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CRIMINALIZING DISSENT, ENTRENCHING IMPUNITY

Persistent Failures of the Bahraini Justice System Since the BICI Report



Criminalizing Dissent, Entrenching Impunity

Persistent Failures of the Bahraini Justice System

Since the BICI Report

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Map of Bahrain



Map No. 3868 Rev. 2 UNITED NATIONS
January 2004

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Source: United Nations

Summary

In July 2011, the ruler of Bahrain King Hamad bin Isa Al Khalifa established the Bahrain Independent Commission of Inquiry (BICI), comprising five international jurists, headed by Cherif Bassiouni. BICI was charged with investigating allegations of human rights abuses in connection with the government's suppression of pro-democracy demonstrations that erupted in February 2011. On November 23, 2011, BICI released an approximately 500-page report detailing its findings; it released final revisions to the report on December 10, 2011.

BICI concluded that Bahraini courts, including military courts, had convicted hundreds of people of political charges relating to the exercise of the rights to free expression and peaceful assembly. As such, BICI recommended that "all persons charged with offences involving political expression, not consisting of advocacy of violence, have their convictions reviewed and sentences commuted or, as the case may be, outstanding charges against them dropped."

BICI also found that Bahrain's security forces had killed at least 18 demonstrators and detainees without justification. BICI recommended that investigations be conducted into such deaths "with a view to bringing legal and disciplinary action against such individuals, including those in the chain of command, military and civilian, who are found to be responsible under international standards of 'superior responsibility.'"

Finally, BICI concluded that security personnel had committed abuses against individuals in custody, constituting "a deliberate practice of mistreatment" that in some cases "was aimed at extracting confessions and statements by duress, while in other cases ... [was] intended for the purposes of retribution and punishment." Consistent with this finding, BICI recommended that "all allegations of torture and similar treatment be investigated by an independent and impartial body" and that "[t]he investigation ... be capable of leading to the prosecution of the implicated individuals, both direct and at all levels of responsibility...."

In November 2011, King Hamad accepted BICI's findings, saying that the government would take the findings and recommendations "to heart" and that they "must be dealt with urgently." He also remarked, "We must reform our laws so that they are consistent with

international standards,” and that “Officials who have not been up to their task must be held accountable.”

More than two years later, however, little has changed in the administration of criminal cases in Bahrain. There are still many documented cases where judges convict defendants of “crimes” based solely on the peaceful expression of political views or the exercise of the rights to freedom of association and peaceful assembly. In the case of 13 of Bahrain’s most prominent opposition leaders and activists, the Supreme Appellate Court upheld many of the convictions and lengthy sentences that had been pronounced by a military court. For example, the civilian court found that because Abdul Wahab Hussain, an opposition leader, had founded a group dedicated to establishing a republic in Bahrain, his conviction on terrorism charges and resulting life sentence were proper. The civilian court likewise found that Hassan Mushaima and Abdul Jalil al-Singace, members of Al Haq, an unlicensed opposition group, had participated in meetings of the group founded by Hussain and possessed “publications advocating for the group.” They too, the court concluded, had been properly convicted of terrorism and sentenced to life imprisonment. To justify its conclusions, the court found that while unlawful means, such as the use of force, must be employed in order to qualify an act as terrorism, the force “need not necessarily be military [*askar*],” because terrorism can be the result of “moral pressure.”

In another prominent case, the Court of Cassation heard appeals from several medical personnel whose military court convictions had been affirmed by a lower-level civilian appeals court. The Court of Cassation, without substantive reasoning in its verdict, chose to uphold the conviction of defendant Sa’id Mazahir Habib al-Samahiji for “inciting hatred and contempt for a certain class of people,” a charge that Bahraini authorities regularly use to prosecute peaceful political speech. Neither did the Court of Cassation question the guilty verdict against Deya Ibrahim Ja’far, who had been convicted of taking part in marches and “destroying public property” for stepping on a photograph of Bahrain’s prime minister. The Court of Cassation also affirmed the convictions of two defendants for the “crime of promoting the overthrow of the regime,” ruling that “changing the state’s political system” constitutes “the commission of a crime.”

