They used force and violence against public servants with the intention of prompting them to wrongfully abstain from carrying out one of their official duties. Namely, they used force and violence with members of the police force charged with dispersing their assembly, using stones, iron rods, and Molotov cocktails, intending to prevent the police from performing their duty. They did not succeed in their aims.</p> <p>b. They started fires liable to endanger people and property. Namely, they threw flaming objects at things as described in the interrogations in service of a terrorist aim.</p>	<p>12. Sayyid `Aqil Ahmad `Ali Mahfuz 13. al-Hurr Yusuf Muhammad Sabikh 14. Ahmad Jawad Ahmad Jawad al-Firdan 15. `Ali Jawad Ahmad Jawad al-Firdan 16. `Abd al-Amir Yusuf `Ali Malullah 17. Salman Naji Salman 18. `Abd al-Amir Ja`far Rashid al-`Aradi 19. Hasan Hamad Salih al-Haddad 20. Mahmud Ramadan Muhammad Sha`ban 21. Suhayl Mahdi Salih `Ali 22 Husayn `Umran Husayn `Umran 23. `Abd al-Hadi `Abdullah al-Saffar 24. Ahmad Jamshir Fayruz 25. Ibrahim Tahir Muhammad al-Shaykh</p>

<p>5. Manufactured, possessed, and maintained flammable containers and materials made from them, with the intention of using them to endanger people and property.</p>	<p>13. al-Hurr Yusif Muhammad Sabikh 14. Ahmad Jawad Ahmad Jawad al-Firdan 15. `Ali Jawad Ahmad Jawad al-Firdan</p>
<p>6. Participated by way of inciting, agreeing to, and aiding the crimes named in charges four and five. Namely, they incited the defendants named therein and agreed with them to perpetrate the acts. Defendants one through five aided them by extending the funds necessary to assemble the tools and means used in the crimes. The crimes occurred pursuant to this incitement, agreement, and aid.</p>	<p>1. Abd al-Jalil `Abdullah Yusif al-Sinkis 2. Muhammad Habib al-Saffaf 3. Hasan `Ali Hasan Mushayma` 4. Sa`id `Abd al-Nabi Muhammad Shihabi 5. Sa`id Mirza Ahmad `Ali (Sa`id al-Nuri) 6. Muhammad Sa`id Musa al-Sahlawi 7. `Abd al-Hadi `Abdullah Mahdi Hasan Jum`a al-Mukhudar 8. `Abd al-Ghani `Isa `Ali `Isa al-Khanjar 9. `Abdullah `Isa al-Mahrus (Mirza al-Mahrus)</p>
<p>7. Participated in assemblies in public places involving more than five persons with the purpose of starting fires, destroying public and private property, assaulting security forces, and undermining public security. They used violence to achieve the aim for which they assembled.</p>	<p>1. Abd al-Jalil `Abdullah Yusif al-Sinkis 3. Hasan `Ali Hasan Mushayma` 5. Sa`id Mirza Ahmad `Ali (Sa`id al-Nuri) 7. `Abd al-Hadi `Abdullah Mahdi Hasan Jum`a al-Mukhudar 8. `Abd al-Ghani `Isa `Ali `Isa al-Khanjar 9. `Abdullah `Isa al-Mahrus (Mirza al-Mahrus)</p>
<p>8. Bahraini nationals, they intentionally disseminated false and tendentious news and rumors about the country's internal affairs abroad liable to harm the stature and esteem of the state. Namely, they disseminated news and rumors abroad regarding sectarian discrimination in the country and the state authorities' injurious performance of their jobs.</p>	<p>1. Abd al-Jalil `Abdullah Yusif al-Sinkis 3. Hasan `Ali Hasan Mushayma` 4. Sa`id `Abd al-Nabi Muhammad Shihabi</p>
<p>9. a. Publicly incited to hatred and contempt of the ruling regime orally and in writing as elaborated in detail in the interrogations. b. Publicly incited against and showed contempt for a particular class of people, orally and in writing. Namely, they denigrated naturalized Bahraini citizens and advocated boycotting them and forcing them out of the country, in a way liable to disturb the public peace.</p>	<p>1. Abd al-Jalil `Abdullah Yusif al-Sinkis 11. `Ali Hasan `Abdullah `Abd al-Imam</p>

<p>c. Intentionally disseminated false and tendentious news and rumors and broadcast incendiary allegations liable to disturb the public order and harm the public interest. Namely, they disseminated and broadcast, over the internet, in publications, and in speeches before public forums, news and rumors regarding sectarian discrimination in the country and the state authorities' pursuit of illegitimate practices, as elaborated in detail in the interrogations.</p>	
<p>10. Possessed and maintained publications containing the false and tendentious news and rumors named in charge 9(c).</p>	<p>1. Abd al-Jalil `Abdullah Yusuf al-Sinkis 2. Muhammad Habib al-Saffaf 5. Sa`id Mirza Ahmad `Ali (Sa`id al-Nuri) 6. Muhammad Sa`id Musa al-Sahlawi 11. `Ali Hasan `Abdullah `Abd al-Imam</p>

Hard copies of the original indictment of 13 October 2010 and an English translation of Law No. 58 of 2006 are available upon request from the BHRC.