

REDRESS

Ending Torture. Seeking Justice for Survivors

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Failure to investigate torture in Bahrain

Submission to the Committee Against Torture Concerning Bahrain's Third Periodic Report

60th Session of the Committee Against Torture

17 March 2017

I. Introduction

1. REDRESS submits these observations to the Committee Against Torture (Committee) ahead of the Committee's examination of the Third Periodic Report of Bahrain (State Party). REDRESS is an international human rights organisation whose mandate is to seek justice and reparation for torture survivors. REDRESS' work has included written submissions to the Committee in respect of State Parties' Reports as well as in other matters.
2. This submission focuses on the State Party's Reply to the Committee's updated List of Issues (Reply) and specifically Issue 13 (b) where the Committee requests the State Party to provide information on two former members of Parliament.¹ The submission concerns only the second member of Parliament mentioned under Issue 13 (b), Mr. Jawad Fairooz Ghuloom Fairooz.²
3. On 29 July 2013, REDRESS submitted to the UN Special Rapporteur on Torture (SRT) a detailed allegation letter regarding Bahrain's responsibility for the torture of Mr. Fairooz in 2011 (Allegation Letter).³
4. Mr. Fairooz, who lives in the United Kingdom where he has asylum, is willing to supply any further information to or address any questions from the Committee either in writing or orally in Geneva or elsewhere, and is willing to attend at any appropriate stage before, during or after the Committee's examination of the State Party's Third Periodic Report.
5. REDRESS refers the Committee to the Allegation Letter and all the annexures thereto marked 1-10. To avoid the current submission being unnecessarily repetitive of what was

¹ Committee Against Torture, List of Issues prior to submission of the second periodic report of Bahrain, CAT/C/BHR/QPR/2, 15 June 2015, p.4.

² Mr Fairooz was a member of parliament in Bahrain's was a member of parliament in Bahrain's Council of Representatives from 2006 to 2010 and was re-elected as a member of parliament in 2010, for a further four-year term.

³ See Annex for a copy of the Allegation Letter along with the appendices sent with it marked 1-10 (provided separately).

sent to the SRT we do not summarise the allegations but do refer the Committee to the **Introduction and Summary** set out at pages 2-3, and in particular paragraphs 6 – 9 which we reproduce as follows:

6. On 2 May 2011, Mr Fairooz was arrested from his home by three masked and hooded men who forced their way into his home. Mr Fairooz and his wife asked the men to provide details about why he was being arrested, where he was being taken and for how long he would be gone for. He was told he was being taken for a short period for questioning but provided no further information.

7. Mr Fairooz was detained until 7 August 2011. He was held in solitary confinement from 2 May 2011 to 16 June 2011 (with the exception of 18 May when Mr Fairooz was questioned by the Military Prosecutor's office and 12 June when he was taken to the Court of National Safety). Mr Fairooz was denied access to a lawyer except on two short occasions, and he was not allowed to contact his family until 27 days after arrest. While detained, he was questioned repeatedly about his political activities, and was subjected to blindfolding, stress positions, beatings, sexual assault and humiliating acts and insults constituting torture and ill-treatment. During this time his wife was also called into the police station for questioning over a period of several hours, where she was subjected to ill-treatment.

8. On 27 September 2011, Mr Fairooz made a detailed complaint about his arbitrary detention, torture and ill-treatment to a number of State authorities, including His Majesty King Hamad bin Isa Al Khalifa (HM King Hamad), Dr Fatima Al Balooshi (Bahraini Minister of Social Development), the Minister of Interior, the Minister of Justice and Islamic Affairs, the Military Prosecutor, the Public Prosecutor, the Bahrain Center for Human Rights, the National Security Agency Director, and the Chairman of the Council of Representatives.³ However, he is not aware of any action having been taken in relation to his case.

9. Following his release, Mr Fairooz was prosecuted on charges relating to his freedoms of expression and opinion, and freedoms of peaceful assembly and association, and sentenced to a suspended prison sentence. He has also been unilaterally stripped of his Bahraini citizenship, in violation of international law.

II. State Party's Reply to the Committee's request to provide information on allegations of mistreatment of Mr. Fairooz and on the State Party's investigation and proceedings

6. The State Party submits that Mr. Fairooz's arrest and detention were lawful and that his complaint about torture and ill-treatment during detention were investigated and dismissed due to a lack of evidence. The State Party does not provide any evidence in support. REDRESS responds to the main assertions of the State Party in this respect, and in particular paragraphs 126, 127, 128, 132 (b) and 134.

II.1. Paragraph 126 of the Reply

7. The State Party submits that Mr Fairooz was arrested for his "involvement in several breaches of the law," that he was detained in accordance with the laws of the land and that he was allowed to contact his family upon arrest.

8. The State Party fails to provide any information on the alleged "several breaches of the law" for which Fairooz was arrested. As set out in paragraphs 69-78 of the Allegation Letter, Mr Fairooz was arrested without warrant on 2 May 2011 and given no reason for his arrest although he asked for these.⁴ He denies and denied breaking any laws.

⁴ Allegation Letter, paragraph 13. See also paragraph 11 of Appendix 1, Statement of Jawad Fairooz.

9. In its Reply, the State Party furthermore failed to produce details, records or evidence to the Committee explaining or justifying the arrest and/or its detention procedures, other than a reference to Royal Decree No.18 (2011) in paragraph 127. As set out in the Allegation Letter, Royal Decree No.18 (2011) gave authority to the Military Attorney General to issue arrest warrants for an indefinite period of time, without having to state the evidentiary basis supporting the arrest and without having to secure any judicial authorisation.⁵ The implementation of the decree, and its application in Mr Fairooz's case was in clear violation of the State Party's obligations under the International Covenant on Civil and Political Rights (ICCPR) (Article 9), the Arab Charter (Article 14(1)), and the Bahrain Constitution (Article 19), all of which prohibit arbitrary arrest and detention.⁶
10. Furthermore, the statement that Mr. Fairooz was allowed to contact his family upon his arrest is misleading. His wife, son and daughter were present when he was taken from the family home on 2 May 2011, but when his wife asked the men who were taking him for contact information so that she could follow up his whereabouts later they did not give her any.⁷ Subsequently, he had no contact with his family at all until twenty-seven days later on 29 May 2011.

II.2. Paragraph 127 of the Reply

11. In paragraph 127, the State Party submits that Mr Fairooz's case was referred to the National Security Court of First Instance on 23 May 2011, that he was "accompanied" by a lawyer and that during his trial, he was accorded full judicial guarantees in accordance with international standards.
12. The information provided is misleading and incomplete. Mr Fairooz has not been present at and does not have any knowledge of any legal proceedings on 23 May 2011. The State Party also fails to mention that Mr Fairooz was not represented by his lawyer, Advocate Abdullah al-Shamlawi, during his first court hearing on 12 June 2011. Mr. Fairooz had repeatedly requested access to his lawyer Mr. al-Shamlawi from the time of his arrest, but his request was refused; the first time he had any contact with any lawyer was on 12 June 2011 when Advocate Reem Khalaf, who happened to be in the Court of National Security that day on other business, offered to help.⁸ Thereafter, despite Mr. Fairooz's attempts to have access to his lawyer between 12 June and 19 June⁹ he only saw Mr. al-Shamlawi for ten minutes prior to a hearing on 19 June. Mr al-Shamlawi was then given only 10 minutes to address the court, where he requested leave to produce witnesses, which request was refused.¹⁰
13. The statement, therefore, that during the trial Mr. Fairooz was afforded "full judicial guarantees in accordance with the Code of Criminal Procedure (2002) and in a manner consistent with international standards" is manifestly incorrect as shown by all the evidence in the Allegation Letter.¹¹
14. The State Party should be requested to produce all the records of all legal proceedings (including detention records), hearings and processes from 2 May 2011 onwards to show what access to lawyers was granted and when, and which lawyer was present and when, and in which courts matters were heard and when.

⁵ Ibid, para. 70.

⁶ Allegation Letter, paragraphs 69 -78.

⁷ Paragraph 11 of Appendix 1.

⁸ Ibid.

⁹ Allegation Letter, paragraph 52.

¹⁰ Ibid 55.

¹¹ Allegation Letter, paragraphs 111-115.

II.3. Paragraph 128 of the Reply

15. The State Party states that Mr. Fairooz's case was referred to the ordinary courts on 18 August 2011. This is incorrect as his case was moved on 29 June 2011, as set out in the Allegation Letter.¹² The reference to the incorrect date suggests that the State Party has not kept proper records (as also illustrated by the reference to 23 May 2011 in paragraph 127 of the State Party's Reply already dealt with in paragraph 12 above), or has not taken the necessary degree of care expected for the preparation of the Reply.
16. If the State Party believes all of the dates and details it has set out in its Reply are accurate it should produce the records; absent such records it is submitted the details in the Allegation Letter and annexures 1-10 are an accurate record of what happened.

II.5. Paragraph 132 (b) of the Reply

17. The State Party suggests in its Reply that during the investigation of Mr Fairooz's complaint about his torture and ill-treatment during detention, Mr. Fairooz "declined to identify any of the persons alleged to have committed the said acts." This is misleading and manifestly incorrect as it suggests he had a choice to identify the perpetrators but chose not to do so. He told the Military Prosecutor that he was blindfolded when he was being tortured and was therefore unable to identify the perpetrators.
18. The State Party also submits that Mr. Fairooz's wife stated that her husband was arrested in a respectful manner and that she could not identify the arresting body. However, this is irrelevant, as she was only present when he was arrested and Mr Fairooz had not complained about any ill-treatment during his arrest.¹³ His complaint was about the torture and ill-treatment inflicted upon him during his detention. His wife was not present then, and could therefore not say anything about his torture. The Military Prosecutor chose to call Mr. Fairooz's wife (in the absence of her husband) for his own reasons, and Mr. Fairooz believes this was to intimidate her as she had herself been ill-treated during his detention.¹⁴
19. The State Party further submits that "[T]o conclude the investigation, the Military Prosecution Service summoned everyone involved in the arrest, as well as the guards and administration of the military reform institution and informed them that everything of which they were accused was untrue. Accordingly, the military prosecutor ruled that there were no grounds for bringing a lawsuit because of the lack of sufficient evidence for the charges of physical assault and verbal abuse given the failure on the part of the complainant to present any evidence, proof or corroboration to support his claim."
20. The State Party's Reply demonstrates that no serious investigation into Mr. Fairooz's complaint in compliance with international standards has taken place. For an investigation to comply with Article 12, it must be prompt, impartial and thorough and it must aim at "at determining the nature of the reported events, the circumstances surrounding them and the identity of whoever may have participated in them."¹⁵ In Mr. Fairooz's case, the authority assigned to investigate his case, - the Military Prosecutor - was not an independent investigatory body, as Mr. Fairooz's complaint concerned conduct by military officers, and as it is an agency closely connected to the torture and

¹² Allegation Letter, paragraph 58.

¹³ See the third substantive paragraph of Appendix 4: "As for the conditions of detention, we were detained in the evening of the 2nd of May 2011 by a number of masked individuals dressed in civilian clothes who do not appear belonging to the security services without showing any warrant of arrest or at least any sort of identification."

¹⁴ See Paragraph 7 of the Allegation Letter: "During this time [of his detention] his wife was also called into the police station for questioning over a period of several hours, where she was subjected to ill-treatment."

