REDRESS

Ending Torture. Seeking Justice for Survivors

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The Redress Trust

1. REDRESS is an international human rights non-governmental organisation, based in the United Kingdom, with a mandate to assist torture survivors to seek justice and other forms of reparation.

2. In the period covered by the review, REDRESS has been closely involved in the case of an individual who was subjected to torture and ill-treatment by the Bahrain National Security Agency in 2010-2011. The details of this case are outlined below. REDRESS has also been in direct and frequent contact with Bahraini civil society organisations and family members of people detained and imprisoned in Bahrain throughout this year.

Summary

3. In this submission, REDRESS provides information concerning Bahrain's failure to uphold its obligations[1] in the context of the **prohibition of torture and cruel, inhuman or degrading treatment or punishment**. Over the past eighteen months – and particularly since March 2011 – Bahrain has seen a massive increase in the reported use of torture within its police stations and by its state security services against those accused of challenging the regime. The frequency of and recurring patterns of this torture suggest that it has been carried out in a systematic way, at least in respect of the recent crackdown against protesters.

4. This submission focuses initially on an individual case of torture by the state security services, highlighting the pattern of violations found in the many other allegations of torture raised over the past eighteen months. These include arbitrary arrest and initial incommunicado detention; use of consistent methods of torture; denial of access to a lawyer; unfair trials and refusal to independently investigate complaints.

5. The submission then highlights some of the failings in law and its implementation which have facilitated these violations including repressive criminal laws, military trials of civilians, failure to implement safeguards in detention, excessively long detention without judicial scrutiny, and continuing impunity for torture.

The Case of Jaafar Al Hasabi[2]

6. REDRESS represents Mr Jaafar Al Hasabi, a Bahraini/British national. He was initially tortured in Bahrain in the early 1990s and, after fleeing to the United Kingdom, sought reparation from the Bahraini government to no avail. On a visit to Bahrain in August 2010 he was again arbitrarily arrested and detained for more than six months, during which he was subjected to severe torture at the hands of Bahraini security agents. His case throws stark light on the fact that while the incidence of torture in Bahrain may have reduced during the last decade – before again

[1] Under the UN Convention Against Torture and the International Covenant on Civil and Political Rights.
[2] For further details, see the allegation letter available at http://www.redress.org/downloads/Allegation%20letter%20Jaafar%20Al%20Hasabi.pdf and annexed to this submission.

skyrocketing during the harsh crackdown beginning last year – the infrastructure for carrying out that torture was still solidly in place and the use of torture and police brutality is deeply ingrained in the security and police system.

7. In August 2010, while on a trip back to Bahrain to visit family, Mr Al Hasabi was arrested at the airport by plain-clothes officials and taken to a building used by the National Security Agency known as 'the Fort' in Manama. In the initial six weeks of his detention, Mr Al Hasabi was subjected to severe torture, including almost continual blindfolding, beatings and kicking during interrogation, electric shocks, *falaqa* (beatings to his feet), forced standing, use of stress positions, threats to his family, and sleep deprivation. He was made to sign a confession which he says was false.

8. Mr Al Hasabi was initially held incommunicado and denied access to a lawyer. After 15 days he was taken before a magistrate and although a lawyer was present, Mr Al Hasabi was not given the opportunity to speak to him before the hearing or at all in private. During the hearing the lawyer asked about marks on Mr Al Hasabi's wrists, and he said he had been tortured. The magistrate took note of this, but did not remark further. Mr Al Hasabi was only allowed access to his family after six weeks.

9. Late in 2010, Mr Al Hasabi was charged with criminal offences based solely on confessions obtained under torture and was brought to trial with 22 other detainees for alleged terrorism offences.[3] The detainees were denied the opportunity to prepare a defence – speaking with their lawyers for the first time only for half an hour during the first hearing. They made allegations of torture which were raised on numerous occasions before the court, but the court did not consider the admissibility of the confessions.[4] No independent investigation was carried out into the allegations, no independent medical examination was allowed[5] and to our knowledge no person has been punished. In December 2010 after a number of hearings the detainees' lawyers resigned en masse in protest at the violation of their clients' rights.[6]

10. Mr Al Hasabi and those being tried with him were released in February 2011 after the uprising in Bahrain. Mr Al Hasabi returned to the UK where he has since remained, however others who had been detained with him[7] were re-arrested in March 2011 and were sentenced (along with nine other political prisoners) on 22 June 2011 by a military 'National Safety Court' to periods of imprisonment between 15 years and life.

