



## **Bahrain Shadow report**

**Report submitted to the Committee against Torture in the  
context of the second periodic review of Bahrain**

**Alkarama Foundation – 20 March 2017**

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## 1. Introduction

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On 6 March 2016, the Bahraini government submitted its State report (CAT/C/BHR/3) under article 19 of the Convention pursuant to the optional reporting procedure to the Committee against Torture, which will be reviewed by the Committee during its 60<sup>th</sup> session on 21 and 24 April 2017.

Alkarama hereby submits this shadow report, in which it evaluates the implementation of the Convention against Torture (UNCAT) in Bahrain, highlighting its main concerns and addressing recommendations to the State party. This report is based on Alkarama's documentation of human rights violations in Bahrain over the last years – including cases of torture – as well as on a review of the State's Replies to the Committee's List of Issues Prior to Reporting (LOIPR) and provides an analysis of the relevant domestic laws and practices.

## 2. Background

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Bahrain proclaims itself a constitutional monarchy, in which the King, Sheikh Hamad bin Isa Al Khalifa, is the head of the State, who appoints the Prime Minister and the cabinet and has the power to dismiss the government. He also appoints the president and members of the upper chamber of the National Assembly, i.e. the Consultative Council (*majlis al shura*), while the lower chamber, the Council of Representatives (*majlis al nuwab*) is elected by universal suffrage. Yet, the King can rule by decree and dissolve the parliament at his discretion.

Moreover, the King is the chairman of the Higher Judicial Council and appoints judges. While the National Assembly drafts legislation and can propose amendments, the King has the right to veto laws passed by the National Assembly. He has the power to amend the Constitution as well as to propose, ratify and promulgate laws. Therefore, the ultimate legislative authority is vested in him.

While political parties remain illegal, political societies are allowed since 2001. In fact, a plethora of political societies from a wide range of society has formed. These operate as quasi parties and are permitted to select election candidates to form parliamentary blocs.

In February 2011, as part of the popular uprising in the Arab world, thousands of Bahrainis took to the street, demonstrating for political reform as well as greater political inclusion. Among the demonstrators, a large part of the Shi'a community was claiming for more political participation and denouncing the discrimination they were subjected to.

Protests began on 14 February 2011 at the Pearl roundabout in Manama City and were instantly repressed by the authorities causing numerous victims among demonstrators and law enforcement officers. On 14 March, at the demand of the Bahraini authorities, troops from Saudi Arabia and the UAE entered Bahrain in virtue of the military assistance cooperation between the countries in order to assist the local security forces. Meanwhile, the King declared a three-month state of emergency and enacted martial law.

The violent crackdown of this uprising resulted in 20 deaths among the protesters, including five who died under torture in detention. Security forces arrested more than 1,600 people who participated in, or allegedly supported, the demonstrations, and held most detainees in *incommunicado* detention for weeks, in some cases several months.<sup>1</sup>

Due to mounting pressure of the international community, the King appointed the Bahrain Independent Commission of Inquiry (BICI) in July 2011, chaired by Cherif Bassiouni, to investigate allegations of human rights abuses that occurred during the uprising. When the BICI released its report in November 2011, it confirmed that severe human rights violations were committed by National Security Agency and

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<sup>1</sup> Human Rights Watch, "The Blood of People Who Don't Cooperate" Continuing Torture and Mistreatment of Detainees in Bahrain, 22 November 2015, <https://www.hrw.org/report/2015/11/22/blood-people-who-dont-cooperate/continuing-torture-and-mistreatment-detainees> (accessed on 8 March 2017).

the Ministry of Interior and that the crackdown followed a systematic practice of physical and psychological mistreatment, which in many cases amounted to torture.<sup>2</sup> It is important to note though, that oppositional forces and NGOs such as the Bahrain Center for Human Rights (BCHR) voiced their reservations about the legitimacy of the BICI findings, criticising the commission for its incomplete investigations and having downplayed the events as an isolated outbreak of violence in an environment where there was otherwise “never a policy of excessive use of force”.<sup>3</sup> Simultaneously, the report included a catalogue of recommendations to remedy the breaches of human rights and avoid their repetition.

Upon the BICI’s recommendations, the government has established three bodies since 2012: the Office of the Ombudsman in the Ministry of Interior established by royal decree No. 27 of 2012; a Special Investigations Unit in the Office of the General Prosecutor, established by attorney general’s decision No. 8 of 2012; and the Prisoners and Detainees Rights Commission (PDRC), established by royal decree No. 61 of 2013. These institutions share a collective, but partially overlapping, mandate to set an end to torture in interrogation and detention facilities. Moreover, Bahrain’s National Institution for Human Rights, which was initially founded in 2009, only properly reassumed its work after the uprising in 2013, when it started to play a more active role in the promotion of a human rights culture and has made efforts to bring its mandate and objectives in greater line with the Paris Principle.

The confessional division remains at the heart of many issues and political fractures in the country today. The process of “National Dialogue” launched by the King on 1 July 2011, has not reached the announced objective of opening the political debate in order to realise reforms in Bahrain. Such a failure underlines the increasing polarisation of the society, particularly illustrated by the boycott of this process by Al Wefaq, the country’s main opposition party.

The repression against the opposition results in abusive arrests, often for political reasons, travel bans or deprivation of nationality. After the arrest of the Secretary General of Al Wefaq in December 2014, and the revocation of citizenship of many opponents in January 2015, the High Administrative Court of Bahrain pronounced, on 17 July 2016, the dissolution of the party for serious violations of the Constitution and national laws, being accused of “conducting of activities detrimental to the civil peace and unity” and “incitement to non-compliance with institutions”. This dissolution is contrary to the right to freedom of peaceful assembly and association.

The national reconciliation is all the more problematic with Bahrain’s participation with the Gulf Cooperation Council’s Saudi-led coalition against the Houthi rebels in Yemen, which significantly contributed to feed this polarisation of the society.

In addition, the rights and freedoms in the country are restricted by an oppressive legal arsenal: the 2006 Anti-Terrorism Law, the 2002 Press Law and certain provisions of the Penal Code. This repressive arsenal was repeatedly used to punish activists on account of their statements or public positions against the government, especially on social media.

### **3. Definition, criminalisation and absolute prohibition of torture**

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The Convention against Torture requires State parties to include in their domestic legislation a definition of torture compliant with article 1 of the Convention and to implement legislation that prohibits torture. Article 19 (d) of Bahrain’s Constitution provides that “[n]o person shall be subjected to physical or mental torture, or inducement, or undignified treatment [...]” and “any statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void.”

<sup>2</sup> BICI, *Report of the Bahrain Independent Commission of Inquiry*, 23 November 2011, <http://www.bici.org.bh/BICIreportEN.pdf>, p. 308 (accessed on 1 March 2017).

<sup>3</sup> BCHR, *BCHR Open Letter to Head of the Bahraini Independent Commission of Inquiry (BICI) re statement to Reuters*, 9 August 2011, <http://www.bahrainrights.org/en/node/4491> (accessed on 1 March 2017).

Article 61 of the Criminal Procedure Code (CPC) stipulates that “[n]o 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.”