More recently, in November 2013, the Public Prosecution Office charged Shaikh Ali Salman, the head of Bahrain’s leading legally recognized political opposition group, Al Wifaq. These charges have yet to be filed with a court, but they have been shown to Salman and

could be filed at any time to initiate a criminal prosecution. The charges allege that Salman insulted the Interior Ministry, based on brief remarks he made at the opening of an exhibition that addressed human rights abuses in Bahrain. In particular, Salman spoke about “violations” against demonstrators, as documented by BICI, and voiced his hope that Bahrain “embraces all Bahrainis without exception, without differentiation, without distinction.” According to Bahrain’s minister of state for information affairs, such remarks were “disparaging [of] the Interior Ministry.”

There also have been more than a score of documented prosecutions for “insulting the king.” For example, on March 12, 2013, police arrested Ali al-Shofa, a 17-year-old, who later was sentenced to a one-year term for allegedly insulting King Hamad on Twitter. In May 2013, a court sentenced six activists to a year in jail, again for allegedly insulting King Hamad on Twitter. In February 2014, King Hamad ratified an amendment to the penal code that increased the punishment for such charges to a sentence of between one and seven years in prison and a fine of between 1,000 Bahraini dinars (BD) and BD10,000 (US\$2,660 to \$26,600). In response to a Human Rights Watch inquiry, the Office of General Prosecutor Ali Fadhul Al Buainain asserted that these convictions do not violate “the lawful right to criticism, which requires 1) that the criticism in question envisages a public interest, and 2) that it does not overstep the boundaries of public office, in order to target – unlawfully – the private life of the official concerned.” In the prosecutions for which Human Rights Watch has been able to identify the purportedly offending statements, those statements have been solely political, with no reference of any sort to the king’s “private life.”

While authorities have been vigorously prosecuting individuals solely for exercising the rights to freedom of expression, association, and peaceful assembly, the few prosecutions of security personnel implicated in the serious and widespread abuses documented by BICI have focused almost exclusively on low-ranking officers, and even those have resulted in acquittals or disproportionately light sentences. For example, BICI found that police shot at close range and killed Hani Abd al-Aziz Juma in March 2011. Prosecutors brought charges against a police officer in connection with Juma’s death. The court concluded that the officer had, without justification, fired two shots at Juma from one meter away, leaving him fatally wounded. Notwithstanding these egregious circumstances, the court found the officer guilty only of assault, making a cursory statement that he had not acted with intent to kill. The court pronounced a seven-year sentence, which an appellate court later reduced to a six-month term.

The case of Ali Saqer raises similar concerns. BICI concluded that Saqer died from hypovolemic shock (an abrupt decrease in blood circulation) caused by torture while in police custody. Prosecutors subsequently charged two officers in connection with Saqer's death. The court found that, in the absence of any justification for using force, the defendants had beaten Saqer to death. Nonetheless, without explanation the court found that the defendants had no intent to do anything more than assault Saqer, and convicted them of assault only. In reaching its conclusion, the court did not take into account the testimony of one defendant that the other defendant had beaten Saqer "until his [the other defendant's] strength was spent" or medical reports establishing that Saqer had "blunt-force contusions" on nearly every part of his body. Subsequently, an appeals court reduced the ten-year prison terms pronounced by the trial court to two-year terms, finding that the defendants deserved "clemency" on the absurd ground that they had been "preserving the life of detainees, among them the victim."

In another case, police killed Isa Abd al-Hassan Ali Hussain and Ali Ahmed Abdullah al-Momen with shotgun fire on February 17, 2011. BICI attributed the deaths to the use of excessive force because the deceased were unarmed and shot at very close range. Prosecutors charged two police officers, each with respect to one of the victims' deaths. However, prosecutors called only exculpatory witnesses at the trial, creating a clear impression that the Public Prosecution Office did not wish to see the defendants convicted; the court acquitted the defendants.

There was a similar dynamic in the prosecution of Lt. Col. Mubarak Abdullah Bin Huwayl al-Marri and Lt. Shaika Nura Bint Ibrahim Al Khalifa, a member of the ruling Al Khalifa family, for abuses allegedly committed against medical personnel; it appears these are the most senior security personnel prosecuted since the BICI report was issued. In that case, the Public Prosecution Office pursued charges in connection with certain victims without offering evidence that linked the defendants to the abuse of those victims, while not pursuing charges in relation to victims for whom there was direct evidence of abuse. The court acquitted both defendants on all counts.

Following his acquittal, al-Marri met with Prime Minister Khalifa bin Salman Al Khalifa. As reflected in a video recording of the meeting posted on YouTube, al-Marri told the prime minister, "[W]hen issues get big, you are the one with a solution." In response, the prime minister said, "You know, those laws ... Nobody could apply them to you. No one can touch

this bond between us. Whoever applies these laws against you applies them to us. We are one body.”

