



Accountability for Human Rights Violations in Bahrain

Comments by Carla Ferstman, Director of REDRESS

Bahrain : Codifying repression and dictatorship

12.00 PM, Wednesday 23rd August 2006

Committee Room 134, 2 Mill Bank, London SW1P 3LX (Annexe to the House of Parliament)

REDRESS has a longstanding interest in the human rights situation in Bahrain and we are very pleased to be part of these discussions.

Bahrain's accession to a number of key international human rights treaties, including to the *United Nations Convention against Torture and Cruel, Inhuman and Degrading Treatment and Punishment* in 1998, gave rise to high hopes within and outside of Bahrain for a new era of respect and tolerance; that torture and other forms of ill-treatment would cease to be commonplace, and that the thousands of victims of these heinous practices would receive justice and other forms of reparation, as required by the Torture Convention. Yet eight years after the Convention came into force, we must take stock of this 'new era' and consider whether advances have indeed been made.

In 2002, a blanket amnesty was put in place by Decree No. 56 of 2002, extending to all officials who allegedly perpetrated crimes of torture and other crimes in relation to "offences that endangered or pose a threat to state/national security" under Decree 10 of 2001 and which fell within the jurisdiction of the State Security Court. REDRESS commented in the past on this amnesty decree and its impact on justice for victims of torture in Bahrain,¹ and the role of the UN Committee against Torture in assessing Bahrain's compliance with the Convention. The UN Committee against Torture in its recent consideration of Bahrain's compliance with the Convention, which took place in Geneva in May 2005, has recommended that Bahrain:

"(d) Consider[s] steps to amend Decree No. 56 of 2002 to ensure that there is no impunity for officials who have perpetrated or acquiesced in torture or other cruel, inhuman or degrading treatment;

(e) Ensure that its legal system provides victims of past acts of torture with redress and an enforceable right to fair and adequate compensation"²

¹ See <http://www.redress.org/publications/BahrainSubmissions.pdf>.

² See [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.34.BHR.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.34.BHR.En?OpenDocument).

The Government of Bahrain, in its reply as part of the deliberations before the UN Committee against Torture, noted that “Nobody had filed a claim for civil compensation based on allegations of torture and nobody had brought a claim before the Constitutional Court alleging that Decree No. 56 of 2002 was unconstitutional. That proved the unsound nature and lack of credibility of claims for compensation that failed to exhaust domestic remedies. In effect, such claims merely damaged the interests of those who had suffered human rights violations.”³

Reports suggest that a number of claims have indeed been filed by victims of torture, yet they have been blocked by the amnesty legislation. Additional research is needed to consider the extent to which constitutional remedies are available in principle and whether victims have access to such remedies in practice, given the prevailing climate of fear amidst recent reports of torture and ill-treatment and crackdowns on freedom of expression and association.

Indeed the Government’s new Counter-Terrorism Bill, also referred to in the concluding observations of the UN Committee against Torture in their deliberations in Geneva, attests to this climate of fear and insecurity, and is the latest in a series of concerns relating to Bahrain’s human rights record. In its concluding observations, the UN Committee against Torture noted with concern:

“(i) Certain provisions of the draft law on counter-terrorism which, if adopted, would reduce safeguards against torture and could re-establish conditions that characterized past abuses under the State Security Law. These provisions include, inter alia, the broad and vague definition of terrorism and terrorist organizations and the transfer from the judiciary to the public prosecutor of authority to arrest and detain, in particular, to extend pre-trial detention” and “(f) Ensure that any measure taken to combat terrorism, including the draft law, is in accordance with Security Council resolutions which require, inter alia, that anti-terrorism measures be carried out with full respect for the applicable rules of, inter alia, international human rights law, including the Convention”⁴

REDRESS is particular concerned about the following aspects of the Counter Terrorism bill, which are likely to have a deleterious impact on a wide array of human rights protections in Bahrain:

A. Broad definition of terrorism:

The bill defines terrorism as “any use of force or violence or threat of its use, irrespective of its motives or purposes, or any other illegitimate mean, considered illegal and punishable by the law used, is pursued by the offender in execution of a criminal act, individually or collectively, with the aim of:

3

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/269bb04a0cb2c111c125700e0048cc4b/\\$FILE/G0541846.DOC](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/269bb04a0cb2c111c125700e0048cc4b/$FILE/G0541846.DOC), at para 34.