In 2012, the Bahraini authorities amended the Penal Code (PC) articles 208 and 232 in order to bring its domestic legislation in line with international standards. Article 208 offers a definition of torture acquiescent to that of article 1 of the Convention:

Shall be punished by imprisonment each public servant or a person assigned to public service, who inflicted deliberately severe pain or suffering, whether physical or moral, to a person detained by him or under his control for the purpose of obtaining from him or from a third person information or a confession, or to punish him for an act he has committed or suspected to be committed by him or someone else, or to intimidate or coerce him or someone else, or for any reason based on discrimination of any kind.

In articles 208 and 232, Bahrain’s PC criminalises the use of torture with imprisonment for public servants and anyone, who threatened people detained by him or under his control with any acts prescribed in the above definition of torture, including if such acts are committed at the instigation of a third person, or with his consent or acceptance. Moreover, it prescribes life imprisonment for anyone convicted of torture resulting in death.

Despite the incrimination of torture in the PC, it seems that absolute prohibition still needs to be clearly expressed in Bahraini law and codes of conduct. Article 2(2) UNCAT specifies that no exceptional circumstance of any kind, be it a state of war or the threat of war, internal political instability or any other state of emergency, can justify the use of torture.<sup>4</sup> In light of the eruptive political tensions in the country since 2011, urgency should be given to the promulgation of such provisions.

On the whole, Bahraini legislation does offer a comprehensive definition of torture and a generally extensive legal framework that should in theory be conducive to the prevention, prosecution and gradual elimination of torture. Yet, this report will outline the considerable gap between existing legal provisions and the practice, which demonstrates that torture is still commonly used by law enforcement officials to coerce confessions or as punishment.

#### **Recommendation:**

1. Incorporate into the Bahraini legislation a provision stating that no exceptional circumstance may be invoked as a justification of torture.

## **4. Practice of torture**

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Cases of torture documented by Alkarama show that torture most commonly occurs at the hands of the security forces at the Criminal Investigation Directorate (CID), which falls under the jurisdiction of the Ministry of Interior during investigation as a means to extract confessions, or in detention as a form of punishment. The most frequent forms of torture and mistreatments described by victims are electrocution, beatings, suspension in painful positions, forced standing, exposure to extreme temperatures, sleep deprivation, verbal abuse, threats of rape to the detainee or family members, and insulting the detainee’s religious beliefs. In some cases, torture that individuals were exposed to even led to their death in detention as shown by the following case documented by Alkarama.

On 31 July 2016, just four weeks after his initial arrest by forces of the Ministry of Interior, **Hassan Al Hayeki**,<sup>5</sup> a 35-year-old Bahraini citizen, died from the injuries he sustained from his prolonged subjection to torture at the hands of interrogators of the Criminal Investigation Directorate in Manama. Al Hayeki was initially beaten and hung by the limbs for four days, after which he was brought before the Public Prosecutor who asked him to confess to having committed a bomb attack in the village of Al Aker, south of Manama, during which a woman was killed in

<sup>4</sup> Articles 2(2) and 2(3) UNCAT; See also UNCAT, *General Comment No.2*, CAT/C/GC/CRP.1/Rev. 4, paras. 5 and 26; See also UN Committee against Torture, *Concluding observations of the Committee against Torture on the United States of America*, 25 July 2006, UN Doc. CAT/C/USA/CO/2.

<sup>5</sup> Alkarama, *Bahrain: Man dies under torture at the hands of the Criminal Investigation Directorate*, 12 August 2016, <https://www.alkarama.org/en/articles/bahrain-man-dies-under-torture-hands-criminal-investigation-directorate> (accessed on 17 March 2017).

late June 2016. After refusing to confess and informing the Prosecutor of the treatment he had received, Al Hayeki was taken back to CID and subjected to further acts of torture. He was repeatedly beaten on his head and genitals. Al Hayeki eventually confessed to the charges on 22 July 2016.

## **5. Violations of legal safeguards related to the deprivation of liberty**

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In its General Comment No. 2 on the implementation of article 2 of the Convention by State parties, the Committee recommended a non-exhaustive list of guarantees which should be provided to all persons deprived of their liberty in order to prevent torture, in addition to the guarantees provided by the letter of the Convention. These guarantees include, *inter alia*, the right of detainees to be informed of their rights, the right to promptly receive independent legal assistance and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability for detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and challenge the legality of their detention or treatment.<sup>6</sup>

The Bahraini CPC of 1966 as amended by Decree No. 46/2002 provides in principle most, if not all of the legal safeguards provided to detainees. Indeed article 61 of the new CCP states that:

No one shall be arrested nor imprisoned except by an order of the legally competent authority. [...] 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 seek the aid of a lawyer.

Despite this provision, in practice, it appears that these safeguards are rarely enforced and as cases documented by Alkarama illustrate even systematically violated.

### **5.1 Violations of the right to be presented with a warrant and informed of the reasons for the arrest**

In most cases documented by Alkarama in 2016, victims were arrested from their homes, mainly at night, by officers who were sometimes in civilian clothing or who were masked and who did not present the individual with a warrant. The officers performing the arrest also failed to inform them of the reason or the charges prompting their arrest.

In the case of the **Bani Jamra boys**<sup>7</sup> for instance, five young men from the town of Bani Jamra were arrested from their homes in early December 2016 by masked men in civilian clothing, who broke into their homes and searched them. The Criminal Investigation officers who performed the search and the arrest did not present them with warrants nor provided them with a reason for the arrest.

This violation is commonplace in Bahrain and has been documented in other cases such as those of former parliamentarians **Matar Matar** and **Jawad Fairuz**.<sup>8</sup> Indeed, both were arrested in separate incidents but in the same manner, at night, by masked officers, who did not present them with a warrant nor informed them of the reasons for their arrest.

### **5.2 Violations of the right to legal counsel**

Despite the fact that article 20 of the Constitution as well as article 61 CPC guarantee the right to legal counsel, the law does not specify that this right must be applied from the onset of detention. Article

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<sup>6</sup> Committee against Torture, *General Comment No. 2*, 23 November 2007, CAT/C/GC/CRP.1/Rev.4, para.13.

<sup>7</sup> Alkarama, *Bahrain: five young men from Bani Jamrah arrested and tortured to confess to having "participated in demonstrations"*, 31 January 2017, <https://www.alkarama.org/en/articles/bahrain-five-young-men-bani-jamrah-arrested-and-tortured-confess-having-participated-0> (accessed on 17 March 2017).

<sup>8</sup> Alkarama, *Bahrain: Two resigned members of the parliament arrested and tortured by the military forces*, 21 June 2011, <https://www.alkarama.org/en/articles/bahrain-two-resigned-members-parliament-arrested-and-tortured-military-forces> (accessed on 17 March 2017).

134 CPC for its part stipulates that a lawyer must be present during the interrogation conducted by the Public Prosecutor.

For instance, 16-year-old **Abbas Aoun Faraj**,<sup>9</sup> who was arrested on 14 February 2017 during mass arrests, was interrogated and presented to the Public Prosecutor without the presence of a lawyer.

In the case of **Ali Al Tajer**,<sup>10</sup> documented in 2015 by Alkarama, the victim was arrested, detained *incommunicado*, interrogated, tortured and forced to sign confessions. It is only half an hour before he was presented to the Public Prosecutor that his family was informed and allowed to call a lawyer. Al Tajer was however not allowed to speak to the lawyer before his interrogation by the public prosecutor.