¹⁵ See for example, Committee Against Torture, *Sonko v Spain*, Communication No.368/2008, paragraph 10.7.

ill-treatment he had suffered.¹⁶ The lack of independence is also reflected in the manner in which the Military Prosecutor carried out the investigation, which was not thorough. The State Party in its Reply confirms that only Mr. Fairooz and his wife were questioned during the investigation. No other witnesses were questioned and no potential suspects were identified. To the contrary, the officials involved in Mr. Fairooz's arrest and detention were merely informed that they had no case to answer.

21. In regard to other witnesses, when Mr. Fairooz was being questioned on 23 October 2011 about his letter of complaint, he mentioned two witnesses who the Military Prosecutor should call to give evidence. This included another member of Parliament (Matar Ibrahim Ali Matar) to be called to give evidence in regard to his (Mr. Fairooz's torture) as Mr. Matar was in a position to corroborate aspects of what had happened, particularly on 18 May 2011 when both men were together mistreated in similar ways.¹⁷ The other witness was Maytham Saeed Al Salman, whose statement is Appendix 3 to the Allegation Letter. He too was present with Mr. Fairooz (and Mr. Matar and others) on 18 May 2011. Mr Fairooz's requests should be recorded in his statement of 23 October 2011 and the State Party should produce the record of his interrogation, and explain why these two additional witnesses were not questioned.
22. There is also no indication that the Military Prosecutor has sought to obtain further pertinent evidence, such as detention records and medical – legal reports. The Military Prosecutor also wrongly suggests that it was on Mr. Fairooz to provide evidence to corroborate his allegation, contrary to international standards. This is particularly true in relation to torture and ill-treatment in detention, as in such cases, the evidence is almost exclusively accessible to the authorities. As a result, the "burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation."¹⁸
23. The State Party's Reply confirms that the Military Prosecutor failed to investigate Mr. Fairooz's complaint in accordance with international standards.

II.6. Paragraph 134 of the State Party's Reply

24. The State Party also submits that Mr. Fairooz was allowed regular visits and communication during the period of detention. This is untrue. From 2 May to 29 May he saw nobody but his captors, and was allowed no contact with anyone outside, including his family and lawyer. The first contact he had was a short monitored telephone call to his son on 29 May 2011 – twenty seven days after his arrest, during which he could not discuss anything that had happened.¹⁹ After that he saw his son at a distance in the Court on 12 June 2011 but could not speak to him. The first time he was allowed to meet any family member was after the hearing on 19 June 2011 when he met with his son and his two sisters. The State Party should be requested to produce records which it claims show that regular visits, and communications took place from 2 May to his release on 7 August 2011.

¹⁶ See further Allegation Letter, paragraph 133.

¹⁷ Ibid, paragraphs 39-46.

¹⁸ See for instance, European Court of Human Rights, *Mammadov (Jalaloglu) v Azerbaijan*, application no. 34445/04, Judgment of 11 January 2007, paragraph 62.

¹⁹ Allegation Letter, paragraph 48.

Annex: Allegation Letter submitted to UN Special Rapporteur on Torture, 29 July 2013

INFORMATION SUPPORTING ALLEGATION LETTER IN THE CASE OF JAWAD FAIROOZ GHULOOOM FAIROOZ

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I. Identity of the complainant

A. Family Name:	FAIROOZ
B. First and other names:	Jawad Fairooz Ghuloom
C. Sex:	Male
D. Birth date or age:	1 January 1961
E. Nationality:	Currently stateless, after revocation of Bahraini citizenship on 6 November 2012
F. Occupation:	Politician (Deputy chair of northern municipality council 2002-2006; Member of Parliament 2006-2010; reelected Member of Parliament for 2010-2014 (resigned March 2011))
G. Identity card number (if applicable)	610133632 - Bahrain
H. Activities (trade union, political, religious, humanitarian/ solidarity, press, etc.)	Member of secretariat general of Alwefaq National Islamic Society since the society's inception
I. Residential and/or work address	119 Cairnfield Avenue, Neasden, London, NW2 7PL, United Kingdom

II. Introduction and Summary

1. Mr Jawad Fairooz Ghuloom FAIROOZ is a politician and has been a member of the secretariat general of Alwefaq National Islamic Society, Bahrain, since its inception on 2 November 2001, and a member of its board from 2006 to 2012. Mr Fairooz was a member of parliament in Bahrain's Council of Representatives from 2006 to 2010. He was reelected as a member of parliament in 2010, for a further four-year term.
2. On 17 February 2011, Mr Fairooz and 17 fellow Alwefaq members of parliament withdrew from the Council of Representatives in protest at the response of State authorities to large-scale protests in Bahrain and the deaths of two protesters. The events of this period have been examined in detail by the Bahrain Independent Commission of Inquiry, and its findings were published in November 2011 ("BICI Report").²⁰ Those protests had begun on 14 February 2011, and after a degree of accommodation by the government, a State of National Safety was declared on 15 March 2011, the protesters were forcefully dispersed, with many arrested and a number of protesters and police killed.²¹
3. Between February 2011 and his detention in May 2011, Mr Fairooz organised coordination meetings between Alwefaq, Wa'ad, the Islamic Action Society, the National Democratic Assembly, the Nationalist Democratic Society, the Al Ikha National Society and the Al Menbar Progressive Democratic Society (the seven political opposition societies). Between mid-February and March 2011, these coordination meetings took place every day, usually in the afternoons and evenings, at Alwefaq headquarters. They

²⁰ Report of the Bahrain Independent Commission of Inquiry, 23 November 2011, <http://www.bici.org.bh/BICIreportEN.pdf>, see in particular Chapter IV (Narrative of Events of February and March 2011).

²¹ For a summary of the protests and the State authorities' response see Katzman (2013), 'Bahrain: Reform, Security, and U.S. Policy', Congressional Research Service, 12 February 2013, pp. 6-9, <http://www.fas.org/sgp/crs/mideast/95-1013.pdf>.

were designed to help the political opposition societies coordinate responses to events as they unfolded, and to facilitate the organisation of joint protests.

4. Mr Fairoz was also responsible for organising peaceful demonstrations and bi-weekly events held jointly by the seven political opposition societies listed above. These bi-weekly events were usually held on Tuesdays and Fridays. Mr Fairoz publicised events in local newspapers and acted as the spokesperson with the media for the seven political opposition societies.
5. On 11 and 12 April 2011, Mr Fairoz's house was attacked by Molotov cocktails. Mr Fairoz attended the police station five to six times to request investigation of the attack on his house. However, the police refused to attend his house to do so.
6. On 2 May 2011, Mr Fairoz was arrested from his home by three masked and hooded men who forced their way into his home. Mr Fairoz and his wife asked the men to provide details about why he was being arrested, where he was being taken and for how long he would be gone for. He was told he was being taken for a short period for questioning but provided no further information.
7. Mr Fairoz was detained until 7 August 2011. He was held in solitary confinement from 2 May 2011 to 16 June 2011 (with the exception of 18 May when Mr Fairoz was questioned by the Military Prosecutor's office and 12 June when he was taken to the Court of National Safety). Mr Fairoz was denied access to a lawyer except on two short occasions, and he was not allowed to contact his family until 27 days after arrest. While detained, he was questioned repeatedly about his political activities, and was subjected to blindfolding, stress positions, beatings, sexual assault and humiliating acts and insults constituting torture and ill-treatment. During this time his wife was also called into the police station for questioning over a period of several hours, where she was subjected to ill-treatment.
8. On 27 September 2011, Mr Fairoz made a detailed complaint about his arbitrary detention, torture and ill-treatment to a number of State authorities, including His Majesty King Hamad bin Isa Al Khalifa (HM King Hamad), Dr Fatima Al Balooshi (Bahraini Minister of Social Development), the Minister of Interior, the Minister of Justice and Islamic Affairs, the Military Prosecutor, the Public Prosecutor, the Bahrain Center for Human Rights, the National Security Agency Director, and the Chairman of the Council of Representatives.²² However, he is not aware of any action having been taken in relation to his case.
9. Following his release, Mr Fairoz was prosecuted on charges relating to his freedoms of expression and opinion, and freedoms of peaceful assembly and association, and sentenced to a suspended prison sentence. He has also been unilaterally stripped of his Bahraini citizenship, in violation of international law.

²² A copy of the letter of complaint, with an informal translation, is provided at Appendix 4.

III. Statement of Facts²³

A. Attack on Mr Fairooz's house

10. On 11 April 2011, at approximately 2.30am, the back of Mr Fairooz's house was attacked by Molotov cocktails. Mr Fairooz's home is close to, and on the same street as, a police detention and interrogation centre. The attack took place during the declared state of National Safety, which lasted from 15 March 2011 to 1 June 2011. Mr Fairooz believes that without, at least, tacit support from the police or other authorities, it is unlikely an individual would throw a Molotov cocktail at his home in such close proximity to the police station and particularly during the declared state of National Safety. Further, immediately after the attack, Mr Fairooz asked the police to investigate. They were reluctant to attend and eventually, at Mr Fairooz's insistence, paid a short visit but made no investigations.
11. The next day (12 April 2011) at approximately 2.30am, the front of Mr Fairooz's house was attacked by Molotov cocktails and his neighbour's car was burnt. Following this attack, and between 13 April 2011 and September 2012, Mr Fairooz attended the police station five to six times asking the police to investigate. No investigations were made. The police did provide Mr Fairooz with a small slip of paper whereby they confirmed he had made an allegation at the station. Mr Fairooz consistently requested that the police investigate or, at the very least, study the damage to his house and provide a letter confirming the damage (so that he could make a claim with his insurance company for the damage caused). The police refused to investigate or provide a letter and, as a result, Mr Fairooz has been unable to make a successful claim for the damage with his insurance company. During this time other opposition figures experienced similar attacks; for example, the home of Munira Fakhro (Vice President of Wa'ad) was also attacked with Molotov cocktails in March 2011.²⁴
12. Prior to 11 and 12 April 2011, on the social networking site Twitter, Mr Fairooz received comments stating that the time would come for him to be punished. Mr Fairooz believes that the comments on Twitter came from Bahrain's security apparatus. Other comments on Twitter alleged that Mr Fairooz was a traitor, related to Iran, and a fanatic. Similar comments were made on an evening television programme which appeared on State television.

B. Arrest, detention and torture and ill-treatment

i. Arrest

13. Mr Fairooz was arrested at around 8:30pm on 2 May 2011 from his house in Hamad Town (south of Manama) by a group of hooded men, carrying guns but wearing civilian clothing, who had forced their way into his living room. One of the men was recording the event on a video camera. Mr Fairooz asked for the men to confirm their identity, but they refused. The individuals did not produce an affidavit permitting the search, nor did they produce a warrant for his arrest, although Mr Fairooz asked for them to provide one. Mr Fairooz also asked the individuals to provide a reason for his arrest, but was not provided any reason. Mr Fairooz was told that he was being taken for questioning for a short period and that he would return home shortly. Mr Fairooz was taken from his home to an unmarked car parked outside, which he was forced to enter. Mr Fairooz noticed that

²³ Unless otherwise stated, for support see Mr Fairooz's witness statement, attached at Appendix 1.