[3] The detainees were charged with setting up, joining and financing a group which aimed to overthrow the government using "terrorism" as one of the methods to achieve these goals.
[4] See reports of the hearings in this case (i) 28 October 2010, by Laila Dashti, Bahraini Human Rights Activist (http://www.bahrainrights.org/en/node/3540); (ii) 11 November 2010, by Frontline Defenders (http://www.frontlinedefenders.org/files/Front%20Line%20Bahrain%20HRD%20Trial%20Observation%20Report.pdf) and by Bahrain Center for Human Rights (http://www.bahrainrights.org/en/node/3681); (iii) 25 November 2010, by Bahrain Center for Human Rights (http://bahrainrights.hopto.org/en/node/3695); (iv) 9 December 2010, by Bahrain Center for Human Rights (http://www.bahrainrights.org/en/node/3687) ; (v) 23 December 2010, by Arab Network for Human Rights Information (http://www.anhri.net/en/?p=1840).
[5] See in particular reports of the hearing on 11 November 2010 where this issue was raised, referred to above.
[6] See the report of the hearing on 9 December 2010, referred to above at n..
[7] Including Dr Abduljalil al-Singace, Sheikh Mohammed Habib, Almuqdad, Sheikh Sa'eed al-Nuri, Sheikh Abdul-Hadi al-Mukhodher, and Sheikh Mirza al-Mahroos.

11. Mr Al Hasabi's case is an example of a pattern of violations which – despite the Bahraini government's denials – have continued to occur in Bahrain[8] and which have been replicated on a massive scale since March this year.[9] Although in the previous cycle of the UPR process the government of Bahrain was at pains to stress that torture was a historic legacy in Bahrain, [10] Mr Al Hasabi's case shows that just as torture was used in the early 1990s, it continues to be used today.

12. A combination of factors contributes to an environment in which these violations continue to occur. REDRESS draws attention to the following failings which must be addressed as a matter of urgency.

Repressive criminal laws and unfair trials

Penal Code

13. Some provisions in the Penal Code are exceptionally vague or broad and have been used to criminalise the exercise of the freedoms of expression, peaceful assembly and association. These provisions are incompatible with the fundamental freedoms enshrined in the ICCPR, but they also significantly facilitate arrest and detention, putting individuals at real risk of torture.

14. Challenges to the current political system are outlawed and punishable by law. For example, it is a crime punishable by imprisonment:[11]

- for a citizen to attend a public meeting abroad with the intent of discussing political, social or economic conditions in the State of Bahrain so as to "undermine its prestige or standing";[12]

- to "expressly incite others to develop hatred or hostility towards the system of government";[13]

- to wilfully broadcast any "false or malicious news reports, statements or rumours or to spread adverse publicity, if such conduct results in disturbing public security, terrorizing people, or causing damage to public interest";[14]

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[8] See REDRESS's submission to the Parliamentary Human Rights Group Seminar on 21 August 2008, p.2, at: http://www.redress.org/downloads/country-reports/Bahrain_seminar_presentation_main.pdf.

[9] See for example, reports from Human Rights Watch: *Bahrain's Human Rights* Crisis, 5 July 2011, p. 4 at http://www.hrw.org/sites/default/files/related_material/Bahrain's%20Human%20Rights%20Crisis_0.pdf; *Bahrain: Medics Describe Torture in Detention*, 21 October 2011, at http://www.hrw.org/news/2011/10/21/bahrain-medics-describe-torture-detention; Bahrain Center for Human Rights: *Sports Journalist Faisal Hyat speaks of torture at Bahrain detention center*, 16 September 2011, at http://www.bahrainrights.org/en/node/4723; Human Rights Watch: *Targets of Retribution: Attacks against Medics, Injured Protesters and Health Facilities*, July 2011 at http://www.hrw.org/sites/default/files/reports/bahrain0711webwcover.pdf.