This practice of depriving detainees of their right to legal counsel is in direct contravention with article 14 of the International Covenant for Civil and Political Rights (ICCPR), and principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In one of its reports, the UN Subcommittee on the prevention of torture and other cruel, inhuman or degrading treatment (SPT) explained the importance of access to legal counsel with regards to the prevention of torture:

From a preventive point of view, access to a lawyer is an important safeguard against ill-treatment which is a broader concept than providing legal assistance solely for conducting one's defence. The presence of a lawyer during police questioning may not only deter the police from resorting to ill-treatment or other abuses, but may also work as a protection for police officers in case they face unfounded allegations of ill-treatment. In addition, the lawyer is the key person in assisting the person deprived of liberty in exercising his or her rights, including access to complaints mechanisms.<sup>11</sup>

### 5.3 Violations of the right to be brought promptly before a judicial authority

Article 9 ICCPR provides that "[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power". The Human Rights Committee has, in its General Comment No. 35, interpreted that the interpretation of "promptly" may vary depending on objective circumstances, but that it should not surpass a few days from the time of arrest. Indeed, according to the Committee, 48 hours are "ordinarily sufficient to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional."<sup>12</sup> The presentation of the accused before a judicial authority enables the individual to challenge the legality of his detention.

Bahraini law provides that the individual arrested shall be presented to the public prosecution within 48 hours of his arrest.<sup>13</sup> The Public Prosecutor then decides whether to charge the individual and prolong his detention or release him.

However, in practice and based on accounts received by Alkarama, it appears that the rule is not systematically applied and that detainees are only presented to a judicial authority, i.e. the Public Prosecutor, once confessions have been extracted from the detainee as shown by the following case.

**Ahmed Ali Mohamed**<sup>14</sup> was arrested on 28 October 2014. He was severely tortured at the Criminal Investigation Directorate for nine days in order to coerce confessions. After nine days, he was brought before the Public Prosecutor, who threatened to "kill him" if he did not confess. Besides the fact that Ahmed Ali Mohamad was presented to a judicial authority beyond what is

<sup>9</sup> Alkarama, *Bahrain: 16-year-old boy forced to confess to his "participation in demonstrations"*, 17 February 2017, <https://www.alkarama.org/en/articles/bahrain-16-year-old-boy-forced-confess-his-participation-demonstrations> (accessed on 17 March 2017).

<sup>10</sup> Alkarama, *Bahrain: security manager charged with terrorism based on confessions obtained under torture*, 15 December 2015, <https://www.alkarama.org/en/articles/bahrain-security-manager-charged-terrorism-based-confessions-obtained-under-torture> (accessed on 17 March 2017).

<sup>11</sup> Committee Against Torture, *Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives*, (CAT/OP/MDV/1, 26 February 2009), para 62.

<sup>12</sup> United Nations Human Rights Committee, *General Comment No. 35*, 16 December 2014.

<sup>13</sup> Bahrain Law No. 46 of 2002, article 57.

<sup>14</sup> Alkarama Foundation, *Bahrain: Student sentenced to 25 years in prison on the basis of confessions under torture*, 24 November 2015, <https://www.alkarama.org/en/articles/bahrain-student-sentenced-25-years-imprisonment-basis-confessions-under-torture> (accessed on 17 March 2017).

deemed ordinarily sufficient time, his case illustrates the difficulty of challenging the legality of detention before a judicial authority, which acts as an accomplice in the perpetration of torture.

#### 5.4 Practice of *incommunicado* and secret detention

Although article 61 CPC guarantees the detainee the right to contact a family member to inform them of the arrest, the provision does not specify a time limit within which this should be done. In cases documented by Alkarama, it appears that the right to inform a family member of a detainee's whereabouts is not promptly enforced.

**Ali Issa Al Tajer** was detained *incommunicado* for 25 days before being presented to the Public Prosecution and being able to consult his lawyer. During this time, he was subjected to torture to extract confession.<sup>15</sup>

**Fadhel Abbas Radhi**<sup>16</sup> was for his part arrested in September 2016 and only allowed three phone calls to his family, during which he was forbidden to inform his relatives of his whereabouts. He called on 10 December 2016 and his family received no further news from him until 28 February 2017. He is however denied visitation rights to this day.

As agreed by UN experts, *incommunicado* detention as well as secret detention create a permissive environment for the practice of torture.<sup>17</sup> Indeed, the absolute prohibition of *incommunicado* and secret detention are necessary conditions for the prevention of torture.<sup>18</sup>

#### 5.5 Violations of the right to a fair trial

In the aftermath of the events of 2011, Bahrainis who had taken part in peaceful protests were tried and sentenced by National Security courts set up for this very purpose in 2011 and who were severely criticised by the BICI for their lack of respect for fair trial guarantees. The BICI had recommended that sentences passed by the National Security courts be subject "to review by ordinary courts [because] fundamental principles of a fair trial, including prompt and full access to legal counsel and inadmissibility of coerced testimony were not respected."<sup>19</sup> The cases were subsequently reviewed and retrials were provided for 135 out of 165 cases that had been brought before the National Security Court.

In February 2017, the Bahraini Council of Representatives approved a draft law that would allow the trial of civilians before military courts with regards to matters of terrorism. Although the law still needs to be approved by the upper house of parliament and the King, if passed, this law poses grave threats to the right to a fair trial. The Human Rights Committee noted that "the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned".<sup>20</sup> These concerns were echoed by the Working Group on Arbitrary Detention which expressed the view that "there is an irreconcilable contradiction of values in the make-up of military courts, the main effect of which is not the denial of justice, but rather a direct injustice."<sup>21</sup> It further explained that a military court is more "likely to produce an effect contrary to the enjoyment of the human rights and to a fair trial with due guarantees."<sup>22</sup>

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<sup>15</sup> Alkarama, *Bahrain: security manager charged with terrorism based on confessions obtained under torture* 15 December 2015, <https://www.alkarama.org/en/articles/bahrain-security-manager-charged-terrorism-based-confessions-obtained-under-torture> (accessed on 17 march 2017).

<sup>16</sup> Alkarama, *Bahrain: Suspected torture of Fadhel Abbas Radhi detained incommunicado since December 2016*, 6 February 2017, <https://www.alkarama.org/en/articles/bahrain-suspected-torture-fadhel-abbas-radhi-detained-incommunicado-december-2016-1> (accessed on 17 march 2017).

<sup>17</sup> General Assembly, *Report on torture and other cruel, inhuman or degrading treatment or punishment*, submitted by Sir Nigel Rodley, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 53/139 (A/54/426), 1 October 1999, para. 42.

<sup>18</sup> Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/13/39/Add.5)*, 5 February 2010, para. 156.

<sup>19</sup> Bahrain Independent Commission of Inquiry, *Report of the Bahrain Independent Commission of Inquiry*, 10 December 2011, para. 1720.

<sup>20</sup> Human Rights Committee, General Comment No. 32, 23 August 2007, para. 22.

<sup>21</sup> Human Rights Council, *Report of the Working Group on Arbitrary Detention*, (A/HRC/27/48), 30 June 2014, para. 67.

<sup>22</sup> *Ibid*, para. 68.