²⁴ Gulf Daily News, 'Society seeks protection', 24 March 2011, available at: <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=302442>.

a clearly marked police car was parked immediately behind the unmarked car he was forced to enter.

ii. Detention at Bahrain Defense Force Headquarters: 2 May – 5 May 2011

14. Upon entering the unmarked car, Mr Fairooz was blindfolded and handcuffed and taken to an unknown destination that Mr Fairooz later learned to be the **headquarters of Bahrain Defense Force (BDF)**. There he was held in solitary confinement in a cell approximately two metres by 1.5 metres. Except during questioning and interrogations, Mr Fairooz was handcuffed and blindfolded whenever he was out of his cell and this included visits to the bathroom.
15. Over the course of three days Mr Fairooz was subjected to a number of periods of questioning about the political activities of Alwefaq and Mr Fairooz's role in Alwefaq; the group's ties with other political opposition societies; the protests that had begun on 14 February 2011; Mr Fairooz's role in the protests at the Gulf Cooperation Council (GCC) [Pearl] Roundabout; Mr Fairooz's conduct in parliament (including raising questions about why he had chosen to pursue topics in parliament that challenged, and apparently reflected negatively upon, decisions made by ruling family ministers); how Mr Fairooz interacted with the international media (including whether the international media had contacted Mr Fairooz or whether Mr Fairooz had contacted them); and the withdrawal of the Alwefaq bloc from parliament.
16. During questioning, interrogators would play Mr Fairooz recorded segments of his interviews with international media and pause at sections. He was then asked to justify his statements as well as reveal the sources of his information. Interrogators suggested to Mr Fairooz that he was gathering evidence for the United States (US), United Kingdom (UK) or the Islamic Republic of Iran (Iran) and he was asked about his relationship with US, UK and Iranian embassy officials.
17. On the second day he was questioned by two officers who made threats of subjecting him to torture, including the use of electric shock. Officers told Mr Fairooz that they could refer him to a specialist interrogator who would know how exactly to extract the maximum possible information from him using very advanced torture equipment. Mr Fairooz believes, from the accents of the officers, that one of the officers questioning him at the time was from Jordan.
18. On 2 or 3 May Mr Fairooz, still blindfolded, was taken to another room and insulted by security forces personnel about his Shia sect, his political party and his perceived lack of loyalty to the State. One official stated that Shia men engaged in illegal sexual relations. As another official took his blood pressure, Mr Fairooz was referred to as a traitor, non-Bahraini, an agent of Iran, illegitimate child and miserable human being. The person taking his blood pressure said that Mr Fairooz did not deserve treatment or medical attention and that sooner or later Mr Fairooz would no longer live in Bahrain. During his medical check-up, Mr Fairooz could hear screaming from other parts of the clinic. As Mr Fairooz was examined, the clinician described the forms of torture that he would suffer if he did not cooperate with authorities during his detention. Mr Fairooz was also encouraged to inform the clinicians of any underlying health problems he suffered from and Mr Fairooz informed them of his high blood pressure and cholesterol. Mr Fairooz did later receive medication for these conditions.
19. Mr Fairooz was brought to the room referred to above (paragraph 17) on a second occasion during his stay at BDF Headquarters. On this occasion, he heard a woman's voice. The woman told Mr Fairooz to remain calm and assured him that she was a

doctor. This female doctor asked Mr Fairooz about the medicine he took for his high blood pressure and cholesterol. Then, Mr Fairooz was hit over the head. He was referred to as a “son of a bitch,” Shia traitor, agent of Iran, non-Bahraini who did not deserve to be in Bahrain, and insults against the chair of Alwefaq were made. Mr Fairooz was hit by whoever passed him, others laughed at him. Mr Fairooz was told that he should give thanks to the leader of Bahrain and that he didn’t deserve to be a minister of parliament and that he was “rubbish” at exercising his duties anyway.

20. At around midnight on the third day (4 May 2011), guards outside his cell forced Mr Fairooz to stand with his hands in the air, and Mr Fairooz was made to stay in that position for around twelve hours, until noon the next day. He was told that he would be subjected to additional ill-treatment if he sat down. A photograph of the Bahraini Prime Minister, Shaikh Khalifa, had been placed in his cell and he was told to kiss the photograph. Mr Fairooz felt that the guards were trained to create stress prior to interrogations, in the hope that this would make him more cooperative during each interrogation.

iii. Detention at National Security Agency Headquarters: 5 May – 17 June 2011

21. On 5 May 2011 Mr Fairooz was blindfolded and handcuffed and driven to the **headquarters of the National Security Agency (NSA) in Manama**. Between 5 May and 17 June (excluding events on 18 May when Mr Fairooz was taken to the military prosecutor’s office, and 12 June when he was taken to the Court of National Safety), Mr Fairooz was held in solitary confinement, in a cell approximately two metres by two metres. Except during questioning and interrogations, on every occasion that Mr Fairooz left his cell he was both blindfolded and handcuffed.
22. This period was the only time that Mr Fairooz was certain of where he was. Guards joked with Mr Fairooz that he was now inside the very place he had stood outside in protest in 2007; recalling Alwefaq’s 2007 protest against conditions of detention, Mr Fairooz deduced that he was in NSA headquarters.
23. Upon arrival, Mr Fairooz was immediately sent to a health clinic which he perceived also served as a torture centre. While examining him, officials described in detail the forms of torture that Mr Fairooz would suffer if he did not cooperate. Mr Fairooz could hear the screaming of other detainees in the clinic.
24. Mr Fairooz was then taken for questioning, during which time he was blindfolded, but not handcuffed. The questions were similar to those that had been asked at BDF headquarters. He was also asked to offer explanations for his visits to several countries including Lebanon, Iraq, Iran and the US.
25. Between 5 May and 17 June 2011, Mr Fairooz was questioned at least three times (each time for between two to three hours) by NSA officers. During each of these interrogations, Mr Fairooz was asked similar questions to those that had been asked at BDF headquarters. He was asked to respond to some questions orally and, in addition, during each interrogation, he was asked to respond to three to six questions in written format. He was given a blank piece of paper and pen to formulate his answers. Questions centred largely on how Alwefaq was founded and Mr Fairooz’s role in it; Mr Fairooz’s relationship with opposition political societies and their leaders; Mr Fairooz’s whereabouts during the uprisings; Mr Fairooz’s political life and family history; Mr Fairooz’s role in all the gatherings that took place in February and March 2011; why Mr Fairooz had been chosen by Alwefaq to hold his coordination responsibilities; and why Mr Fairooz raised criticisms of the ruling family.

26. It was suggested that Mr Fairooz had special and confidential contacts in the US and Iranian embassies. Mr Fairooz denied this.
27. During his detention in the NSA, guards would occasionally, and deliberately, delay responding to Mr Fairooz's request to use the bathroom. On one occasion, he was left in the bathroom for more than 12 hours overnight. The morning shift guardsman said he would report the incident but Mr Fairooz is not aware that any subsequent action to investigate took place.

iv. Questioning at Military Prosecution Office: 18 May 2011²⁵

28. Early in the morning on 18 May, Mr Fairooz was taken out of his cell and given his belongings, which had been confiscated from him on 2 May (including his watch, glasses and ring). Mr Fairooz was given the impression that he was being released. Mr Fairooz was placed in a bus. Blindfolded and handcuffed, Mr Fairooz could not see but felt that other passengers were on the bus. The bus stopped suddenly and passengers were informed that they would be returned to NSA headquarters. Instead of returning to NSA headquarters, however, Mr Fairooz's belongings (watch, glasses, and ring) were taken from him again (while on the bus) and the vehicle drove to what Mr Fairooz described as a "sunny outdoor location".
29. At this location, individuals entered the vehicle, grasped the passengers and forcibly removed them from the bus. Mr Fairooz was taken by force, his head was hit, and he was referred to as a traitor. He was made to sit outside in the sun, and asked to provide his name, and citizenship number. Each of the passengers was asked to provide these details, which took at least half an hour. They were then returned to the bus. Mr Fairooz could not be sure (as he was still blindfolded) but he believes that additional passengers were placed on the bus while held at this "sunny outdoor location".
30. Mr Fairooz believes that the bus drove for at least two to three hours before arriving at a different location. Upon arriving at this location, passengers were told that they were no longer in Bahrain but in Saudi Arabia, and that all instructions should be respected and adhered to. Security officials informed Mr Fairooz and others that the Saudi Arabians treated Shia people in their own country "like dogs" and so would perhaps have even less regard for Shia people of Bahrain; indicating that they should bear this in mind. Mr Fairooz and other passengers were taken to what Mr Fairooz describes as a waiting room. The detainees in this waiting room were forced to repeat the national anthem of Bahrain. The national anthem was played loudly and would be stopped in between lines. The detainees were told to sing the rest of the line sometimes individually, and sometimes as a group. Anyone not partaking would be beaten. Mr Fairooz was struck over the head as a result.
31. Also while in this waiting room, Mr Fairooz was randomly asked to stand, sit, and move. When Mr Fairooz moved, as he was blindfolded, he hit himself against an object or a wall. This continued for approximately one hour.
32. After one hour, Mr Fairooz heard his name being called. He was taken to a small room and his blindfold was removed. Mr Fairooz noticed two men sitting in a room: the military prosecutor and someone taking notes.
33. The military prosecutor informed Mr Fairooz that he would be interrogated for some time, asked Mr Fairooz if he was aware of why he was being detained and the charges being brought against him. Mr Fairooz said that he was not aware. The military

²⁵ See also Appendix 3: Witness Statement of Maythan Saeed al Salman.

prosecutor informed Mr Fairoz that he was facing four charges. The military prosecutor told Mr Fairoz that his office had spoken with his lawyer and invited his lawyer to attend but that his lawyer was in another urgent meeting. Mr Fairoz was informed that his lawyer would likely arrive in a couple of hours and asked whether he wanted to go ahead with the interrogation. Mr Fairoz agreed.

34. Upon being released Mr Fairoz asked his lawyer about this incident. Mr Fairoz's lawyer alleges that the military prosecutor's office did not contact him until the very moment that Mr Fairoz was going to be interrogated. Without prior knowledge that Mr Fairoz would be questioned on 18 May, his lawyer had organised other meetings. Further, Mr Fairoz's lawyer said that he was aware that it would take a few hours to reach the military interrogator's office (given that the interrogations took place in undisclosed locations and so lawyers were required to attend known police and security offices and then be transferred by police and security officials to undisclosed places of interrogation). Mr Fairoz's lawyer feared that the interrogation would have ended by the time his own meetings completed and he was able to coordinate with the police and security officials to be taken to Mr Fairoz's interrogation location.
35. Mr Fairoz says he consented to the interrogation continuing on 18 May without the presence of a lawyer in the hope that his lawyer would attend within a few hours and because he was afraid of having to undertake the same journey to the military prosecutor's office again in the future. Mr Fairoz did not want to agree to postpone the interrogation and have to undergo the same ill-treatment he experienced on the journey, in the "sunny outdoor location", and in the military prosecutor's waiting room a second time.
36. The interrogation lasted for between 8 and 10 hours. Within this time, Mr Fairoz was entitled to take breaks for food and prayers. During the interrogation, Mr Fairoz complained about the treatment he had suffered in the morning.
37. The military prosecutor alleged that Mr Fairoz had conspired to overthrow the Bahraini regime, together with others at the GCC [Pearl] Roundabout events. Mr Fairoz was asked if he had been deliberately spreading hatred among the people of Bahrain against the regime, and spreading false news about the regime – acts which constituted offences under Bahraini criminal law. Mr Fairoz was told not to deny any allegations, because the authorities held recordings of Mr Fairoz implicating himself.
38. The military prosecutor informed Mr Fairoz that he would play him segments of Mr Fairoz's interviews with international media which confirmed the charges against him, but that these recordings were only samples of other recordings which they held and which fully implicated Mr Fairoz in all the charges being brought against him. Incomplete segments of statements Mr Fairoz had given to international media were played as evidence during the interrogation. Mr Fairoz was also asked about the statements he had given to the United Nations and the European Parliament.
39. At the end of the interrogation, Mr Fairoz was blindfolded and taken back to the waiting room. The guards in the waiting room punished Mr Fairoz and others for complaining about the treatment they had suffered in the morning by insulting Mr Fairoz and others, and again instructing Mr Fairoz to stand and move while blindfolded. While moving blindfolded, Mr Fairoz hit the wall and staircase banister. The guards laughed at this and further subjected Mr Fairoz to humiliating insults. Mr Fairoz was told to provide information of his income. Upon hearing the amount, guards mocked him and laughed at

him, calling him foolish for letting himself get into trouble with the authorities when he was given such a high salary. This went on for almost an hour.