[10] See, eg. the Bahraini Government's submission to the First Cycle of the UPR, p.22, at http://www.upr-info.org/IMG/pdf/Bahrain_State_report_Off_EN_2008.pdf.

[11] Note that on 24 October 2011 the government announced that Parliament would vote on reforms to some, but not all, of these provisions: amending Article 168, repealing Articles 134A and 174, and introducing a new article on freedom of expression. However, at the time of submission of this report these amendments had not yet been passed.

[12] Bahrain Penal Code, as enacted by Amiri Decree No. 15 of 1976, art. 134A.

[13] *Ibid.* art. 165.

- to produce or possess any "pictures designed to cause offence to the country's reputation";[15] and

- to offend "the Amir of the country, the national flag or emblem"[16] or "the National Assembly, or other constitutional institutions, the army, law courts, authorities or government agencies".[17]

Such offences have been used on a massive scale to detain and convict people involved in peaceful protest since March this year.[18]

15. Bahraini law also imposes a prison sentence on anyone who promotes or favours the overthrow or changing of the political, social or economic system of the State by use of force, threat or any other illegitimate method,[19] or who forms an organisation with this object.[20] Additionally, demonstrators can be imprisoned if they are believed to be assembled with the aim of undermining public security or are deemed to be using or attempting to use violence.[21] Experience has shown that these provisions are open to abuse to repress any kind of criticism of the regime – whether violent or not. Widespread use of torture, reliance on forced confessions,[22] lack of access to lawyers and adequate time to prepare and present a defence,[23] and judges who do not appear to be impartial and independent,[24] mean that it is almost impossible for a person facing such charges to receive a fair trial.

Emergency Laws

16. On 15 March 2011, a state of National Safety was declared in response to the protests, and was renewed once for a second three month period.[25] This increased the scale

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[14] *Ibid.* art. 168.
[15] *Ibid.* art. 174.
[16] *Ibid.* art. 214.
[17] *Ibid*. art. 216.
[18] For example, many of the medical professionals arrested since March 2011 were charged with, among other things, incitement against the regime and dissemination of false news (http://www.hrw.org/news/2011/07/18/bahrain-systematic-attacks-medical-providers) and similarly, leading political activists were convicted of charges including spreading false news and inciting hatred towards the system of government (http://www.bna.bh/portal/en/news/474496).
[19] *Ibid.* art. 160.
[20] *Ibid.* art. 159.
[21] *Ibid.* arts. 178 and 179.
[22] See, e.g. Human Rights Watch Report: *Bahrain Torture Redux: The Revival of Physical Coercion during Interrogations in Bahrain*, February 2010, pp.30-58 at http://www.hrw.org/reports/2010/02/08/torture-redux-0.
[23] See, e.g. Human Rights Watch Report: *Bahrain: Set Aside Martial Law Death Sentences*, 2 May 2011 at http://www.hrw.org/news/2011/05/02/bahrain-set-aside-martial-law-death-sentences; *Bahrain's Human Rights Crisis*, 5 July 2011, p. 6-7, above n..
[24] See, e.g. Abovementioned HRW reports; reports from the fourth hearing of Mr Al Hasabi and the other defendants at http://www.bahrainrights.org/en/node/3687; Amnesty International Report *Bahrain Harsh Jail Terms for Opposition Figures*, 23 June 2011at http://www.amnesty.org/en/library/info/MDE11/036/2011/en.
[25] In accordance with the Constitution, a state of National Safety or martial law can be proclaimed by decree for a period of three months, and can be renewed subject to the approval of the National Assembly: Constitution, art. 36(b). During a period of martial law any constitutional provisions may be suspended within the limits prescribed by the law: Constitution, art. 123 (the only exceptions are that the meetings of the Consultative Council and the Chamber of Deputies cannot be suspended, and the immunities of its members cannot be interfered with). This does not expressly apply, however, to a state of National Safety.

and intensity of human rights violations in Bahrain, and in particular led to a spike in arbitrary arrests and the trying of civilians before military-led courts.