## 5.6 Violations of the exclusionary rule

Article 15 UNCAT provides that State parties “shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.”<sup>23</sup>

[U1] Alkarama documented a number of cases in which individuals were arrested and tortured in order to extract confessions.

**Mohamad Ali**<sup>24</sup> was arrested in September 2013, detained *incommunicado* for three days during which he was subjected to severe acts of torture to force him to confess to “espionage for foreign countries”, “participation in illegal gatherings” and “assaulting security personnel.”

Confessions extracted under torture are usually subsequently used as evidence in trials to charge and/or sentence the accused.

For example, despite having reported the ill-treatment he was subjected to, to the court, **Radhi Abdulrasool**<sup>25</sup> was sentenced to 15 years in prison on the basis of his coerced confessions that were used as evidence.

As for **Ahmad Ali Mohamad**,<sup>26</sup> he was sentenced to 25 years in prison and was deprived of his nationality on the sole basis of confessions obtained under torture during the conduct of the investigation. Ahmad Ali Mohamad had been detained *incommunicado* for nine days during which time he was subjected to electrocutions, severe beatings and was exposed to extreme temperatures; he was then forced to sign written confessions, which led to him being charged for terrorism.

### Recommendations:

1. Ensure that the arrestee is always presented with a written warrant at the time of arrest or informed of the reason for the arrest, is brought promptly before a judicial authority and informed of the charges held against him/her;
2. Guarantee detainees access to legal counsel from the onset of the arrest;
3. Exclude as evidence any confession acquired under torture;
4. Allow the person to promptly notify both a family member and a lawyer of the arrest.

## 6. Violations in the context of the fight against terrorism

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In 2006, Bahrain passed Law No. 58/2006 for the Protection of Society Against Terrorist Acts, which introduces “heavier penalties for serious offences committed for terrorism purposes”.<sup>27</sup> Indeed, the death penalty is prescribed for those crimes that are punished by life imprisonment when committed without terroristic intent.<sup>28</sup> However, the definition of a terrorist act as provided for in article 1 of the law does not clearly clarify the terrorist intent necessary to characterise a terrorist act and could thus lead to the application of this law for acts conducted without terrorist intent. Moreover, in its second periodic report, Bahrain states that no one has been executed under the Anti-Terrorism Law,<sup>29</sup> however, in early 2017, three men were executed on terrorism charges.<sup>30</sup>

<sup>23</sup> Article 15 UNCAT.

<sup>24</sup> Alkarama, *Bahrain: Another case of torture used to extract confessions*, 17 November 2015, <https://www.alkarama.org/en/articles/bahrain-another-case-torture-used-extract-confessions> (accessed on 17 March 2017).

<sup>25</sup> Alkarama, *Bahrain: Sentenced to 15 years on basis of confessions obtained under torture*, 18 November 2015, <https://www.alkarama.org/en/articles/Bahrain-sentenced-15-years-basis-confessions-obtained-under-torture> (accessed on 17 March 2017).

<sup>26</sup> Alkarama, *Bahrain: Student sentenced to 25 years in prison on the basis of confessions under torture*, 24 November 2015, <https://www.alkarama.org/en/articles/bahrain-student-sentenced-25-years-imprisonment-basis-confessions-under-torture> (accessed on 17 March 2017).

<sup>27</sup> Committee against Torture, Second periodic reports of States due in 2007, Bahrain (CAT/C/BHR/2), 19 November 2015, para. 191.

<sup>28</sup> Bahrain Law No. 58 of 2006, article 3.

<sup>29</sup> *Ibid*, para. 192.

<sup>30</sup> See Section 7.1.

Despite what is claimed in the State party report that the "safeguards against torture provided for with respect to all other offences [...] apply to the Act on the protection of Society against Terrorist Acts", it emerges that the Anti-Terrorism Law, as amended in 2014, expands the prerogatives of the police and the prosecution office with regards to terrorism crimes and reduces the legal safeguards afforded to suspects in the CPC. Indeed, article 27 of Law Decree 68 of 2014 amending the Anti-Terrorism Law allows the police to detain a suspect for a period of 28 days before presenting him to the terrorism prosecution unit, which may decide to release him or to keep him in pre-trial detention for a period not extending 6 months. As explained in the State party's report, a suspect can be detained for a period of up to six months before his detention can be "considered by the judiciary at all levels".<sup>31</sup> As previously clarified, the period of custody before the accused is brought before a judicial authority should only in absolutely exceptional circumstances be any longer than 48 hours. Therefore, inscribing a period of 28 days into the domestic Anti-terrorism legislation is in clear violation of international standards.

These amendments have been implemented for instance in the case of **Ali Issa Al Tajer**,<sup>32</sup> who was detained for 25 days before being presented to the public prosecution. He was tortured by the detaining authorities, who subjected him to severe beatings, stripped him of his clothes, insulted him and deprived him of sleep. It is after he was subjected to such treatment that, blindfolded, Al Tajer was forced to sign confessions admitting to "joining a terrorist organisation to overthrow the government by force" and "training individuals to use weapons for terrorist purposes".

These amendments contravene the rights of the detainees afforded to them by the ICCPR, which impose fair trial guarantees and certain safeguards such as the right to *habeas corpus*. Indeed, the Working Group on Arbitrary detention has explicitly stated that these rights also apply to terrorism suspects and has set as a principle that:

"persons under charges of terrorist acts shall be [...] brought before a competent judicial authority, as soon as possible, and no later than within a reasonable time period"<sup>33</sup> and that "the person detained under charges of terrorist activities shall enjoy the effective right to habeas corpus following their detention."<sup>34</sup>

Furthermore, in January 2017, the government passed Law Decree No. 1 of 2017, rehabilitating the law enforcement powers of the National Security Agency (NSA), an intelligence agency, with regards to terrorism suspects. In its report, the BICI had denounced the NSA for its widespread use of torture and demanded that an investigation be opened in the case of the death of one detainee held in their custody.<sup>35</sup> The BICI had thus recommended that the decree establishing the NSA be amended in order "to ensure that the organisation is an intelligence gathering agency without law enforcement and arrest authorities."<sup>36</sup> The reinstatement of these powers to this agency along with the prolonged periods of detention of individuals suspected of terrorism, creates an environment conducive to the practice of torture. In his report to the Commission on Human Rights, the Special Rapporteur on torture has stated that a "key safeguard to prevent incidents of torture or other forms of ill-treatment is the prompt and effective access of individuals deprived of their liberty to a judicial or competent authority."<sup>37</sup>

## Recommendations:

1. Ensure that legal safeguards provided in the Code of Criminal Procedure equally apply to suspects of terrorism;

<sup>31</sup> Committee against Torture, Second periodic reports of States due in 2007, Bahrain (CAT/C/BHR/2), 19 November 2015, para. 30.

<sup>32</sup> Alkarama, *Bahrain: Security Manager Charged with Terrorism Based on Confessions Obtained Under Torture*, 15 December 2015, <https://www.alkarama.org/en/articles/bahrain-security-manager-charged-terrorism-based-confessions-obtained-under-torture> (accessed on 17 March 2017).

<sup>33</sup> Human Rights Council, Report of the Working group on Arbitrary detention (A/HRC/10/21), 16 February 2009, para 54 (d).

<sup>34</sup> *Ibid*, para 54 (e).