40. While in the waiting room, Mr Fairooz heard the names of other detainees being called. These included the names of resigned MP Matar Matar, Shaikh Mitham Alsalmam, Sheikh Abdeladeem Almohtadi and Sheikh Mohammed Habib Almoqdad.
41. Late that same night, Mr Fairooz and the others were taken back to the bus. While on the bus, and as it was moving, Mr Fairooz and others were instructed to stand on a single leg; those not willing to obey the order or those who could not for physical reasons endured additional beating and cursing.
42. After a few hours, the bus stopped. Mr Fairooz was grabbed violently, beaten with sticks, shoes, taken out of the bus and pulled to the ground.
43. A voice shouted that a “Sheik” was waiting for Jawad Fairooz. A guard beat Mr Fairooz while dragging him on ground towards the man referred to as a Sheik. The man identified as a Sheik beat Mr Fairooz with a stick, kicked him with his shoes, and threatened the use of electric shocks. Mr Fairooz, still blindfolded, could feel that the Sheik was pulling something over his head. As his did this, the Sheik said he could kill Mr Fairooz right now but that he did not want to spoil his hand with Mr Fairooz’s dirty blood. Mr Fairooz felt the Sheik remove the object over his head and felt two others begin to beat him. As this went on, the Sheik said he had been waiting a long time to punish Mr Fairooz, he asked rhetorically “who are you to stand against the ruling families, traitor, agent of Iran” and hurled insults against Alwefaq, and Mr Fairooz’s parents.
44. When the beating stopped, the Sheik informed Mr Fairooz that they would be waiting for him to return: “you will come here again and it will be longer session next time”.
45. Mr Fairooz was then dragged back on to the bus and was forced to sit at the back of the bus. A man asked Mr Fairooz for his name and identity number again. Mr Fairooz kept silent; the guard repeated his questions and then beat and kicked Mr Fairooz. He also subjected Mr Fairooz to sexual assault and harassment, and threatened him with rape.
46. Mr Fairooz’s hand was hit. The man who hit Mr Fairooz said that it was known Mr Fairooz practiced sexual acts with boys. Mr Fairooz kept quiet. The man then said that he could attack Mr Fairooz sexually and began touching Mr Fairooz on his back, backside and genitals. The man told Mr Fairooz to bend over so that he could rape him and alleged that Mr Fairooz had done this before, or had had this done to him before, and so was accustomed to it. This threat could be easily heard by others in the bus.
47. Upon returning to the NSA, Mr Fairooz’s body ached. He had dark spots across his body. The next morning (19 May), a guard noticed that Mr Fairooz was not feeling well and insisted Mr Fairooz inform him of what happened. The guard seemed disturbed and promised to raise concerns with his supervisors. Mr Fairooz is not aware that any investigation was carried out, however.

v. First contact with outside world: 29 May 2011

48. Mr Fairooz was not allowed to contact his family until 27 days after his arrest (on 29 May), when he was allowed a five-minute phone call. During that call he was not allowed to talk about the reasons for his arrest or give his location, or to ask for legal assistance.

vi. Appearance at Court of National Safety: 12 June 2011

49. On 12 June Mr Fairooz was taken before a specially-constituted court called the Court of National Safety,²⁶ although he was not aware of where he was being taken during transit. He was not allowed to wear his glasses at the court. While waiting to appear before the judge Mr Fairooz was kept in the court's cells. A friendly lawyer noticed Mr Fairooz and informed Mr Fairooz's son who later arrived to the court to see his father. Mr Fairooz and his son were permitted to meet for ten minutes after the court session.
50. Mr Fairooz appeared before the judge who recited the charges against him and asked whether Mr Fairooz had had access to a lawyer. Mr Fairooz responded that he had not known he would be facing a judge in court even as he was in transit to the court. Mr Fairooz informed the military judge that he had consistently asked for a lawyer, throughout his period of detention, but had been refused access to one.
51. A lawyer present in court, Ms Reem Khalaf, intervened and offered to represent Mr Fairooz. The judge accepted and permitted Ms Khalaf to meet with Mr Fairooz for five minutes, adjourning the court for this time. Ms Khalaf informed Mr Fairooz that she would ask the judge for additional time to become familiar with his case. Following the adjournment, Ms Khalaf requested two weeks' preparation time and was given one week. Mr Fairooz later learned that Ms Khalaf had informed his lawyer of the upcoming court date.
52. Between 12 June and 19 June 2011, Mr Fairooz requested access to his lawyer but was refused.

vii. NSA Headquarters

53. On one occasion, while held at NSA Headquarters, Mr Fairooz asked to use the toilet and was escorted to the bathroom. In the bathroom next to the toilet (approximately one meter away) was a washbasin. Mr Fairooz used the toilet and then the washbasin. He called for the guard to escort him back to his cell. The guard opened the door and shouted at Mr Fairooz for moving from the toilet to the washbasin. The guard stated that Mr Fairooz did not have permission to use the washbasin. Mr Fairooz said that it was customary to use both the toilet and the washbasin and that he had never previously had to ask permission to use both separately. Mr Fairooz also stated that other guards had never had a problem with using both the toilet and washbasin. This guard then beat, and punched Mr Fairooz (on his face and head), and left him in the bathroom for one hour. When the guard returned to take Mr Fairooz back to his cell, he grabbed Mr Fairooz by the neck and dragged him back to the cell. Mr Fairooz found this experience to be humiliating and disturbing.

viii. Detention at Dry Dock Prison, Muharraq: 17 June 2011-22 June 2011

54. On 17 June, Mr Fairooz was transferred to **Dry Dock Prison in Muharraq**, and placed in a prison cell which he shared with a 16 year old prisoner. While here, Mr Fairooz was denied access to a copy of the Quran and a prayer mat. He was told by guards that they had been instructed not to provide him with either a copy of the Quran, or to a prayer mat, even though they had both available. Mr Fairooz believes that he was denied access as a form of punishment.

²⁶ This was established under Royal Decree No. 18 of 2011 and comprised one military judge and two civilian judges: see BICI Report, above n. 20, para. 130.

55. On 19 June, Mr Fairooz returned before a **military court**. Mr Fairooz was permitted ten minutes prior to the hearing with his lawyer. Mr Fairooz's lawyer was given only ten minutes to address the court and during this time he raised the issue of Mr Fairooz's treatment and requested that the court hear from witnesses in defence of Mr Fairooz. The judge refused and moved to announce that the verdict would be handed down on 4 July 2011.
56. That same day, at around 3pm on 19 June, Mr Fairooz's son and two sisters visited him in Dry Dock Prison after Mr Fairooz's appearance in military court. They were given 15 minutes for the meeting and three guards were present during the meeting.

iv. Alqarain prison: 22 June 2011 – 7 August 2011

57. On 22 June, Mr Fairooz was transferred to **Alqarain prison**, located in a remote area to the south of the country. Mr Fairooz was held in the same cell as another detainee, human rights lawyer Mr Mohammed Altajer.
58. On 29 June, a **military court** decided, in the absence of Mr Fairooz and his lawyer, that his case be moved to a civilian court. Mr Fairooz remained at Alqarain prison until he was suddenly released on 7 August 2011 without any information as to whether he still faced charges.

ix. Continuing prosecution and revocation of citizenship

59. The charges that had originally been brought against Mr Fairooz before the military court (Court of National Safety) on 12 June 2011 were as follows (as described in the unofficial translation of the final court judgment²⁷):

1. *Openly instigated hatred for the regime and its contempt, by speaking to Al-Alam TV Channel where he asked the broadcaster to listen to the slogans against the regime.*
2. *Deliberately spreading false news and rumors and propaganda that could disrupt the public security, cause havoc and harm the public interest by claiming that the Saudi Army had entered Bahrain to face the armless Bahraini people and that there were militia in plain clothes in various areas of the country directed, organized and trained in the manner explained in the case papers.*
3. *Took part in a gathering at the GCC Roundabout aimed at disrupting public security.*
4. *Called for and organized marches without notifying the concerned authority, namely the Martyrs March, and a march entitled “The Government Must Resign”, a march entitled “Down with the 2002 Constitution” and a march in front of government buildings.*

The Military Prosecution demanded his punishment vide articles 165, 168 and 178 of the Penal Law and articles 1, 2 (a), 9, 13 (2) of Decree Law No 18 of 1973 concerning Gatherings, Processions & Meetings amended by Law No 32 of 2006.

60. A copy of the text of the relevant provisions is included at Appendix 7.
61. At the end of the period of National Safety, Mr Fairooz's case was referred to the competent civil courts on 29 June 2011, by virtue of Article 1 of Royal Decree No 62 of 2011 to refer the cases not adjudicated by National Security Courts to an ordinary Court.²⁸

²⁷ Appendix 7: Judgment of Court in Case 07201108210, 7 November 2012.

²⁸ *Ibid.*

62. After his release, Mr Fairooz's case was not closed, and his trial resumed in October 2011. The prosecutor dropped charges related to “*spreading false news about the regime*” and “*encouraging hatred among the people toward the regime.*”²⁹ The charges for taking part in an illegal gathering and calling for and organising marches without notifying the concerned authority were pursued.
63. After a number of hearings the court set down the date of 4 July 2012 to deliver the verdict. However, on that date – without advance notice or explanation – the judge in his case was changed, and his case was given to another judge.
64. The trial was restarted, with the lawyer having to start his defence again. The trial continued and a date for delivery of the verdict was announced for 2 January 2013. However, on 3 November 2012 Mr Fairooz received notice from the Court that the date of verdict had been brought forward to 7 November 2012.³⁰ Mr Fairooz left the country on 5 November 2012 and travelled to the UK, under a valid visa.
65. On 6 November 2011, the Ministry of Interior in Bahrain broadcast a statement on national TV that it had revoked the citizenship of 31 citizens. Mr Fairooz and his brother Jalal Fairooz were listed as the final two names on the list. A statement released by the official news agency (attached as Appendix 5) stated that the citizenship had been revoked because those concerned had caused “*damage to state security.*”³¹ Mr Fairooz had received no prior warning of this revocation of citizenship, which left him stateless.
66. On 7 November 2011, the court announced the verdict in Mr Fairooz's case, finding him guilty of the two remaining charges under Article 178 of the Penal Code and Decree Law No 18 of 1973 concerning Gatherings, Processions & Meetings amended by Law No 32 of 2006, Articles 1, 2 (a), 9, 13 (2), and sentenced him to a 15 months suspended prison sentence.³²
67. Mr Fairooz's lawyer appealed the decision and on 15 January 2013, the appeal court (in one session) confirmed the previous verdicts and sentences. The requests of Mr Fairooz's lawyer for the appeal court to re-consider the verdicts were refused. During both the 7 November and 15 January hearings, Mr Fairooz was in London (UK) and unable to attend.
68. Mr Fairooz has not appealed the decision to revoke his citizenship. He believes that the decision to revoke his citizenship was not made through the proper channels and is not clear that a valid and fair forum to raise an appeal is available.