17. These courts, specially constituted under the law and termed courts of 'National Safety', are headed by a military judge, and cases are prosecuted by a military prosecutor. They started hearing cases in June and it appears that all those who have been charged with felonies and who have already been referred to the courts will continue to be tried there. Credible reports put the number of those convicted or facing charges before such courts at approximately 400.[26]

18. Even in a state of emergency, let alone when it has lapsed, military courts should in principle not have jurisdiction to try civilians, because of serious concerns over their ability to adhere to the guarantees of a fair trial.[27] These are concerns that have been borne out in the case of Bahrain.[28]

19. The Government itself appears to have misgivings about the fairness of the military trials – having ordered the 'retrial' in a civilian court of 24 medics convicted of offences before the National Safety Court.[29] However, no such retrial has been provided for the hundreds of other people convicted by the National Safety Courts, (including three facing the death penalty[30]), nor have the trials of those still facing charges been transferred to civilian courts.

Counter-Terrorism Laws

20. Bahrain's Law no. 58 of 2006 with respect to the protection of the community against terrorist acts (the "Terrorism Law") has also been used to detain and convict those exercising their legitimate rights. The definition of terrorism and what constitutes association with, promotion of and approval of terrorism contained in the law are extremely broad[31] and – particularly when combined with unfair trials – can and has been used to arbitrarily detain individuals challenging the regime.[32]

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[26] See Human Rights Watch, 'Bahrain's Human Rights Crisis', 5 July 2011, p. 5, above n.. One lawyer who represented some of those convicted, told Al Jazeera in October that the total numbers of those who had faced charges in the military courts is not clear - but estimated at least 600. In one two week period in September 2011, 208 people were sentenced or lost appeals in the National Safety Courts. http://www.aljazeera.com/news/middleeast/2011/10/201110235173013184.html.

[27] UN Human Rights Committee, *Akwanga v Cameroon*, Communication No. 1813/2008, 19 May 2011, UN Doc. CCPR/C/101/ /D/1813/200 and General Comment No. 13, para. 4.

[28] See eg. Human Rights Watch, *Bahrain's Human Rights Crisis*, 5 July 2011, above n. .

[29] See the government statement dated 5 October announcing this at http://www.bna.bh/portal/en/news/475486.

[30] Which, imposed after an unfair trial constitutes a grave violation of the right to life. Those sentenced to death are Ali Al-Singees (19) and Abdulaziz Husain (24), who were convicted of murder by the National Safety Court on 28 April 2011, and Ali Al-Taweel (22), who was convicted of murder by the National Safety Court on 29 September.

[31] "Terrorism" is defined as "the use of force or threatening to use it or any other unlawful means constituting a crime legally punishable by law resorted to by a perpetrator for the execution of an individual or collective criminal plan with the aim of disrupting public order or threatening the Kingdom's safety and security or damaging national unity or security of the international community if this would result in harming persons terrorizing and intimidating them and endangering their lives, freedoms or security or causing damage to the environment, public health, national economy or public utilities, facilities or properties or seizing them and obstructing the performance of their business activities, preventing or obstructing the government authorities, places of workshop or academic institutions from carrying out their activities": art. 1.

[32] For example, Mr Al Hasabi and the others tried with him in 2010, and the 21 opposition activists convicted in June 2011, referred to above at para. 4.

Lack of safeguards in detention

21. Although Bahrain has some safeguards in its laws to ostensibly prevent acts of torture,[33] there are nonetheless consistent and credible reports that these minimal protections are being violated.

22. More thorough and effective safeguards and a greater degree of independent oversight are necessary to ensure that these laws are upheld. Prompt access to lawyers must be ensured, the right to inform family members or third persons about one's detention must be provided in practice, and the right to an independent medical examination (not by a doctor employed by the Prosecutor's office[34]) must be guaranteed. Tied to this, significant reforms of the judiciary are urgently needed to ensure that independent judicial oversight of detention can operate effectively in practice.