<sup>35</sup> Bahrain Independent Commission of Inquiry, Report of the Bahrain Independent Commission of Inquiry, 10 December 2011, p. 219.

<sup>36</sup> Bahrain Independent Commission of Inquiry, Report of the Bahrain Independent Commission of Inquiry, 10 December 2011, para. 1718.

<sup>37</sup> Commission on Human Rights, Report of the Special Rapporteur, Theo van Boven (E/CN.4/2004/56), 23 December 2003, para. 39.

2. Amend article 27 of the Law to reduce the initial period of custody of terrorism suspects from 28 days to 48 hours;
3. Repeal new legislation that reinstates law enforcement and arrest authority to the National Security Agency in continued compliance with the BICI's recommendations.

## **7. Death penalty**

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Bahrain has not abolished the death penalty, which still exists as a sentence for a number of crimes. Bahrain has also never put in place an official moratorium on the death penalty, but has repeatedly implemented a *de facto* moratorium and had not executed a death sentence since 2010.

However, in January 2017, Bahrain executed **Abbas Al Samea, Sami Mushaima, and Ali Al Singace**,<sup>38</sup> who had allegedly killed police officers in 2014. Their judgment was condemned by the Special Rapporteur on summary executions for having been handed out at the end of a deeply flawed trial. Indeed, it was alleged that the sentences passed by the court were based solely on confessions extracted under "torture, including methods such as electric shocks and sexual humiliation. The [men] reportedly were also denied access to adequate legal assistance." Furthermore, it is to be noted that one of the three men executed, Ali Al Singace, was under 18 years of age at the time of his arrest.

The Human Rights Committee has repeatedly explained that "the imposition of a death sentence upon the conclusion of a trial in which the provisions of article 14 ICCPR have not been respected constitutes a violation of the right to life."<sup>39</sup> The fact that the judiciary failed to respect due process and fair trial standards in these cases could constitute grievous and irreversible miscarriages of justice. In these circumstances, the use of death penalty amounts to cruel, inhuman and degrading treatment as set out in article 16 of the Convention against Torture. Furthermore, the CAT has previously raised concerns about the use of the death penalty against children,<sup>40</sup> which constitutes a direct violation of article 6(5) of the ICCPR which states that a "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age."

### **Recommendations:**

1. Enact an official moratorium on executions with a view to abolishing the death penalty;
2. Ratify the Second Optional Protocol to the ICCPR;
3. Amend the Code of Criminal Procedure to prohibit the imposition of the death penalty for crimes committed by persons below 18 years old.

## **8. Absence of effective measures to prevent torture**

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The absence of effective measures for the prevention of torture can be attributed to the absence of adequate training of State agents on human rights standards and the absence of independent mechanisms to monitor places of deprivation of liberty.

<sup>38</sup> "Urgent Appeal to the Government of Bahrain to stop new executions – UN rights experts", 25 January 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21118&LangID=E#sthash.GQjYJeu8.dpuf> (accessed 17 March 2017).

<sup>39</sup> Human Rights Committee, Communications No. 1044/2002, *Shakurova v. Tajikistan*, Views adopted on 17 March 2006; No. 915/200, *Ruzmetov v. Uzbekistan*, Views adopted on 30 March 2006; No. 913/2000, *Chan v. Guyana*, Views adopted on 31 October 2005; No. 1167/2003, *Rayos v. Philippines*, Views adopted on 27 July 2004. See also its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

<sup>40</sup> Committee against Torture, Concluding Observations of the Committee against Torture – Yemen, 17 December 2009 (CAT/C/YEM/CO/2), para. 21.

## 8.1 Training of law enforcement officials

Bahrain's periodic report provides an extensive list of trainings conducted in-country and abroad for law enforcement officials as well as judges, prosecutors and other stakeholders. The list of trainings of law enforcement officials shows that a number of trainings have been made available on human rights; however, none of them exclusively focus on the UNCAT and the prevention of torture. Indeed, the only explicit reference to the UNCAT included in the report is that "training workshops in prevention and punishment of acts of torture pursuant to the Convention against Torture are arranged for government officials, parliamentarians, prosecutors and others involved in implementing measures relevant to the prevention and monitoring of torture",<sup>41</sup> which fails to explicitly include law enforcement officials in such trainings.

Furthermore, the report emphasises the establishment of a Police Code of Conduct on which officers of all ranks have been trained and which has also been integrated as part of the curriculum of the Bahraini Royal Police Academy. While this is a good initiative, the Police Code of Conduct does not explicitly mention the prohibition of torture and ill-treatment but merely refers to "respect for human dignity"<sup>42</sup> and "dealing with all members of society in a civilized and humane manner"<sup>43</sup>. In contrast, the Code of Conduct adopted by the UN General Assembly as a terms of reference, explicitly prohibits the practice of torture in its article 5, which states that "[n]o law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment."<sup>44</sup>

In addition, the findings of the Bahraini Ombudsman after his visit to the Jaw Central Prison in 2013 further call the adequate training of law enforcement officials in to question. The Ombudsman and his team visited the largest Bahraini male prison, located in the southern part of the country, from 3 to 5 September 2013, to thoroughly investigate the detention facility and interview a large number of detainees. In his subsequent report<sup>45</sup> on the visit, the Ombudsman exposed the inadequate and insufficient training programmes for prison staff to develop the skills to deal with and meet the diverse needs of the prisoners and more alarmingly the weak theoretical and practical training on how to use force when necessary to ward off risks and maintain order. Moreover, he pointed towards the deficiencies in the documentation of the use of force. All these findings are highly concerning and depict a rather poor record for the prevention of torture and other forms of ill-treatment.

### Recommendations:

1. Provide law enforcement officials with trainings focused on the respect and implementation of the Convention against Torture as well as the prevention of torture;
2. Amend the Police Code of Conduct in order to explicitly include the absolute prohibition of torture;
3. Provide law enforcement officials with training on adequate use of force in detention facilities as laid out in the Standard Minimum Rules for the Treatment of Prisoners.

## 8.2 Lack of independent monitoring mechanisms in places of detention

Visits to detention facilities are of great importance to the prevention of torture and other cruel, inhuman or degrading treatment or punishment and to monitor the State's respect of its relevant international human rights obligations.

<sup>41</sup> Committee against Torture, Second periodic report of States due in 2007 Bahrain, (CAT/C/BHR/2), 19 November 2015, para.103.

<sup>42</sup> Ministry of Interior, Decision 14/2012 on the Promulgation of a Police Code of Conduct, V-Policing Principles, <http://www.adhrb.org/wp-content/uploads/2015/10/Police-Code-of-Conduct.pdf> (accessed on 3 March 2017).

<sup>43</sup> *Ibid.*

<sup>44</sup> General Assembly, Resolution 34/169 Code of Conduct for Law Enforcement Officials, 17 December 1979, article 5.

<sup>45</sup> Ministry of Interior, Office of the Ombudsman, [http://www.bahrainrights.org/sites/default/files/file\\_attach/Ombudsman\\_Inspection\\_Report.pdf](http://www.bahrainrights.org/sites/default/files/file_attach/Ombudsman_Inspection_Report.pdf).