²⁹ Appendix 1: Statement of Jawad Fairooz.

³⁰ *Ibid.*

³¹ Appendix 5: BNA, ‘Urgent: Statement by Ministry of Interior’, 7 November 2012, available at:

<http://www.bna.bh/portal/en/news/532098>. This appears to have been carried out under Article 10(c) of the Citizenship Law, which permits the revocation of nationality when a holder of Bahraini citizenship undermines State security.

³² *Ibid.*; Appendix 7 Judgment of Court in Case 07201108210, 7 November 2012, above n. 27.

IV. The arrest and detention of Mr Fairooz was arbitrary and in violation of Bahrain's international obligations

69. Mr Fairooz's arrest was based on Royal Decree No. 18 of 2011 on the Declaration of a State of National Safety. The regime of arrest and detention implemented by the decree, and its application in Mr Fairooz's case, was in clear violation of Bahrain's obligations under the International Covenant on Civil and Political Rights (ICCPR) (Article 9), the Arab Charter (Article 14(1)),³³ and the Bahrain Constitution (Article 19),³⁴ all of which prohibit arbitrary arrest and detention. Furthermore, his detention involved flagrant violations of fair trial rights, and his rights to freedoms of opinion and expression, and peaceful assembly and association. As such, it was arbitrary and in breach Bahrain's international human rights obligations.
70. Royal Decree No. 18 of 2011 gave authority to the Military Attorney General to issue arrest warrants for an indefinite period of time, without having to state the evidentiary basis supporting the arrest and without having to secure any judicial authorisation. The National Safety Decree did not provide for any judicial oversight, instead treating the Military Attorney General as the person with responsibility for oversight. In addition, the National Safety Decree did not require the arresting officer to produce an arrest warrant issued by the Military Attorney General, nor is there any requirement for obtaining a search warrant to search the premises of the person arrested.³⁵
71. Four government agencies were primarily responsible for the implementation of Royal Decree No. 18 of 2011; the BDF, the Ministry of Interior, the NSA and the National Guard. Article 5 of Royal Decree No. 18 of 2011 provides that these authorities are empowered to undertake a range of measures to implement the Decree, including:
- a. Searching persons and places when suspicions exist of a violation of the provisions of this Decree or the decision or orders issued by the authority responsible for its implementation; and
 - b. Arresting and detaining suspects and persons deemed threatening to the security of citizens.³⁶
72. Mr Fairooz's arrest was authorised by order of the Chief Command of the BDF.³⁷
73. The BICI Report found that the pattern of arrest and detention during the period of National Safety involved multiple violations of the prohibition of arbitrary arrest and detention, as laid down in Article 9 of the ICCPR and Article 14 of the Arab Charter.³⁸ Those instruments further provide that anyone who is arrested should be informed at the time of arrest of the reasons for the arrest, must be brought promptly before a judge or other officer authorised by law to exercise judicial power, and must have the opportunity to take proceedings before a court to challenge the legality of their detention.³⁹ Both instruments provide that a person who has been arbitrarily or unlawfully detained is entitled to compensation.⁴⁰

³³ "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant." Article 14(1), Arab Charter, adopted by the Council of the League of Arab States on 22 May 2004. Bahrain has been a member of the League of Arab States since 11 September 1971.

³⁴ Extracted at Appendix 10.

³⁵ For a full description of the scope and content of Royal Decree No. 18 of 2001, see BICI Report, above n. 1, paras. 126–34; and 1174.

³⁶ *Ibid.*, para. 1171.

³⁷ *Ibid.*; see also, Appendix 7 Judgment of Court in Case 07201108210, 7 November 2012, above n. 27.

³⁸ BICI Report, above n. 20, para. 1235.

³⁹ ICCPR, Articles 9(2), 9(3) and 9(4); Arab Charter, Article 14(3), 14(5) and 14(6).

⁴⁰ ICCPR, Article 9(5); Arab Charter, Article 14(7).

74. The pattern of violations described by the BICI Report, which applied in Mr Fairooz's case, involved detainees being:

arrested by security forces without presentation of an arrest warrant and without being promptly informed of the reasons for their arrest. ... [M]any 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 [Government of Bahrain] 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.⁴¹

75. These were exactly the circumstances that applied in Mr Fairooz's case:

- he was arrested without a warrant and was not informed of the reasons for his arrest or the charges he was facing until 18 May, more than two weeks after his arrest;
- he was denied any access to the outside world until he was allowed to make a five minute phone call to his family on 29 May 2011, 27 days after his arrest, although he was not allowed to tell them where he was; and
- he had no access to a lawyer until he was brought before the Court of National Safety on 12 June, six weeks after his arrest. At that time the only access he was given was to a lawyer who happened to be at the court and who volunteered to represent him. He was again denied access to a lawyer until his next appearance at the Court of National Safety, and was not given any opportunity to prepare his defence.

76. The fact that the Royal Decree No. 18 of 2011 purported to authorise such arrest and detention does not mean that it did not violate international human rights law. As the UN Human Rights Committee has consistently stressed, the notion of "*arbitrariness*" need not be equated with "*against the law*".⁴² Instead, arbitrariness should be interpreted more broadly to include "*elements of inappropriateness, injustice, lack of predictability, and due process of the law*".⁴³

77. Furthermore, the fact that the Government of Bahrain deposited a derogation from Article 9 of the ICCPR with the Secretary-General of the United Nations on 28 April 2011 (note the State of National Safety was declared on 15 March) does not mean that the fundamental guarantees do not apply. The government remains bound by Article 4 of the ICCPR which permits derogation from human rights obligations only to the extent *strictly required*, provided the measures are consistent with its other obligations under international law.⁴⁴ As the BICI Report provides, measures involving denial of access to courts and lawyers for periods of weeks (as in Mr Fairooz's case) can never be considered "*necessary measures*" that would be protected by such derogations.⁴⁵

78. Furthermore, as discussed below, the charges on which Mr Fairooz were held and tried amount to violations of his right to freedom of expression, freedom of association, and freedom of peaceful assembly as guaranteed under the Universal Declaration of Human Rights, ICCPR and Arab Charter. As such, the detention was in any event arbitrary.⁴⁶

⁴¹ BICI Report, above n. 1, para. 1235.

⁴² Human Rights Committee, *Mukong v Cameroon*, Communication No. 458/1991, 10 August 1994, para. 9.8.

⁴³ *Ibid.*

⁴⁴ See ICCPR, Article 4; http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

⁴⁵ BICI Report, above n. 1, para. 1236, citing *Aksoy v Turkey* (21987/93) 1996-VI ECHR 2260.

⁴⁶ See UN Working Group on Arbitrary Detention, *Fact Sheet No.26*, available at: <http://www.ohchr.org/EN/PUBLICATIONSRESOURCES/Pages/FactSheets.aspx>.

V. Mr Fairooz is a victim of torture and other ill-treatment

Summary

79. During his detention, Mr Fairooz was subjected to solitary confinement (between 2 May and 16 June) with the exception of 18 May (when Mr Fairooz was transported together with other detainees to the Military Prosecutor's office) and his 12 June court appearance. Mr Fairooz was handcuffed and blindfolded every time he left his cell, including visits to the bathroom and in transit. Mr Fairooz's blindfold was taken off only during questioning.
80. While assessed by medical staff in clinics, Mr Fairooz was described the ways in which he would suffer torture if he did not comply with interrogators and was beaten. During interrogations he was threatened with the use of torture including electric shocks. While in his cell he was forced to stand in stress positions for over twelve hours and was deprived of sleep. During his detention in the NSA, guards would occasionally, and deliberately, delay responding to Mr Fairooz's request to use the bathroom. On one occasion, he was left in the bathroom for more than 12 hours overnight. In transit to or from questioning at the military prosecutor's office he was humiliated with insults and beaten, including punches to the face and ears; he was also subject to sexual touching and threatened with rape and death. He was also blindfolded, humiliated and forced to walk around hitting himself against objects before and after his interrogation by the military prosecutor. He was on numerous occasions insulted for his religious sect and his political beliefs; at Dry Dock prison, Mr Fairooz was denied access to the Quran and a prayer mat.
81. Prior to his arrest and detention, Mr Fairooz and his family were also subject to attacks on their house by unknown persons with Molotov cocktails, but the police failed to respond appropriately to these attacks. It is submitted that this also amounted to ill-treatment of him and his family, for which the State is responsible.

Injuries sustained as a result of the torture and ill-treatment

82. Following the events of 18 May 2011 (when Mr Fairooz was taken to be interrogated by the military prosecutor), Mr Fairooz experienced bruising or blackspots. He experienced aches and pains which lasted for at least one week following 18 May.
83. Mr Fairooz is seeing a doctor in the UK as a result of ongoing psychological consequences from his torture and ill-treatment. Mr Fairooz has complained of nightmares, inability to form relationships, depression and anger. A copy of a letter from his treating general practitioner is attached as Appendix 8.

Mr Fairooz suffered torture and ill-treatment contrary to international human rights law

84. The treatment inflicted on Mr Fairooz amounted to a violation of Bahrain's obligations under international law including the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Articles 7 and 10(1) of the ICCPR; Article 8(1) of the Arab Charter of Human Rights and was also contrary to Article 19 of the Constitution of Bahrain.
85. The treatment suffered by Mr Fairooz followed a pattern of widespread violations during the period of National Safety. The BICI Report found that claims made by individuals that they suffered mistreatment and other forms of physical and psychological abuse while in State custody indicated clear patterns of behaviour by certain government agencies,⁴⁷ and that the

⁴⁷ BICI Report, above n. 1, para. 1230.

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.⁴⁸

86. It is submitted that the events set out in the statement of facts above – particularly in the context of Mr Fairooz's arbitrary arrest and almost incommunicado detention – are sufficient to amount to torture⁴⁹ and cruel, inhuman and degrading treatment or punishment.
87. During his detention at the BDF Headquarters (2 – 5 May), Mr Fairooz was:
 - held in a solitary confinement cell, measuring approximately two metres by 1.5 metres
 - hit on the head and hit overall, as well as insulted and humiliated
 - handcuffed and blindfolded whenever he was out of his cell and including on visits to the bathroom
 - threatened with the use of electric shocks and other forms of torture using “very advanced torture equipment”
 - made to stand in a stress position for approximately 12 hours
 - deprived of sleep.
88. During his detention at NSA Headquarters (5 May – 17 June), Mr Fairooz was:
 - held in solitary confinement, in a cell approximately two metres by two metres
 - regularly blindfolded and handcuffed
 - delayed being given access to the bathroom, in contravention of the Standard Minimum Rules on the Treatment of Prisoners⁵⁰
 - on one occasion, left in the bathroom for hours and on another occasion beaten and dragged back to his cell after using the toilet and washbasin.
89. En route to the military prosecutor's office on 18 May 2011, Mr Fairooz was dragged out of the bus and referred to as a traitor.
90. At the military's prosecutor's office that same day, Mr Fairooz was:
 - forced to repeat the national anthem of Bahrain and was beaten when he did not sing along
 - randomly asked to stand, sit, and move while blindfolded causing him to hit himself against an object, wall and / or staircase
 - subjected to humiliating insults.
91. During the journey back to NSA headquarters on 18 May, Mr Fairooz was:
 - while on the bus, subjected to humiliating insults and curses, beaten with sticks and kicked by shoes as well as hit on his head, face, back, arms, and legs
 - while on the bus, and as it was moving, instructed to stand on a single leg and subjected to cursing
 - grabbed violently, beaten with sticks, shoes, taken out of the bus and pulled to the ground

⁴⁸ *Ibid.*, para. 1238.