The stark contrast between the results of prosecutions of security personnel and prosecutions for “crimes” based on peaceful speech- and assembly-related activities presents a harsh indictment of Bahrain’s criminal justice system. Killing a protestor by firing shots at close range without justification, or beating a detainee to death, earns perpetrators sentences of six months and two years, respectively. Calling peacefully for the establishment of a republic, on the other hand, warrants a life term. Such results are impossible to reconcile with even minimal standards of justice. Sir Nigel Rodley, one of the BICI commissioners, noted to a BBC reporter in January 2013 that “the system as a whole finds dissent more dangerous than official criminality, and I see no sign that they have moved away from that position.”

Recommendations

To the Government of Bahrain

- Expunge all convictions based on the exercise of the rights to freedom of expression, association, or peaceful assembly, and all convictions based on confessions where there is any suggestion of abuse.
- Release immediately all individuals, including Ibrahim Sharif, Abdulhadi al-Khawaja, Hassan Mushaima, Nabeel Rajab, and the other activists, who have been detained or convicted solely for the exercise of the rights to freedom of expression, association, or peaceful assembly.
- Revoke Bahrain Penal Code articles that continue to be used to prosecute individuals for the exercise of the rights to freedom of expression, association, or peaceful assembly, or amend such articles so that they comply with international law.
- Ensure thorough and impartial investigations into all instances of unlawful killings, torture, and other abuses by government agents, and prosecute in good faith those responsible for criminal abuses, regardless of position or rank, in impartial proceedings. As to criminal prosecutions involving human rights abuses allegedly committed by government agents that have resulted in acquittals, victims should be permitted to pursue civil actions based on the alleged abuses.
- Adopt disciplinary and other additional measures to deter future violations.
- Amend the Bahrain Code of Criminal Procedure to require a medical examination by an independent physician in addition to the Public Prosecution Office's medical examiner of any criminal suspect who claims to have been subjected to torture or ill-treatment while in custody and who requests such an independent examination.
- Appoint an independent commission to investigate and report publicly on the Public Prosecution Office's use of evidence obtained through torture or ill-treatment in the indictments and legal proceedings examined in this report and otherwise, in violation of article 19(d) of Bahrain's Constitution and international law.
- This independent commission should also investigate prosecutors and other law enforcement officials who, in the trials examined in this report and otherwise, colluded in obtaining evidence through torture and ill-treatment or failed to report

allegations that evidence had been obtained through torture or ill-treatment, and those found responsible should be prosecuted.

- Ensure that all criminal trials are open to the public, including civil society organizations, except to the extent that restrictions on access are permitted by international law.
- Request a formal debate at the June 2014 regular session of the United Nations Human Rights Council (HRC) on the implementation of the conclusions and recommendations of the Bahrain Independent Commission of Inquiry and on the conclusions of the recent mission in Bahrain conducted by the Office of the High Commissioner for Human Rights (OHCHR).
- Extend a standing invitation to the Special Procedures of the HRC, respond positively to the visit request of the special rapporteurs on torture and on the rights to freedom of peaceful assembly and association, and facilitate in a timely manner a visit by the special rapporteur on the independence of judges and lawyers.

To the Public Prosecution Office

- Terminate ongoing prosecutions and do not institute future prosecutions against any individual based solely on the exercise of the rights to freedom of expression, association, or peaceful assembly.

To the Office of the High Commissioner for Human Rights

- Brief the HRC members on the conclusions of the February-May 2014 mission of her office in Bahrain, in particular on detentions of individuals for exercising their rights to freedom of expression and peaceful assembly; torture; restrictions to freedom of expression, assembly and association; the independence of the judiciary; and the implementation of the recommendations of the Bahrain Independent Commission of Inquiry, especially on accountability.

To the Member States of the United Nations Human Rights Council

- Adopt a resolution to condemn continued violations of human rights in Bahrain, to call for the release of individuals solely detained for exercising the rights to freedom of expression, association, or peaceful assembly, and to call for the

implementation of the recommendations of the Bahrain Independent Commission of Inquiry.

- Call for Bahrain to swiftly facilitate access for Special Procedures which have requested a visit, including the special rapporteurs on torture, on freedom of peaceful assembly and association, and on human rights defenders, and to swiftly facilitate access for the working group on arbitrary detention and the special rapporteur on the independence of judges and lawyers.
- Call for the OHCHR to address issues of concern identified during its February-May 2014 mission and ask the OHCHR to report back on Bahrain's implementation of its recommendations.