⁴ Supra, fn. 2, at Para 6(i).

- disrupting the provisions of the Constitution, laws, regulations or public disorder;
- endangering the safety and security of the kingdom;
- damaging the national unity, the security of the international community, if doing so would harm persons, terrorize them, intimidate, or endanger their lives, liberty or security;
- harming the environment, public health, national economy, facilities, installations, public or private property, or seizure or impairing the performance of its work;
- preventing or obstructing the public authorities, worship places, institutes of science, from performing their duties.

There has been a lot of debate internationally about what may be an appropriate definition of terrorism, if there is a need for a specific definition at all. The danger of creating a new criminal law definition to respond to terrorism is that such a definition will use imprecise language that casts doubt as to the acts being prohibited, or will use excessively broad definitions that may encompass acts that few would regard as terrorism. Vague terrorism definitions also risk arbitrary application and tend to be accompanied by a procedural framework that undermines important protections such as prompt access to a judge to challenge the legality of detention, prolonged and at times indefinite detention without formal charges being laid, all of which are contrary to fundamental principles of human rights. Vague and imprecise definitions are all the more dangerous when there is a lack of independence in the judiciary or an ineffective judicial system, given that one is not able to rely on the judiciary to interpret the vague definition in a sufficiently narrow way.

What has been recognised internationally, is that terrorist offences, where and if there is perceived to be a need to define them, should include a narrow and precise definition that should be no broader than any action intended to cause the most serious harm to civilians (death or serious harm to civilians) with the purpose (of intimidating a population or compelling a government or political or international organization to do, or abstain from doing, an act). The reference in the Bahrain Bill to a very wide variety of harm [any use of force or violence]; and very broad aims [disrupting the Constitution; damaging national unity, harming the national economy etc.] is for the reasons above cited, extremely dangerous, as it risks to catch a variety of other offences.

B. Restrictions on freedom of association, expression and assembly

Article 1 of the Counter-terrorism bill defines a prohibited terrorist act as including any act that threatens "national unity".

The reference in Article 6 to

“Founding, establishing, organizing or managing; ... an association, a commission, an organization, a group, a gang or a subsidiary; undertaking a

chairmanship or leadership, the purpose of which is the invitation, by any means; to disrupt the provisions of the Constitution, laws or prevent any of the State enterprises or public authorities from exercising their duty; or the attack on personal liberty of citizens, or other public rights and freedoms guaranteed in the Constitution and the law; or harm the national unity”

is particularly worrying giving the impact it may have for freedom of association and the potential for its use to repress political opponents or associations.

C. Excessive powers of the Public Prosecutor regarding detention without judicial review

The Bill grants the Public Prosecutor excessive discretion and arguably heightens the risk of torture or ill-treatment, and arbitrary detention. It is a fundamental principle of international law that persons have the right to be brought promptly before a judge or a judicial authority to challenge the legality of their detention (habeas corpus). This principle, as a key means to protect against non-derogable rights, has itself been recognized as a right that can never be derogated from, even in times of emergency. The principle of habeas corpus is fundamental to the rule of law, as it is an important check on arbitrary detention and may prevent abuses, including torture.

Article 27 allows for extensive detention before charge without judicial review, and whilst it provides some power to the public prosecutor to review the detention of individuals held for more than five days, this cannot be considered an effective or independent review by a judicial authority. The ability for security services to apply for an extension of detention before charges are laid is equally worrying, given that they are entitled to make this request on the basis of evidence that is not disclosed to the detainee.

Conclusions

Following the introduction of the amnesty decree which makes it virtually impossible for victims of past human rights abuses to obtain effective and enforceable remedies, the introduction of this counter-terrorism law is extremely worrying, for the reasons mentioned, and for the potential it has to reverse Bahrain to the situation that existed in the early 90's.

The range of UN statements that have been made are extremely important in showing the concern of the International Community with respect to the situation in Bahrain, but additional pressure is needed, to ensure that the UN and other bodies remain seized of the issue, and to encourage them to follow up effectively their recommendations.

The UN Committee against Torture recommendations (both with respect to the amnesty decree and the counter-terrorism bill) are designed to engage the government in a dialogue for positive change, but this will require consistent input from civil society groups, to ensure that the dialogue is fostered, and that it leads to improvements in the human rights situation for all in Bahrain.