⁴⁹ See, generally, Human Rights Committee, *Felicia Gilboa de Reverdito on behalf of her niece, Lucia Arzuaga Gilboa, who later joined as co-author v Uruguay*, Communication No. (147/1983), 1 November 1985, finding that beatings while in detention amount to torture and a violation of Article 7; Human Rights Committee, *Carl Sterling v Jamaica*, Communication No. (598/1994), 22 July 1996, finding that severe beatings while in detention on death row amounted to torture and violations under Articles 7 and 10(1).

⁵⁰ 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 resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rules 12 and 15.

- while on the ground, beaten with a stick, kicked, and threatened with the use of electric shocks
 - threatened with death and future prolonged beating
 - subjected to insults against Alwefaq, and his parents
 - dragged back to the bus, beaten, kicked, sexually harassed and touched, and threatened with rape.
92. During his detention at the Dry Dock Prison in Muharraq (17 – 22 June), Mr Fairooz was denied access to a copy of the Quran, and to a prayer mat as a form of punishment.
93. Additionally, it is generally accepted that prolonged incommunicado detention itself violates the prohibition of cruel, inhuman or degrading treatment or punishment.⁵¹ On 18 October 2011, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment called for the prohibition of indefinite solitary confinement and prolonged solitary confinement, which he defined as any period in excess of 15 days. The Special Rapporteur also called for an end to the practice of solitary confinement in pretrial detention based solely on the seriousness of the offence alleged.⁵²
- Purpose of the torture*
94. Underlying the inhuman acts were a number of prohibited purposes, including:
- In order to obtain information:* Mr Fairooz was placed in stress positions prior to an interrogation and threatened with electric shocks during interrogation.
- Punishment:* The solitary confinement, beating, sexual harassment and other treatment were inflicted upon Mr Fairooz for his perceived participation in opposing the government and State in parliament and for his coordination role during the February to May 2011 protests, gatherings, rallies and demonstrations.
- Discrimination on the grounds of religion:* Mr Fairooz was regularly, at various places of detention and during transit, addressed in demeaning terms relating to his religious sect. At Dry Dock prison, he was refused access to a Quran and prayer mat.
- To degrade and humiliate Mr Fairooz:* Mr Fairooz was sexually harassed, threatened with rape, not permitted access to bathroom, kept in the bathroom for almost 12 hours on one occasion, and beaten for using the washbasin on one occasion. He was forced to perform acts such as kissing a photograph of the King, singing the national anthem, stand on one leg on a bus, and move while blindfolded. He was accused of performing sexual acts with boys, as a result of his Shia sect and his parents and Alwefaq members were insulted in his presence.
95. Mr Fairooz believes that he was being punished for his activities in parliament, for his activities as a coordinator of protests and statements for the seven political opposition societies named at paragraph 3 above. During his time in parliament, Mr Fairooz raised queries about forms of patronage and corruption that he perceived to be taking place (for example in relation to alleged corrupt practices regarding illegitimate requisitioning of public land and the commercialisation of coastal land leading many small family fisheries to lose their livelihood); and Mr Fairooz was also following the 2006 “Al-Bandar Report”

⁵¹ BICI Report, above n. 1, para. 1237.

⁵² UN General Assembly, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez’, 18 January 2012, UN Doc. A/HR/19/61, available at: <http://www.ohchr.org/Documents/Issues/SRTorture/A-HRC-19-61.pdf>.

scandal (where Salah Al-Bandar reportedly leaked documents alleging the existence of a systematic government plan to limit the influence of Shia opposition groups and create a counterweight Sunni bloc)).

96. Further, between February and May 2011, Mr Fairooz organised peaceful demonstrations, bi-weekly events (such as gatherings or rallies) and facilitated coordination meetings between the seven political opposition societies. Mr Fairooz believes that he was also being punished as a result of these activities.
97. Accordingly, Mr Fairooz was the victim of a violation of the CAT, Articles 7 and 10(1) of the ICCPR; Article 8(1) of the Arab Charter (prohibition on torture) and Article 19 of the Constitution of Bahrain.

VI. The State has violated Mr Fairooz's Freedoms of Expression and Opinion, and of Peaceful Assembly and Association	Freedoms
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98. Mr Fairooz's political activities have at all times been entirely peaceful. The questioning Mr Fairooz was subjected to and his subsequent trial clearly demonstrate that Mr Fairooz's arbitrary arrest and detention, conviction, and revocation of citizenship were each motivated by the exercise of his freedoms of expression, association and peaceful assembly. This has resulted in serious violations of his rights as guaranteed under the Universal Declaration of Human Rights (Articles 19 and 20), the ICCPR (Articles 19, 21 and 22), and the Arab Charter (Article 24 and 32).

Arrest and detention

99. Mr Fairooz was initially arrested and detained under Articles 165, 168 and 178 of Bahrain's Penal Code, and Decree Law No 18 of 1973 concerning Gatherings, Processions & Meetings amended by Law No 32 of 2006, Articles 1, 2 (a), 9, 13 (2) ("Gatherings Law"). The BICI examined in detail the operation of Articles 165 and 168 (along with Articles 169, 179 and 180), and considered that the Government "*used these articles to punish those in the opposition and to deter political opposition*".⁵³ It expressed serious concerns about their conformity with international human rights law and the Constitution of Bahrain,⁵⁴ and recommended 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*".⁵⁵

100. The government later repealed and amended some of these provisions,⁵⁶ however by that point Mr Fairooz had already been detained for a significant period of time.

101. In the Civil Court, Mr Fairooz was prosecuted under Article 178 of the Penal Code and the Gatherings Law. Article 178 of the Penal Code provides as follows:

Every person who takes part in a demonstration in a public place where at least five persons are assembled with the aim of committing crimes or acts intended to prepare or facilitate the commission of such crimes or aimed at undermining public security, even though for the realization of a legitimate objective, shall be liable for

⁵³ BICI Report, above n. 1, para. 1279.

⁵⁴ BICI Report, above n. 1, paras. 1280-1284.

⁵⁵ *Ibid.*, para. 4.

⁵⁶ See *Final Report of the National Commission to follow-up recommendations of the Bahrain Independent Commission of Inquiry*, 20 March 2012, available at: http://www.biciactions.bh/wps/themes/html/BICI/pdf/report/nc_report_en_1.pdf ("BICI Follow-Up Report"), Appendix 3 (available at: http://www.biciactions.bh/wps/themes/html/BICI/pdf/report/nc_report_en_app3.pdf).

imprisonment for a period of no more than two years and a fine not exceeding BD 200, or either penalty.

102. What amounts to “*undermining public security*” is determined by the authorities and – as is seen in Mr Fairooz’s case – construed broadly.
103. The Gatherings Law requires the organisers of any public meeting to notify head of Public Security at least three days in advance, and authorises that official to determine whether a meeting warrants police presence on the basis of “*its subject ... or any other circumstance*”. The law stipulates that meeting organisers are responsible for “*forbidding any speech or discussion infringing on public order or morals*”, but leaves “*public order or morals*” undefined.
104. Restrictions may be placed on peaceful protests where such restrictions are in conformity with the law and are necessary in a democratic society.⁵⁷ However, it has been made clear by the Special Rapporteurs on the rights to freedom of peaceful assembly and of association, and on the right to freedom of opinion and expression that:

*When restricting the rights to freedoms of peaceful assembly, of opinion and expression, and of association, the least intrusive means of achieving the legitimate objective pursued by the authorities should always be given preference. Freedom to hold and participate in peaceful protests is to be considered the rule, and limitations thereto considered the exception.*⁵⁸
105. Furthermore, although prior notification procedures may be permissible for the organisation of assemblies, the Special Rapporteurs have made it clear that “*organizers should not be criminalized for not requesting an authorization*”.⁵⁹
106. In addition, the Special Rapporteurs have stressed that assembly organisers should not be held liable for violent behaviour committed by others. Instead, police have the duty to remove violent individuals from the crowd in order to allow protesters to exercise their basic rights to assemble and express themselves peacefully.⁶⁰
107. Mr Fairooz’s activities have always been peaceful, and his conviction under Article 178 for attending a gathering aimed at “*undermining public security*” is a clear example of rights to free speech and assembly being punished by a widely drafted law.
108. The charges against Mr Fairooz seem to be based on his own admission of organising and participating in gatherings and so relate entirely to peaceful political activities. Some participants of gatherings advocated the fall of the current regime and were violent, though Mr Fairooz did not, and did not use or advocate the use of violence. Mr Fairooz addressed those gathered at the GCC [Pearl] Roundabout twice. During his interrogation with the military prosecutor, he was criticised for taking the stage to address the gathering when a poster behind him advocated the fall of the regime. The military prosecutor suggested that Mr Fairooz should have refused to speak unless the poster was taken down.
109. Specifically, the evidence against Mr Fairooz seemed to consist of his own admission of organising peaceful protests and speaking at rallies, as well as with international media, the United Nations and European Parliament. Outside of his admission of

⁵⁷ See UN Human Rights Council, *Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests*, 21 January 2013, UN Doc. A/HRC/22/28, available at:

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.28.pdf>

⁵⁸ *Ibid*, para. 12.

⁵⁹ *Ibid*, para. 11.

⁶⁰ *Ibid*, para. 10.

organising peaceful protests, recorded speeches and media interviews seemed to form the basis of the evidence against Mr Fairooz.

110. Mr Fairooz's criminal conviction under Article 178 of the Penal Code and the Gatherings Law is in clear violation of the rights to freedom of assembly and freedom of speech. These convictions should be vacated, and Mr Fairooz compensated for his wrongful arrest, detention and conviction on the basis of the charges.

VII. The State has violated Mr Fairooz's right to a fair hearing by an independent and impartial tribunal

Arrest and Appearances at the Court of National Safety

111. Mr Fairooz was brought before the National Safety Courts, which demonstrated a lack of impartiality and independence. The structure of the National Safety Courts precluded the possibility of a fair trial. Established by the King,⁶¹ the courts comprised the Lower National Safety Courts and the National Safety Court of Appeals, each of which was staffed by three-judge panels appointed by the BDF commander-in-chief. The presiding judges were military officers, assisted by two civilian judges. The chief military prosecutor prosecuted the cases.

112. States should take specific measures guaranteeing the independence of legal tribunals and the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of members of judiciary in order to safeguard the independence, security and conditions of service. Military functions fall within the framework of a hierarchical organisation and are subject to rules of discipline that are difficult – if not impossible – to reconcile with the independence of judges called for under article 14 of the ICCPR. Royal Decree No. 18 of 2011, which created the National Safety Courts, did not refer to the independence, security, or conditions of employment of the judges. The Decree did not positively affirm the independence of judges appointed; nor provide assurances that judges were free to reach a fair decision on the basis of the facts before them, free from reprisals in the event that they reached rulings not in keeping with the wishes of the ruling family or the BDF commander-in-chief.⁶² There are concerns that the National Safety Courts served primarily as a vehicle to convict defendants of alleged crimes arising from their exercise of the rights of freedom of expression, association, and peaceful assembly.⁶³

113. Further, Mr Fairooz was summarily informed of the charges against him on 18 May, 16 days after his arrest, in contravention of article 14(3)(a) of the ICCPR which requires States to ensure that those charged with criminal offences are informed promptly and in detail the nature and cause of criminal charges brought against them.⁶⁴ Additionally, Mr Fairooz's lawyer did not receive adequate notice of Mr Fairooz's interrogation with the Military Prosecutor on 18 May. Bahraini law provides that the accused and his or her lawyer shall be entitled to attend all investigation procedures and that prosecutors shall

⁶¹ Royal Decree No. 18 of 2011.