### ***The Office of the Ombudsman***

The Office of the Ombudsman was established in 2012 and is a secretariat under the control of the Ministry of Interior (MoI). Its mandate is "to ensure that employees of the Bahraini MoI interact with the public in an appropriate manner that is respectful of human rights".<sup>46</sup> In fact, it is within the competence of the Ombudsman to visit prisons, juvenile care centres, and detention centres to ascertain the legality of the procedures, and that inmates, prisoners and detainees are not subjected to torture or inhuman or derogatory treatment as stated in Article 12 of Decree No. 35/2013 amending Decree No. 27/2012 for the establishment of the Independent Office of the Ombudsman within the Ministry of Interior. The Office of the Ombudsman maintains a permanent office in Jaw prison.

While the Ombudsman Nawaf Mohammed Al Ma'awda states that his investigators visit places of detention "on an almost daily basis in order to gather evidence and carry out interviews",<sup>47</sup> there is no mention in the law as to whether these visits can or should be unexpected. For instance, the Ombudsman and his team visited Jaw Prison from 3 to 5 September 2013, but had announced this visit to the prison authorities on 1 September. In order to assess the prison conditions properly, the Ombudsman should be given clearly defined authority to conduct spontaneous visits.

Amnesty International reported that the Ombudsman and his officials had conducted a visit to the detention facility of the CID in Manama in January 2015 and that the Ombudsman had assured to consequently report on it publicly.<sup>48</sup> Yet, no official report on the visit had been made available by the Office of the Ombudsman. On the whole, given the Ombudsman's statement of the frequency of visits to detention facilities, we note that his office hardly ever publically reports about these visits, nor publishes any substantial findings. Indeed, the only public report the Office of the Ombudsman published was that that of its visit to Jaw prison in 2013.

### **Recommendations:**

1. Amend Decree No. 35/2013 in order to clearly instate unannounced visits to detention facilities in the law;
2. Increase the transparency of the Office of the Ombudsman by making the findings of all prison visits public.

### ***The Prisoners and Detainees Rights Commission***

The Prisoners and Detainees Rights Commission (PDRC) is a national preventive mechanism established by Royal Decree No. 61 of 2013. The PDRC's creation followed the establishment of an Office of Ombudsman and is chaired by the Ombudsman, whose office is under the direct control of the MoI. The PDRC is mandated to inspect places of detention, conduct interviews with prisoners, inform authorities of cases of torture and ill-treatment as well as propose recommendations and publically report on its visits.

In 2014 and 2015, the PDRC conducted a number of prison visits, including to the Dry Dock Prison and the Criminal Investigation Directorate (CID). While we welcome the fact that the PRDC publically reports its findings, we note that it has received two-fold criticism pertaining to its lack of independence and the flaws in its reporting. Its independence is called into question due to its close attachment to the Office of the Ombudsman, which is under the control of the MoI and for the appointment procedure of its members. Moreover, the quality of the PDRC's reporting is disputed as the methodology applied for prison visits is incomprehensive and non-compliant with international standards.<sup>49</sup> Besides, the fact that the PDRC fails to report cases of torture is extremely suspicious, given the large amount of well documented torture cases, in particular at the CID and the Dry Dock Prison.

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<sup>46</sup> Ministry of Interior, Office of the Ombudsman, *First Annual Report 2013/14*, p.6.

<sup>47</sup> *Ibid.*

<sup>48</sup> Amnesty International, *Behind the Rhetoric, human rights abuses in Bahrain continue unabated*, 2015, [https://www.amnesty.org.uk/files/2015-04\\_-\\_behind\\_the\\_rhetoric\\_english\\_-\\_final\\_1.pdf](https://www.amnesty.org.uk/files/2015-04_-_behind_the_rhetoric_english_-_final_1.pdf) (accessed on 3 March 2017).

<sup>49</sup> Americans for Democracy and Human Rights in Bahrain, *Fundamentally Flawed: A Review of Bahrain's Prisoners and Detainees Rights Commission*, 2015, [http://www.adhrb.org/wp-content/uploads/2015/09/PDRC\\_Fundamentally-Flawed.pdf](http://www.adhrb.org/wp-content/uploads/2015/09/PDRC_Fundamentally-Flawed.pdf)

**Recommendations:**

1. Ratify the Optional Protocol of the Convention against Torture and guarantee the PDRC's independence from the MoI by putting its law in line with the standards of the OPCAT;
2. Improve the PDRC's methodological framework for the inspection of detention facilities and the subsequent reporting.

***The National Institute for Human Rights***

The Bahraini National Institute for Human Rights (NIHR) was initially established in 2009, but was largely ineffective, despite a 2012 amendment to its mandate, until 2014, when it was re-enacted. The provisions of Law No. 26 of 2014, which established the National Institution for Human Rights, as amended by Decree-Law No. 20 of 2016, defines the role of the NIHR in the field of protection of human rights through the receipt of complaints on human rights, and as set out in article 12 (g), field visits to monitor the human rights situation in places of detention.

While article 12 (g) prescribes the NIHR to conduct both unannounced and announced field visits to places where it suspects human rights violations to occur, we have no information available on whether the actual visits conducted were spontaneous or scheduled with the authorities of the detention facilities. Moreover, the NIHR lacks transparency in its reporting of these visits as it does not publish reports or publically announce all its findings. Indeed, in August 2013, the NIHR visited the Dry Dock Prison and submitted a report to the competent authorities, which denied the occurrence of abuse without giving any details. This report was never made public.

In May 2016, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Institutions for the Protection and Promotion of Human Rights (GANHRI) granted the NIHR the "B" status to indicate its non-compliance with the Paris Principles. The SCA criticised the NIHR for the non-transparent appointment procedure of its members, which was not clearly merit based and reminded the institution that NIHR membership of political representatives such as parliamentarians and members of the Shura Council negatively impacts its independence. Moreover, the SCA reiterated general concerns that reports on visits conducted to places of detention be made public in order to increase the transparency of the institution and encouraged the NIHR to conduct unannounced visits.<sup>50</sup>

The establishment of the Office of the Ombudsman, the PDRC and the reinstatement of the NHRI has been sufficient to earn the government considerable international praise and Alkarama commends the establishment of these institutions in addressing impunity in Bahrain, but after carefully monitoring their activities, remains extremely doubtful of their independence, efficiency and transparency.

**Recommendation:**

1. Put the NIHR in line with the Paris Principles by amending its current legislation on the appointment of the NIHR members to guarantee a merit based and participatory appointment process and ensure that its active members are in no way directly tied to the executive;
3. Amend the NIHR's current legislation to give it authority to conduct unannounced visits to detention facilities;
4. Take a public stand on the perpetration of the most serious human rights violations by publishing reports on all prison visits.

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<sup>50</sup> Alkarama Foundation, *Bahrain: National Institution for Human Rights Receives B Status to Mark Non Compliance With International Standards*, 9 August 2016, <https://www.alkarama.org/en/articles/bahrain-national-institution-human-rights-receives-b-status-mark-non-compliance> (accessed on 17 March 2017).

## 9. Failure to investigate and prosecute acts of torture

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State parties to the UNCAT are obliged to investigate thoroughly, promptly and impartially any allegation of torture, even if the victim did not file a formal complaint. Such investigations should be followed by the prosecution of those who committed the acts and other agents who participated in the commission of the crime (e.g. through acquiescence and complicity) as well as their superior according to the applicable standards. It is important to note that the Committee recommends the establishment of an independent body to investigate allegations of torture committed by State agents, and that such establishment should ordinarily be enacted through legislation.<sup>51</sup> In the same vein, the prosecuting authorities should be able to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment.