To the Special Rapporteur on the Independence of Judges and Lawyers

- Send an urgent visit request to the government of Bahrain.

Methodology

Human Rights Watch has covered human rights developments in Bahrain in detail since 1996, and, in February 2012, published *No Justice in Bahrain*, a report analyzing unfair trials, including of political dissidents in military and civilian courts before and after the mass demonstrations of February and March 2011. Since April 2011, Human Rights Watch has had very limited access to Bahrain. This is because the government has for the most part rejected or ignored Human Rights Watch's requests for visas to visit the country to monitor trials and investigate other human rights violations, with the result that our ability to meet with government officials regarding the issues relevant to this report has been extremely limited. Also for that reason, we have been unable to observe trial proceedings or meet with defendants in the cases featured in this report, defense lawyers, or victims of human rights abuses. We did, however, conduct interviews by telephone or Skype with several defense lawyers as well as victims of, and witnesses to, certain of the human rights abuses discussed.

In addition, Human Rights Watch did have access to many documents generated in connection with criminal cases, including most importantly court verdicts. These verdicts are lengthy, especially in cases with multiple defendants or complicated factual scenarios, and include substantial discussions of the evidence considered by the court. Our conclusions thus are in large measure based on the words of Bahrain's judges themselves, rather than on the advocacy of defense lawyers, defendants, or others.

This report also draws on the report of the Bahrain Independent Commission of Inquiry, published accounts relating to criminal cases from pro-government and independent media, and reports from Bahraini and international human rights groups.

Human Rights Watch's letter to Dr. Ali Fadhul Al Buainain, Bahrain's attorney general, and the response of his office, are appended to this report.

I. Prosecution of Peaceful Protest and Political Dissent

Since the Bahrain Independent Commission of Inquiry (BICI) issued its report in November 2011, Bahrain's courts have regularly convicted defendants of purported crimes that involved nothing more than the defendants' expression of political views. In a number of instances, civilian courts reaffirmed convictions pronounced first in military courts that had operated in 2011, including in cases involving prominent opposition activists and medical personnel. Notably, arguments by these defendants that prosecutors were targeting them simply because they had voiced dissent were dismissed as summarily by civilian judges as they had been by the military courts. In addition, civilian courts have heard many new prosecutions since the issuance of the BICI report, including in cases involving political figures and human rights activists, based on the defendants' exercising their rights to freedom of expression, association, and peaceful assembly. In these cases as well, courts have repeatedly pronounced defendants guilty.

Military Court Cases Reheard in Civilian Courts

On March 15, 2011, King Hamad bin Isa Al Khalifa issued Royal Decree 18/2011, establishing a three-month state of emergency, which was referred to in the decree as a "State of National Safety."¹ Among other repressive measures, the decree established special military courts, called National Safety Courts, which immediately set about investigating and prosecuting many protected acts of speech and peaceful assembly.²

On June 1, King Hamad lifted the state of emergency, but under the terms of the decree the National Safety Courts continued hearing those cases that had already been referred to them.³ As such, prosecutions before the National Safety Courts continued without

¹ "HM King Hamad Declares State of National Safety," Bahrain News Agency, March 15, 2011, <http://www.bna.bh/portal/en/news/449960> (accessed November 28, 2013).

² Royal Decree 18/2011, art. 7.

³ "HM King Hamad Issues Decree on Lifting State of National Safety," Bahrain News Agency, <http://www.bna.bh/portal/en/news/455725> (accessed November 28, 2013); "The State of National Safety is Lifted," Gulf Daily News, June 1, 2011, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=306986> (accessed November 28, 2013); Royal Decree 18/2011, art. 13; "Military Prosecutor's Statement on National Safety Cases," Bahrain News Agency, June 28, 2011, <http://www.bna.bh/portal/en/news/462821> (accessed November 26, 2013) ("The National Safety Courts will continue hearing the cases referred to it [sic] before the lifting of the State of National Safety on June 1 until final verdicts are issued, as indicated by Article (13) of [the decree]").

interruption until June 29, when King Hamad issued Royal Decree 62/2011, referring all cases still pending before the National Safety Courts to the civilian courts.⁴ However, on August 18, King Hamad issued Royal Decree 28/2011, providing that serious cases pending before the Lower National Safety Courts would be tried to completion there before being referred to civilian courts for appeals.⁵