⁶² Human Rights Watch, *No Justice in Bahrain: Unfair Trials in Military and Civilian Courts*, available at: <http://www.hrw.org/sites/default/files/reports/bahrain0212webcover.pdf>, p. 24.

⁶³ *Ibid.*, pp. 2-3 and 10.

⁶⁴ See also; BICI Report, above n. 1, para. 131 and Eighth United Nations Congress on the Prevention of Crime; Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), principle 1 and 5.

give the accused and counsel notice of the date on which any interrogation by the Public Prosecution Office is to occur.⁶⁵

114. Mr Fairooz was twice brought before National Safety Courts (12 and 19 June). Article 14(3)(b) of the ICCPR provides that accused persons must have adequate time and facilities for the preparation of their defense and to communicate with counsel of their own choosing. The UN Human Rights Committee has stated that accused persons must have “immediate access to counsel.”⁶⁶ From the period of his detention (beginning 2 May 2011) Mr Fairooz sought access to a lawyer and continued to do so until his release on 7 August 2011, yet he appeared before the Court of National Safety on 12 June without prior notification and without adequate access to a lawyer. Prior to his 19 June court appearance, he was able to speak with his lawyer for 10 minutes. Mr Fairooz, therefore, had limited or no access to lawyers to prepare his defense, this was a pattern in many of the cases before the National Safety Courts.⁶⁷ Mr Fairooz was unable to defend himself with legal assistance, in contravention of article 14(3)(d) of the ICCPR. Further, during the 19 June court session, in contravention of articles 14(3)(d) and (e) of the ICCPR, requests to call witnesses in Mr Fairooz’s defense (and to bring evidence regarding mistreatment in custody) were dismissed. Further, at no point was Mr Fairooz (or his lawyer) provided with access to documents and other evidence; including materials that the prosecution planned to offer in court. The facts convey an inequality in arms in contravention of article 14(3)(b) of the ICCPR.

115. Civilians may only be tried by military or special courts in exceptional circumstances⁶⁸ and there are good grounds to hold that the trial of civilians by military courts is incompatible with article 14 of the ICCPR.⁶⁹ In any case, the right to a fair trial, and due process guarantees stipulated in article 14 of the ICCPR must be guaranteed in such proceedings.⁷⁰ The government of Bahrain failed to meet their obligations under article 14 of the ICCPR.

Prosecution before Civil Court

116. There are also serious doubts about the independence and impartiality of the courts in Mr Fairooz’s case, which form part of the Bahraini judiciary. In law, judges in Bahrain are appointed by Royal Order (Article 24 of the Law of Judicial Authority). The appointments are supposed to be based on the recommendation of the Judicial Supreme Council. Under Article 69 of the Law of Judicial Authority, the King chairs the Supreme Judicial Council, which is made up of seven senior judges and the Public Prosecutor. The King may also appoint a representative to head the Supreme Judicial Council (the body responsible for supervising the work of the courts)⁷¹ and the public prosecutor (Article 58). In practice, although the constitution provides for an independent judiciary, the King effectively controls the judicial system.⁷²

⁶⁵ *Ibid.*, note 43, Human Rights Watch report, p. 43

⁶⁶ Human Rights Committee, Concluding Observations: Georgia, U.N. Doc. CCPR/C/79/Add.74, April 9, 1997, para. 28.

⁶⁷ *Ibid.*, note 43, Human Rights Watch report, p. 30.

⁶⁸ UNHRC General Comment No. 32 (Ninetieth session, 2007): Right to equality before courts and tribunals and to a fair trial, A/62/40 (Vol. I) 178 at para. 22.

⁶⁹ Akwanga v Cameroon (1813/2008), ICCPR, A/66/40 vol. I, Opinion by Mr. Fabián Omar Salviolimay, UN Human Rights Committee, (CCPR/C/101/D/1813/2008), pp. 15 and 16, para. 3

⁷⁰ *Ibid.*, note 45, Human Rights Committee, General Comment 32, para. 22.

⁷¹ Amnesty International, *Flawed reforms: Bahrain fails to achieve justice for protestors*, p. 16, available at:

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

⁷² US State Department Country Reports on Human Rights Practices for 2012 Section 1. Respect for the Integrity of the Person, Including Freedom from: Fair Public Trial; para. (e), available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

117. At the end of the period of National Safety, Mr Fairooz's case was referred to the competent civil courts on 29 June 2011, by virtue of Article 1 of Royal Decree No 62 of 2011 to refer the cases not adjudicated by National Security Courts to an ordinary Court.⁷³ However, due process failures continued. Following his release from detention on 7 August 2011, Mr Fairooz was not told whether he was still facing charges. Upon making investigations, Mr Fairooz found that his prosecution continued under Article 178 of the Penal Code and the Gatherings Law.

118. Mr Fairooz's verdict date was originally set to be 4 July 2012. However on that date, without advance notice or explanation, the judge in his case changed, and his case given to another judge. The trial was restarted, with the lawyer having to start his defence again. Article 14(3)(b) requires that defendants have adequate time and facilities for the preparation of their defense. Sudden changes in the trial calendar negatively impacts upon representing counsel and uncertainty in the timing of trial dates makes substantive and meaningful trial preparation nearly impossible.

119. Nonetheless, Mr Fairooz's trial continued and a date for delivery of the verdict was announced for 2 January 2013. However, on 3 November 2012 Mr Fairooz received notice from the Court that the date of verdict had been brought forward to 7 November 2012. Article 14 of the ICCPR Article 14(3)(d) contains three distinct guarantees, including the provision that accused persons be entitled to be present during their trial. Necessary steps should be taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance. Mr Fairooz was given only four days' notice.

120. Mr Fairooz left the country on 5 November 2012 and travelled to the UK, under a valid visa. On 7 November the Court announced the verdict in Mr Fairooz's case, finding him guilty of two remaining charges under Article 178 of the Penal Code and Decree Law no 18 of 1973 concerning Gatherings, Processions and Meetings.

121. While Mr Fairooz was in the UK, Mr Fairooz's lawyer appealed the decision and on 15 January 2013, the appeal court (in one session) confirmed the previous verdicts and sentences. The requests of Mr Fairooz's lawyer for the appeal court to re-consider the verdicts were refused. In relation to appeals, article 14(5) of the ICCPR imposes a duty on Bahrain to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case. The UN Human Rights Committee has held that the Covenant is not violated where a higher instance court examines the allegations against a convicted person in great detail, considers the evidence submitted at the trial and referred to in the appeal, and finds that there was sufficient incriminating evidence to justify a finding of guilt in the specific case.⁷⁴ In Mr Fairooz's case, the appeal court failed to apply these minimum requirements.

122. The lack of information Mr Fairooz was provided in relation to his case following release as well as the consistent changes of trial dates, made it nearly impossible for Mr Fairooz to prepare his defense adequately.

VIII. The State has violated Mr Fairooz's right to know which acts and omissions constitute criminal offences, or are foreseeable from the wording of the offence
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⁷³ *Ibid.*

⁷⁴ *Ibid.*, note 45, Human Rights Committee, General Comment 32, para. 48, p. 15.

123. Royal Decree No. 18 of 2011 established National Safety Courts to investigate and prosecute crimes that:

- a. “brought about the state of national safety;”
- b. crimes committed “defying the procedures” of the decree; and
- c. any other crimes that the BDF commander-in-chief might refer to them.⁷⁵

The Royal Decree created uncertainty as to which actions constituted criminal offences and which did not. The Decree enabled actors to bring charges against individuals, including Mr Fairooz, who were in fact legally exercising their freedom of expression and opinion, and freedom of peaceful assembly and association.

124. As outlined in the BICI Report, defendants charged for breaching orders issued by the authorities charged with implementing the Royal Decree have argued such charges contravene article 20(a) of the Bahrain Constitution. Article 20(a) enshrines the principle that there can be no crime committed, and no punishment, unless there was a violation of the law as it existed at the time of the alleged offence (*nullum crimen, nulla poena sine lege*).

125. Article 15 of the ICCPR requires that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Article 15 is specifically listed as non-derogable. In *Kokkinakis v Greece*, the European Court of Human Rights interpreted the principle⁷⁶ as requiring the State to ensure the offence be clearly defined in law, so that “the individual can know from the wording of the relevant provision and, if need be, with the assistance of the court’s interpretation of it, what acts and omissions will make him liable.”⁷⁷ In *S. W. v. UK*, the European Court of Human Rights asserted that courts may clarify the rules of criminal liability provided that “the resultant development is consistent with the essence of the offence and could reasonably be foreseen.”⁷⁸ The Inter-American Court of Human Rights has also stressed that crimes be classified and described in “precise and unambiguous language that narrowly defines the punishable offence.”⁷⁹

126. The offences listed in Royal Decree No. 18 did not meet these minimum requirements of precision, narrow definition and foreseeability. Instead, the offences were deliberately vague, giving the authorities (particularly the BDF commander-in-chief) much discretion as to which acts and omissions constituted crimes. The minimum requirements of article 15 of the ICCPR were therefore not reached.

127. Further, the BICI Report found that upon declaring a State of National Safety on 15 March 2011, the agencies charged with implementing the provisions of Royal Decree No. 18 of 2011 were faced with a “legislative lacuna.” The vague nature of the offences listed in Royal Decree No. 18 of 2011 was also felt by officials who were able to use broad discretion to make interpretations:

“In the absence of any codes governing the application of the State of National Safety, these government bodies were compelled to develop interpretations of Royal Decree No. 18 of 2011 and to identify and ascertain the powers that they possess pursuant to that decree. Commission investigations and discussions with the government agencies revealed that a variety of laws were either applied or referred to during the State of National Safety. The

⁷⁵ *Ibid.*; above no. 1, para 131.

⁷⁶ Contained in Article 7(1) of the European Convention on Human Rights.

⁷⁷ *Kokkinakis v Greece* (Application no. 14307/88), 25 May 1993, ECHR, para. 52.

⁷⁸ *S. W. v. UK* (Application no. 20166/92), 22 November 1995, ECHR, para. 38.

⁷⁹ I/A Court H.R., Castillo Petruzzi et al. v. Peru, Merits, Reparations and Costs. Judgment of May 30, 1999, Series No. para. 121.

result was that a number of legal frameworks were developed which were simultaneously applicable during the period in which Royal Decree No. 18 of 2011 was in force.”⁸⁰

This further highlights the ambiguous language of the Royal Decree No. 18 and its violation of article 15 of the ICCPR.