These recommendations were echoed by the BICI report released after the 2011 uprising, during which numerous allegations of torture were reported. The report called for the establishment of "a standing independent body to examine all complaints of torture, mistreatment, excessive use of force or other abuses at the hands of the authorities."<sup>52</sup> The Commission further recommended that "all allegations of torture and similar treatment be investigated by an independent and impartial body, following the Istanbul Principles."<sup>53</sup>

### 9.1 Lack of independent and efficient complaint mechanisms

The Convention requires States parties to ensure an effective right to complain to the competent authorities and protect victims and witnesses of acts of torture against reprisals. As such, the State party must ensure that victims can file a complaint with the judicial authorities, who in turn must be impartial and take effective steps to promptly and impartially examine the facts, investigate them and prosecute the perpetrators. To fulfil this obligation, State parties have to enact legislation to ensure the effectiveness of those rights including by establishing an independent body to investigate allegations of torture committed by its agents.<sup>54</sup>

As stated in Bahrain's periodic report, and in seeming compliance with the BICI's recommendations, in 2012, the Bahraini government established three different entities habilitated to receive complaints and conduct investigations of torture and ill-treatment: the Special Investigation Unit (SIU), the Office of the Ombudsman and the Office of the Inspector General at the National Security Agency.

The Office of the Ombudsman, mandated to receive and investigate allegations of torture and ill-treatment by officers of the General Security<sup>55</sup> and subsequently refer them to the competent authority, cannot be considered as a "standing independent body." Indeed, the Ombudsman's Office is established within the MoI and its budget is allocated as a "separate item" of the Ministry's budget.<sup>56</sup> According to Royal Decree No. 27/2012 which established this entity, the Ombudsman and his deputy are appointed for five years by decree, upon recommendation of the MoI;<sup>57</sup> they can furthermore be prematurely dismissed of their functions on the basis of a recommendation of the Minister of Interior.<sup>58</sup> It is thus clear that the MoI retains significant control over the Office of the Ombudsman. The Ombudsman further appoints the office's staff on the basis of criteria agreed upon with the Minister of Interior and can further be assisted in carrying out his duties by General Security officers granted to him by the Head of the General Security,<sup>59</sup> the same agency whose officers he is mandated to investigate. Furthermore, the

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<sup>51</sup> CAT, General Comment No. 3, CAT/C/GC/3, 19 November 2012.

<sup>52</sup> Bahrain Independent Commission of Inquiry, Report of the Bahrain Independent Commission of Inquiry, 10 December 2011, para. 1722.

<sup>53</sup> *Ibid.*

<sup>54</sup> CAT, General Comment No. 3, 19 November 2012, CAT/C/GC/3, para. 5.

<sup>55</sup> General Security forces are under the command of the Ministry of Interior

<sup>56</sup> Royal Decree No. 27 of 2012, article 16.

<sup>57</sup> *Ibid.*, article 2.

<sup>58</sup> *Ibid.*, article 7.

<sup>59</sup> *Ibid.*, article 2.



responsiveness of the Ombudsman can be questioned; in at least one case documented by Alkarama, that of **Kumail Hamida**,<sup>60</sup> the Ombudsman refused to register the complaint.

As explained in the State report, once the preliminary investigation of the Ombudsman is concluded and sufficient evidence is found to substantiate the allegation, the case is referred to the Special Investigation Unit for further investigation and subsequent prosecution. According to the authorities, the SIU is an “independent unit within the Public Prosecution Service headed by an attorney and staffed with investigators”.<sup>61</sup> If a case referred to the Ombudsman has already been referred to the SIU, the former cannot undertake its own investigation. The MoI can thus use this system of referral to effectively interrupt the Ombudsman’s investigation and his potential investigation into allegations of torture committed by officers operating under the authority of the Ministry, especially given that the SIU does not have a public reporting obligation as opposed to the Ombudsman’s office. Furthermore, in cases documented by Alkarama, it appears that the Public Prosecutor’s office – to which the SIU belongs – has often ignored detainees’ allegations of torture – as was the case for 16-year-old **Abbas Aoun Faraj**<sup>62</sup> – and was, in one case at least, involved in acts of torture.<sup>63</sup> The SIU’s lack of independence was criticised by the Bahraini National Institution for Human Rights in its first report in which it stated that the SIU “does not have the aspired independence and impartiality to ensure effective investigations.”<sup>64</sup>

The lack of independence noted above also applies to the Office of the Inspector General of the National Security Agency, mandated to receive complaints and investigate allegations of ill-treatment and torture committed by agents of the NSA. Indeed, the Ombudsman of this entity is appointed and dismissed by decree on the basis of recommendations made by the Head of the NSA,<sup>65</sup> who might himself be found responsible for violations committed by his subordinates. The NSA’s Ombudsman has, since its inception, never published a report on its activities.<sup>66</sup>

### Recommendations:

1. Revise Royal Decree No. 27/2012 to ensure the independence of the Ombudsman’s office from the Ministry of Interior by repealing *inter alia* the appointment and revocation clauses;
2. Revise Royal Decree No. 28/2012 to ensure the independence of the NSA Ombudsman from the NSA by *inter alia* repealing the appointment and revocation clauses;
3. Impose a public reporting obligation on the Special Investigation Unit and the Office of the Inspector General of the National Security Agency.

## 9.2 Failure to investigate and prosecute

It appears from all three annual reports of the Ombudsman that, out of the 2,142 complaints received from July 2013 to 30 April 2016 (which also include requests for assistance), 222 were referred for criminal/disciplinary investigation and out of those 222, only nine yielded convictions. However, these nine convictions also included disciplinary measures as shown in the Ombudsman’s first report for 2013/2014, which lists two convictions while stating that “three cases went to the Security Courts and one of these led to a conviction (of six months imprisonment and fines), one resulted in disciplinary

<sup>60</sup> Alkarama, *Bahrain: Torture of Kumail Hamida who suffers from intellectual disabilities to force him to confess to “participating in demonstrations*, 14 February 2017, <https://www.alkarama.org/en/articles/bahrain-torture-kumail-hamida-who-suffers-intellectual-disabilities-force-him-confess> (accessed on 17 March 2017).

<sup>61</sup> Committee against Torture, Third periodic report of states due in 2011, Bahrain (CAT/C/BHR/3), 16 June 2016, para. 9

<sup>62</sup> Alkarama, *Bahrain: 16 year-old boy forced to confess his “participation in demonstrations”*, 17 February 2017, <https://www.alkarama.org/en/articles/bahrain-16-year-old-boy-forced-confess-his-participation-demonstrations> (accessed on 17 March 2017).

<sup>63</sup> Refer to section 9.2.

<sup>64</sup> National Institution for Human Rights, Annual Report 2013, para. 10

<sup>65</sup> Royal Decree No. 28 of 2012, articles 2 and 5.

<sup>66</sup> Ombudsman Office of the National Security Agency website, Media Center page <http://www.ombudsman.nsa.bh/en/media-center/> (consulted on 17 March 2017).



action and one is still in the courts.”<sup>67</sup> Furthermore, the Ombudsman has in some cases refused to register a complaint, or its investigation has yielded no result.