23. Laws permitting prolonged periods of detention without judicial oversight and conferring significant power on the Prosecutor are also highly problematic.

24. Under the Criminal Procedure Code, an individual can be detained in custody for up to seven days,[35] which is long by international standards. In cases falling within the national security section of the Penal Code, however, these powers are significantly broadened, further reducing any safeguards that might otherwise exist. In such cases, the public prosecutor may extend detention up to 45 days,[36] and the High Criminal Court can then approve further pre-trial detention of successive terms of 45 days.[37] The Prosecutor also has the power to order that the detained person does not have contact with anyone other than their lawyer.[38]

25. Similarly, for alleged crimes under the Terrorism Law[39] an individual may be held for five days on the order of a (non-judicial) "judicial arrest officer", which can be extended by a further 10 days by the public prosecutor.[40] The public prosecutor may further order that a suspect be held in detention for investigation for a period of up to 60 days.[41] This detention can be extended on the basis of secret evidence to which the detainee has no access.[42]

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[33] For example, under the Criminal Procedure Code persons arrested or detained have the right to be informed of the reasons for their arrest, the right to contact relatives and to seek the aid of a lawyer: Law of Criminal Procedures promulgated by Legislative decree No.(46) of the year 2002 , art. 61.

[34] As was the case in Mr Al Hasabi's case: during the hearing on 11 November 2011 the detainees' lawyers objected to medical examinations being carried out by the medical examiner connected to the Public Prosecutor's office because of serious concerns about impartiality and independence, and requested examination by an independent medical committee. This request was denied: see the reports of the hearing referred to above n. , p. 6 (Frontline Defenders report), and p. 2 (Bahrain Centre for Human Rights report).

[35] This period can be extended by a Lower Court Judge for successive terms totalling up to 45 days: Criminal Procedure Code, art. 147.

[36] *Ibid.*

[37] *Ibid.* art. 148

[38] *Ibid.* art. 146

[39] Referred to above at para. 20.

[40] Law no.58 of 2006 with respect to the protection of the community against terrorist acts, art. 27. The "judicial arrest officer" referred to in the legislation is not a member of the judiciary and is not vested with the same guarantees of judicial independence, but is instead under the authority of the Public Prosecution.

[41] *Ibid.* art. 26.

[42] *Ibid.* art. 28.

26. As shown in Mr Al Hasabi's case and others this initial period of detention, often incommunicado, has provided the environment in which torture takes place.

Failure to investigate and prosecute complaints of torture, and to provide reparation

Investigation and prosecution

27. The Penal Code stipulates a prison sentence for every civil servant or officer who uses "torture",[43] force or threat against a person to force them to make a confession or statement.[44]

28. However, allegations of torture are not seriously investigated and there continues to be a long-standing culture of impunity.[45] To date, within the domestic legal system, there has been a complete failure to ensure independent investigations and accountability for torture. For example, in Mr Al Hasabi's case, medical examinations were perfunctory and carried out by doctors attached to the public prosecutor's office,[46] and judges refused at some hearings even to hear complaints of torture,[47] let alone requiring them to be investigated.

29. We note that the King of Bahrain has appointed a Commission of Inquiry to examine events since February this year. While this is a welcome development, the Commission has a limited mandate both in terms of the period of time examined and the object of its investigation.[48] During its operation domestic systems have continued to abdicate responsibility to ensure prompt investigations of alleged violations and an effective remedy for victims, in itself amounting to further and continuing violations. We look forward the Commission's findings and recommendations, but stress that the Government of Bahrain must go beyond the outcomes of the inquiry to entrench the rule of law and address the deeply ingrained structural conditions leading to torture and impunity for it.