The National Safety Courts served primarily as a vehicle to convict defendants of purported crimes arising from the defendants' exercise of the rights to freedom of expression, association, and peaceful assembly. Such rights are well established in international law, particularly the International Covenant on Civil and Political Rights (ICCPR). The ICCPR provides that "[e]veryone shall have the right to freedom of expression," including "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."⁶ Bahrain's Constitution states that "freedom of conscience is absolute" and "freedom of opinion ... is guaranteed," and recognizes the rights to assembly and to form associations.⁷

According to the BICI report, the National Safety Courts convicted approximately 300 people of political crimes. The BICI report characterized these prosecutions as designed "to punish those in the opposition and to deter political opposition."⁸ Based on a review of a more limited set of court materials than was available to the independent commission, Human Rights Watch found that military courts convicted 204 defendants of transparently political charges, including "possessing political publications," "inciting hatred of the ruling system," and "offending a public official."⁹

⁴ "HM King Hamad Issues Royal Decree Referring Cases to Civil Courts," Bahrain News Agency, June 29, 2011, <http://bna.bh/portal/en/news/462966> (accessed November 26, 2013).

⁵ "National Safety Court Decree Protects 'Right to Appeal,'" Gulf Daily News, August 23, 2011, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=312293> (accessed November 26, 2013); "Bahrain: Military Tribunals Back Again," Bahrain Youth Society for Human Rights, August 23, 2011, <http://byshr.org/?p=704> (accessed November 26, 2013).

⁶ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.

171, entered into force March 23, 1976, accession by Bahrain on September 20, 2006, art. 19(2). The ICCPR also guarantees "the right of peaceful assembly." *Ibid.* art. 21.

⁷ Constitution of the Kingdom of Bahrain, 2002, arts. 22, 23, 27, and 28.

⁸ Bahrain Independent Commission of Inquiry, "Report of the Bahrain Independent Commission of Inquiry," November 23, 2011, <http://www.bici.org.bh/BICIreportEN.pdf> (BICI Report), paras.1279-1290.

⁹ Human Rights Watch, *No Justice in Bahrain: Unfair Trials in Military and Civilian Courts*, February 28, 2012, <http://www.hrw.org/sites/default/files/reports/bahrain0212webwcover.pdf>, p. 11.

Given the politicized character of the National Safety Courts, BICI recommended that “all persons charged with offences involving political expression, not consisting of advocacy of violence, have their convictions reviewed and sentences commuted or, as the case may be, outstanding charges against them dropped.”¹⁰ BICI member Sir Nigel Rodley told Human Rights Watch that, in calling on authorities to review convictions and commute sentences, the independent commissioners meant that the Bahraini government should release individuals convicted of political offenses and expunge related criminal records. “I can confirm that our collective understanding was that the purpose of the review would be to exonerate from criminal responsibility those who have acted peacefully in the pursuit of the internationally recognized rights of freedom of expression and assembly,” Rodley said. “In the absence of any prior criminal charges, or any other charges, such persons should be released from all criminal responsibility and their records expunged.”¹¹

The Bahraini government contends that it has “implemented in full” this recommendation.¹² Contrary to this assertion, however, Bahrain’s civilian courts have convicted, or upheld the military court convictions of, scores of defendants based on the exercise of basic rights, such as freedom of expression or peaceful assembly, since the issuance of the BICI report. As noted in an August 2013 US State Department document responding to a US Congressional request for an assessment of Bahrain’s implementation of BICI recommendations, “[t]here are few instances where officials have dropped charges against individuals related to protesting peacefully or expressing their opinions and political views.”¹³

Case of the Leading Activists

Perhaps the most prominent trial before the National Safety Courts involved 21 defendants, including well-known opposition figures and activists, seven of whom were tried in absentia. Military prosecutors alleged that many of these defendants had formed or been

¹⁰ BICI report, paras. 1291 and 1722.

¹¹ “Bahrain: Independent Commissioners Urge Prisoner Release,” Human Rights Watch news release, December 15, 2011, <http://www.hrw.org/news/2011/12/15/bahrain-independent-commissioners-urge-prisoner-release>.

¹² Government of Bahrain, “BICI Follow-Up Report,” December 2013, <http://iaa.bh/uploads/pressreleasepdf/4fac9f4f-3930-4de3-af08-f812747b157a.pdf>.