IX. The State has violated Mr Fairooz’s right to a nationality

Revocation of citizenship

128. The government has provided no evidence justifying the revocation of Mr Fairooz’s citizenship, and it is submitted that this action was a clear punishment for his exercise of freedoms of expression and association.⁸¹ By revoking Mr Fairooz’s citizenship, leaving him stateless, the government of Bahrain has violated Article 15 of the Universal Declaration on Human Rights which states, “*Everyone has the right to a nationality... No one shall be arbitrarily deprived of his nationality*”.⁸² This right was recognised in a strongly worded statement by the UN High Commissioner for Human Rights issued after the revocation on 7 November 2012.⁸³
129. Mr Fairooz believes that the decision to revoke his citizenship was not made through the proper channels and is not clear that a valid and fair forum to raise an appeal is available, if he were to attempt an appeal. Article 14(5) of the ICCPR provides the right to have a conviction or sentence reviewed by a higher tribunal according to law. However, the right to have a decision reviewed can only be exercised effectively if the person subject to the decision is entitled to have access to a duly reasoned, written judgment in relation to the decision, as well as evidence in support of the decision. Such reasoning and evidence are not available in relation to Bahrain’s decision to revoke Mr Fairooz’s citizenship and as such Mr Fairooz cannot be said to have a real avenue to appeal.

X. Remedial action taken

Allegations of arbitrary arrest, torture and ill-treatment

130. Mr Fairooz, along with fellow resigned MP Matar Matar, wrote a detailed letter of complaint about his arbitrary arrest and ill-treatment, and the fire bombing of his house, to the authorities, which was sent to the following agencies on 27 September 2011:
 - HM King Hamad;
 - Dr Fatima Al Balooshi (Bahraini Minister of Social Development);
 - Minister of Interior;
 - Minister of Justice and Islamic Affairs;
 - Military Prosecutor;

⁸⁰ BICI Report, above n.1, para. 166.

⁸¹ In response to the Inter-Parliamentary Union complaint process (see next section), the Government appeared to justify the revocation on the basis that “Mr. Fairooz was associated with calls made in some quarters to consider Bahrain as the fourteenth province of the Islamic Republic of Iran”: see Appendix 9: Decision of the IPU, January 2013, p.3. Such a call is entirely at odds with his political agenda and demands which have called for serious reforms to establish a true constitutional monarchy through dialogue and peaceful measures.

⁸² Universal Declaration of Human Rights, Art. 15.

⁸³ See Appendix 6: UN Office of the High Commissioner for Human Rights, *Press briefing notes on Bahrain, Democratic Republic of Congo and Egypt*, 23 November 2012, available at:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12828&LangID=E>.

- Public Prosecutor;
 - Bahrain Center for Human Rights;
 - the National Security Agency Director; and
 - the Chairman of the Council of Representatives.
131. A copy of the letter of complaint is attached as Appendix 4, along with an unofficial translation.
132. Mr Fairooz's case was also one of the cases referred to in the BICI Report presented to the government on 23 November 2011. A copy of the reference to his case (Case No. 55) is extracted at Appendix 2.
133. Following the release of the BICI Report, the government committed to investigating allegations of torture and ill-treatment from the relevant period, and set up a Special Investigation Unit within the public prosecution to carry out investigations. However, Mr Fairooz's complaint concerned conduct by military officers, and it was accordingly assigned to the Military Prosecutor (an agency closely connected to the torture and ill-treatment he had suffered, particularly through the ill-treatment inflicted on him before and after his questioning on 18 June, including at the organisation's premises). Mr Fairooz made a detailed statement to the Military Prosecutor on 23 October 2011, in the presence of his lawyer. His wife was also called to give a statement. Since that time he has not been contacted further about the complaint, but has heard through the Inter-Parliamentary Union process (see next paragraph) that "*no evidence has emerged thus far to sustain the allegations of ill-treatment*"⁸⁴ and that the investigation by the military prosecution has been closed.
134. A complaint was also filed on Mr Fairooz's behalf with the Committee on the Human Rights of Parliamentarians of the Inter-Parliamentary Union. This Committee has a mandate to investigate alleged violations of human rights affecting individual (or groups of) members of national parliaments. Although it cannot itself directly provide a remedy, a case remains on the agenda of the Committee and, if it is examined under its public procedure, of the Governing Council, until a satisfactory settlement has been reached.⁸⁵
135. In January 2013 the Committee adopted a decision, which is attached as Appendix 9. Through that decision, the Committee expressed its concern that:
- despite these efforts and the testimony provided by both Mr. Fairooz and Mr. Matar regarding their ill-treatment in detention, the authorities have been unable to complete the investigation more than one-and-a-half years after the alleged ill-treatment took place.
136. It further urged the authorities:
- bearing in mind the extremely serious conclusions of the Bahrain Independent Commission of Inquiry regarding the use of torture and other forms of physical and psychological abuse of detainees during and after the protests, to ensure that the investigation will swiftly shed full light on the allegations.
137. It also noted "*with deep concern* that Mr. Fairooz has been stripped of his nationality" and stressed that "under international law, the revocation of nationality is an extremely serious measure, all the more so if it leads to statelessness, and can only take place with

⁸⁴ Appendix 9: Decision of the IPU, January 2013, p. 2.

⁸⁵ For further information about the Committee's procedure see <http://www.ipu.org/hr-e/procedure.htm>.

full respect for due process”, and asked for further information from the government.⁸⁶ The IPU procedure remains ongoing.

138. Bahrain is duty-bound to provide an effective remedy and reparation for violations suffered in order to comply with the CAT and the ICCPR. That remedy should include an effective and impartial investigation into the violations, bringing those responsible to justice, and the provision of reparation in the form of restitution, compensation, rehabilitation, measures of satisfaction and guarantees of non-repetition.

⁸⁶ *Ibid.*, pp. 3-4 (emphasis in original).

XI. Information concerning the author of the present report:

139. REDRESS is an international human rights non-governmental organisation, based in London, with a mandate to assist torture survivors to seek justice and other forms of reparation. It fulfils its mandate through a variety of means, including casework, law reform, research and advocacy. It has accumulated a wide expertise on the various facets of the right to reparation for victims of torture under international law and regularly takes up cases on behalf of victims of torture before national, regional and international human rights mechanisms and courts and tribunals.

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⁸⁷ Available at: <http://www.bna.bh/portal/en/news/532098>.

⁸⁸ Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12828&LangID=E>

⁸⁹ Available at: <http://www.bahrainlaw.net/post1187.html>

Appendix 2: Extract from Report of the Bahrain Commission of Inquiry, p. 462.

CASE NO. 55

Date of statement: 03 August 2011

Statement: The detainee was arrested at his home at approximately 20:30 on 2 May 2011 by a group of masked civilians. The masked civilians videotaped his arrest. He was blindfolded and taken to an unknown location where he was interrogated for two hours while still blindfolded. The interrogator did not introduce himself or the institution for which he worked. After the interrogation, masked men took photographs of the detainee and then put him in an isolated cell (2m x 1.5m). He was interrogated again the following day and threatened with physical torture and electrocution. He was later cursed and insulted while being examined in a medical clinic. On 4 May, they began to torture him in his cell. He was deprived of sleep as he was forced to stand with his hands raised. He was threatened that he would be subjected to physical torture if he sat down. This process lasted until midnight.

On 5 May, the detainee was transferred to the NSA where he was kept in an isolated cell for 45 days and interrogated regularly. Based on the questions asked during interrogations, the detainee concluded that he had been arrested because of his political views and activities and because he was a member of Al Wefaq.

The detainee and several others were taken to the Military Prosecution on 18 May. While waiting to enter, he was beaten and mocked by the guards. The investigation at the Military Prosecution lasted 10 hours. He did not consult with a lawyer. He was then taken to a military facility where he was kicked, punched and severely beaten with metal sticks. The guards took the detainee to a man called the Al Sheikh who cursed him, insulted his sect and beat him using a metal rod on his face, ears and back. On the way back to the NSA, one of the guards beat the detainee again and threatened him with rape.

On 29 May, the detainee was allowed a five-minute telephone call to his family but he was not allowed to say anything about his location or the torture he had suffered. Throughout his detention in the NSA, he was kept blindfolded in an isolated cell.

On 17 June, he was transferred to Dry Dock Detention Centre where he was kept in a small cell with another person. He was denied access to the Quran and a prayer rug for the first three days. He was permitted his first family visit on 19 June and was transferred to Al Qurain Prison on 22 June.

Appendix 10: Extracts of relevant Bahraini legislation

Arrest and Detention

Article 19 of the Constitution of Bahrain 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 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.⁹⁰*

Torture and ill-treatment

Penal Code, Article 208 (applicable at time of arrest and detention)

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.

Penal Code, Article 208 (as amended October 2012⁹¹)

A prison sentence shall be the penalty for every civil servant or officer entrusted with a public service who causes severe pain or sufferings, physically or morally, either personally or through a third party, to a prisoner or a detainee to get from him information or confessions or to penalize him for something he has committed or he is accused of having committed. The same sanction is applied for the intimidation or coercion.

A prison sentence shall be the penalty for every civil servant or officer entrusted with a public service who threatens, either personally or through a third party with his full consent, a prisoner or a detainee for any of the causes cited in the first paragraph.

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

This article shall not be applied on cases of pain and suffering caused by, resulting from or accompanying legal procedures or sanctions.

The obsolescence period shall not be applied for torture crimes cited by the article.

Penal Code, Article 232 (applicable at time of arrest and detention):

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

⁹⁰ *Ibid.*, above n. 1, para. 1225

⁹¹ See BICI Follow-Up Report, above n.56, Appendix 3 (available at: http://www.biciactions.bh/wps/themes/html/BICI/pdf/report/nc_report_en_app3.pdf), p.157.

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.

Penal Code, Article 232 (as amended October 2012⁹²):

A prison sentence shall be the penalty for every person who causes severe pain or sufferings, physically or morally, either personally or through a third party, to a prisoner or a detainee to get from him information or confessions or to penalize him for something he has committed or he is accused of having committed. The same sanction is applied for the intimidation or coercion.

A prison sentence shall be the penalty for every person who threatens, either personally or through a third party with his full consent, a prisoner or a detainee for any of the causes cited in the first paragraph.

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

This article shall not be applied on cases of pain and suffering caused by, resulting from or accompanying legal procedures or sanctions.

Bahrain Code of Criminal Procedure, Article 61:

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.

Freedoms of Expression and Peaceful Assembly

Penal Code, Article 165:

Any person who uses one of the publication methods to incite hatred towards the ruling regime or show contempt towards it shall be punished with imprisonment.

Penal Code, Article 168 (this has since been amended⁹³):

A punishment of imprisonment for a period of no more than two years and a fine not exceeding BD 200, or either penalty, shall be imposed upon any person who wilfully broadcasts any false or malicious news reports, statements or rumours, or spreads adverse publicity, if such conduct results in disturbing public security, terrorising people or causing damage to public interest.

The same penalty shall be imposed upon any person who possesses, either personally or through others, any documents or publications containing anything provided for in the preceding paragraph, if they are intended for distribution or reading by others, and upon any person who possesses any publishing, recording or promotion device intended, even on a temporary basis, for the printing, recording or broadcast of any of the above.

Penal Code, Article 178:

Every person who takes part in a demonstration in a public place where at least five persons are assembled with the aim of committing crimes or acts intended to prepare or facilitate the commission of such crimes or aimed at undermining public security,

⁹² *Ibid*, p.158.

⁹³ *Ibid*, p.120.

even though for the realization of a legitimate objective, shall be liable for imprisonment for a period of no more than two years and a fine not exceeding BD 200, or either penalty.

Penal Code, Article 69bis (enacted in October 2012⁹⁴):

Restraints on the liberty of expression in this law or any other law are explained in the context needed for a democratic community. The practice of the liberty of expression in this frame is exempted from sanctions.

⁹⁴ *Ibid*, p.121.