Effective remedy

30. Bahraini law does not provide clear or specific remedies for torture or ill-treatment. Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Bahrain has an obligation to ensure that the victim of an act of torture obtains redress, which includes restitution, compensation,

[43] Although this term is not defined.
[44] Penal Code art. 208.
[45] See, for example, the Committee Against Torture's concluding observations on Bahrain in 2005 (UN Doc. CAT/C/CR/34/BHR of 21/06/2005), where it noted with concern "[t]he apparent failure to investigate promptly, impartially and fully the numerous allegations of torture and ill-treatment and to prosecute alleged offenders, and in particular the pattern of impunity for torture and other ill-treatment committed by law enforcement personnel in the past" (para. 6(f)).
[46] See n. .
[47] See, e.g. In Mr Al Hasabi's case, allegations of torture made by the defendants were not recorded in the minutes of the session and the judge only indicated that the "defendants are showing me their legs" (http://www.frontlinedefenders.org/node/13947), additionally, not all defendants were permitted to show their injuries to the judge (http://bahrainrights.hopto.org/en/node/3695).
[48] Determining whether violations of human rights law and norms took place, and to make recommendations as it sees fit.

rehabilitation, satisfaction and guarantees of non-repetition.[49] The only option under Bahraini law is for victims of torture to institute civil proceedings,[50] but given the unwillingness of Judges to address complaints of torture in criminal cases, that has not been seen by victims to be a realistic avenue for redress.

31. A further obstacle in the way of obtaining a remedy for torture committed since March 2010 has been the intimidation of the medical profession by the bringing of charges against certain doctors and medical staff who treated protestors.[51] REDRESS has received credible reports that this has made it more difficult for victims of torture to be treated and for evidence of torture to be collected.

Recommendations

REDRESS makes the following recommendations to Bahrain:

- Ratify and effectively implement international human rights treaties, including the Optional Protocol to the CAT, the Optional Protocol to the International Covenant on Civil and Political Rights, the Rome Statute of the International Criminal Court and the Convention on Enforced Disappearances and to accept the competence of the Committee Against Torture to hear individual communications under the CAT;

- Extend a standing invitation to all Special Procedure mandate holders;

- Repeal Articles 134A, 165, 168, 174, 214 and 216 of the Criminal Code, and repeal Law no.58 of 2006;

- Immediately halt trials of civilians in military courts, overturn convictions of those already found guilty by such courts, release all persons held for exercising their legitimate rights, and provide reparation to those wrongfully detained and tried;

- Introduce deep reforms to the judiciary to ensure its independence and impartiality;

- Implement more effective safeguards and stricter oversight measures to protect detainees from torture and ill-treatment, including requiring immediate access to a lawyer and informing family of arrest, requiring a lawyer to be present at all interviews with detained persons and for those interviews (and not just confessions) to be video-recorded, excluding from any criminal trial evidence obtained from a suspect without a lawyer present and introducing a system of independent monitoring of places of detention;

[49] See UN Committee Against Torture, *Guridi v Spain*, Communication No. 212/2002, UN Doc. CAT/C/34/D/212/2002, para. 6.8.
[50] Criminal Procedure Code art.22; Civil Law, promulgated by Legislative decree no.19 of 2001, art. 158.
[51] For a discussion of this case see Fulton, Sarah (2011) 'International Law and the Prosecution of Medics in Bahrain', http://www.ejiltalk.org/author/sarahfulton/. For reference to the climate of fear facing medical professionals see Medecins Sans Frontieres, 'Health Services Paralyzed: Bahrain's Military Crackdown on Patients: An MSF Public Briefing Paper', April 2011, http://www.msf.org.au/uploads/media/Bahrain_Briefing_Paper_MSF_7APR11.pdf.

- Introduce a 24 hour time limit within which a detained person must be brought before an independent Judge, in all circumstances, including in relation to terrorism and national security offences;

- Conduct a full review of law enforcement and security service procedures and interrogation methods, including the adoption of internal guidelines and procedures;

- Introduce a complaints procedure for allegations of torture and ill-treatment and an independent investigations and prosecutions unit to examine such complaints, and ensure that all perpetrators – including those having command responsibility – are prosecuted;

- Respond fully and seriously to the recommendations of the Bahrain Independent Commission of Inquiry;

- Ensure that victims of torture and other human rights violations, including those based outside Bahrain, have prompt access to adequate and effective remedies and reparation.