In the case of **Hussain Abdulrasool** who was tortured in order to extract his confessions and who was left paralysed as a result of the acts he was subjected to, the family submitted complaints to the Public Prosecutor, the NHRI and the Ombudsman. The Ombudsman started an investigation but it yielded no results, and, despite being acquitted of all charges, Mr Abdulrasool was never compensated for the permanent disability he now has to bear.<sup>68</sup>

Moreover, the data provided by the Ombudsman’s reports divides complaints into a set of categories, none of which explicitly include torture; as such, it is very difficult to estimate the number of complaints related to torture and ill-treatment and whether these cases have been investigated and have led to prosecution.

In its 2011 final report, the BICI listed 44 deaths that “required further investigation”. According to its December 2013 follow-up report, it stated that all 44 deaths had been investigated by the Special Investigation Unit. However, the efficiency of the SIU as part of the Public Prosecution office in terms of investigating and prosecuting acts of torture is questionable given that the public prosecution has been itself accused of having committed acts of torture or at least coerced confessions from detainees and of having ignored torture allegations.

Indeed, in the case of one of the **young men from Bani Jamra** arrested in early December 2016, when a detainee alleged that his confession had been extracted under torture, the deputy of the public prosecutor beat him in the face with a whole puncher to force him to confirm the confessions he had made under interrogation.<sup>69</sup> Other examples include the case of **Ahmad Ali Mohamad**, who alleged to have been threatened with death by the Public Prosecutor if he did not confess, or the case of **Ali Issa Al Tajer**, who was charged with terrorism after his allegations of torture were ignored by the Public Prosecutor.<sup>70</sup>

The BICI report stated that out of the 44 deaths investigated by the SIU, 39 cases which included 95 defendants, had been referred to the courts. Out of the 95 accused, 15 were acquitted, 13 were convicted and 25 cases were still pending before courts. In its subsequent follow-up report in 2014, the BICI stated that, since the SIU’s establishment in 2012, the unit had received more than 150 complaints, which were allegedly thoroughly investigated. Out of these complaints, 30 resulted in the prosecution of 51 officers and non-commissioned officers. The 2014 report further states that “to date, 7 cases have resulted in convictions of guilt, involving 9 defendants.”<sup>71</sup> Therefore, there appears to be a decrease in the number of convictions between 2013 and 2014 due to probable acquittals on appeal.

For instance, in 2016, in the case of the death of **Hassan Al Shaikh**,<sup>72</sup> an inmate at the Jaw prison, who was found dead in solitary confinement after being brutally beaten, three police officers (a major and two lieutenants) had their sentences overturned after having been sentenced on first instance to prison sentences ranging from 12 months to three years.

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<sup>67</sup> Bahrain Independent Ombudsman, First Annual Report 2013/2014, p.8.

<sup>68</sup> Alkarama, *Bahrain: Father paralysed after excessive use of force by policemen, 2 December 2015*, <https://www.alkarama.org/en/articles/bahrain-father-paralysed-after-excessive-use-force-policemen> (accessed on 16 March 2017).

<sup>69</sup> Alkarama, *Bahrain: Student sentenced to 25 years in prison on the basis of confessions under torture*, 24 November 2015, <https://www.alkarama.org/en/article/bahrain-student-sentenced-25-years-imprisonment-basis-confessions-under-torture> (accessed on 16 March 2017).

<sup>70</sup> Alkarama Foundation, *Bahrain: security manager charged with terrorism based on confessions obtained under torture*, 15 December 2015, <https://www.alkarama.org/en/articles/bahrain-security-manager-charged-terrorism-based-confessions-obtained-under-torture> (accessed on 16 March 2017).

<sup>71</sup> Bahrain Independent Commission of Inquiry, “Moving beyond 2011”, February 2014, p. 33.

<sup>72</sup> DT news, “Three Bahrain police officers acquitted of prisoner death”, 28 March 2016, <http://www.newsofbahrain.com/viewNews.php?ppId=17514&TYPE=Posts&pid=21&MNU=2&SUB> (accessed on 24 February 2017).

In the State report, Bahrain affirms that in the cases handled by the SIU and that resulted in convictions, sentences were handed out ranging from one month to seven years' imprisonment in relation to cases involving death, torture and ill-treatment.<sup>73</sup>

For instance, and as reported in the State report, in the case of **Hani Abdulaziz Abdullah** who was beaten to death, the police lieutenant found guilty of his death was sentenced to six months in prison after his case was appealed,<sup>74</sup> despite the fact that the Bahraini Penal Code provides for life imprisonment in case the torture leads to death.<sup>75</sup>

In contrast, three individuals were executed in the beginning of 2017 for having killed a police officer. This disparity has been criticised by the Bahraini National Institution for Human Rights in its first report where it denounced the "discrepancy between the judgments awarded against the accused persons in security cases, [...] in which terms of imprisonment are usually long, and the judgments awarded against the accused persons in cases of torture and other forms of ill-treatment by the employees of the Ministry of Interior. The punishment in these cases is usually diluted, which is not commensurate with the offense committed, or acquittal may be awarded. Such approach, if proven, promotes impunity policy."<sup>76</sup>

These sentences do not reflect the gravity of the crimes in violation of article 4 UNCAT which imposes on states to make "these offences punishable by appropriate penalties which take into account their grave nature."

#### **Recommendations:**

1. Ensure that all allegations of torture made are promptly investigated;
2. Revise the Penal Code in view of specifying the duration of imprisonment for the crime of torture;
3. Ensure that the crimes of torture, ill-treatment and death under torture carry with them appropriate penalties that reflect the grave nature of these crimes;
4. Ensure that the Ombudsman's reports include a separate category for allegations of torture in order to ensure more transparency.

## **10. Conclusion**

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Since its initial review in 2005, and particularly after the publication of the recommendations by the BICI in 2012, Bahrain has amended its domestic legislation with the aim of putting it in line with its international obligations and the UNCAT. However, few of the legal safeguards enshrined in its domestic legislation are being respected in practice. Indeed, Alkarama continues to receive numerous cases of torture, demonstrating that this practice is still widely used.

Bahrain should ratify the Optional Protocol to the UNCAT as to create a strictly independent national preventive mechanism. Moreover, it should improve the existing preventative and investigative institutions, namely the Ombudsman, the PDRC, the SIU and the NHRI to increase their transparency and independence from the executive. Additionally, the critical provisions of the Anti-terrorism law should be amended and aligned with international standards. To put an end to the practice of torture, the authorities must take, without delay, the necessary steps, such as the comprehensive training of all law enforcement officials as well as the strict prosecution of perpetrators of torture, in order to bring its laws and practices into conformity.

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<sup>73</sup> Committee against Torture, Third periodic report of States due in 2011, Bahrain (CAT/C/BHR/3), 16 June 2016, para.124.f.

<sup>74</sup> *Ibid*, para. 90.f

<sup>75</sup> Bahrain Penal Code as ratified by legislative decree No.15 of 1976, article 208.

<sup>76</sup> National Institution for Human Rights, Annual Report 2013, para. 13.

Alkarama hopes that the concerns raised in this report will be addressed constructively during the dialogue between the Committee against Torture and the representatives of the State party in order to put an end to torture and other violations of human dignity.