¹³ US State Department, “Implementation by the Government of Bahrain of the Recommendations by the Bahrain Independent Commission of Inquiry.” The State Department issued this document in response to “a request in Conference Report 112-705 to accompany H.R. 4310, the National Defense Authorization Act for FY 2013.” The State Department document is unclassified but undated and appears to be unavailable on the State Department website. A copy is on file with Human Rights Watch.

involved with a group referred to as the “Coalition for a Republic,” whose purpose was to replace Bahrain’s monarchy with a republican form of government. Prosecutors also charged certain defendants with broadcasting “false and tendentious news and rumors,” including for having asserted that sectarian discrimination existed in Bahrain, and charged some defendants with “inciting” people to engage in demonstrations and marches.¹⁴ Even though all of these activities appeared to constitute the exercise of basic rights, rather than criminal conduct, the military court, in June 2011, convicted each defendant, sentencing eight defendants to life terms, ten defendants to fifteen-year terms, two defendants to five-year terms, and one defendant to a two-year term.¹⁵ The National Safety Court of Appeals affirmed all of the convictions and sentences in September 2011.¹⁶

The 14 defendants who were in custody appealed the military court verdict to the civilian Court of Cassation, the highest appellate court in Bahrain. The Court of Cassation vacated the convictions and referred the case to the Supreme Appellate Court for a retrial.¹⁷ During the proceedings in the Supreme Appellate Court, civilian prosecutors purportedly withdrew charges for “crimes linked with freedom of expression.” In reality, prosecutors continued to pursue charges based upon the defendants’ advocating the establishment of a republican form of government in Bahrain and related activities.¹⁸

Prosecutors in the retrial contended, and the Supreme Appellate Court found, that Abdul Wahab Hussain, a longtime opposition leader and head of Al Wafa’ [Fidelity] Islamic Movement, had founded the Coalition for a Republic “to change the system of governance in the kingdom,” and that other defendants had joined the group and participated in its activities. For example, the court wrote that Hassan Mushaima and Abdul Jalil al-Singace, members of the legally unrecognized opposition group Al Haq, and Ibrahim Sharif, leader of the recognized National Democratic Action Society, had “possessed publications advocating for the group.” The court found that Abdulhadi al-Khawaja, a veteran human rights activist, and others had “propagate[d] the overthrow of the state’s political order.”

¹⁴ National Safety Court, Case No. 124/2011, Verdict, June 22, 2011.

¹⁵ *Ibid.*

¹⁶ “National Safety Court of Appeals issues verdicts,” Bahrain News Agency, September 28, 2011, <http://bna.bh/portal/en/news/474496?date=2011-09-28> (accessed November 26, 2013).

¹⁷ The Court of Cassation “partially vacated” the judgment against one defendant, al-Hurr Muhammed Yusef al-Samikh, and reduced his sentence from two years to six months. Supreme Appellate Court, Case No. 124/2011, Verdict, September 4, 2012 (describing procedural history of the prosecution).

¹⁸ *Ibid.*

The court also concluded that members of the group “worked assiduously to frustrate” a “national dialogue,” choosing instead to “advocate the declaration of a republic in the country.” In addition, the Supreme Appellate Court found that members of the group attended various protests.¹⁹

Relying on these findings, the court ruled that all defendants were guilty of terrorism (except for one defendant whom the military court had acquitted of this charge) and affirmed the prison terms that the military courts had pronounced, including life sentences for Hussain, Mushaima, al-Khawaja, and al-Singace, and a five-year term for Sharif. Specifically, the court concluded that both the objective and the means employed by the Coalition for a Republic were illegal. As to objective, the court noted that the Coalition for a Republic was established with “the goal ... of removing the monarchical system.”²⁰

As to means, the court found that unlawful means, such as force, must be employed in order to qualify an act as terrorism, but that the Coalition for a Republic need not “advocate [the] use [of] force explicitly; rather it is enough that it be implicitly understood that ... [there will be] recourse to force, terrorism or any other unlawful means.” The court also concluded that “force in the current case need not necessarily be military [*askari*], but rather may be the exercise of force through other actions, such as the organization of popular demonstrations as a tool to pressure the government.” The court also found that terrorism can be the result of “moral pressure.”²¹

Similarly, the court found the defendants guilty of attempting to change the constitution and monarchical system “by force,” based on the conduct described above and the court’s reasoning that “force” does not necessarily entail “the use of weapons; rather force may be exercised in other actions, such as organizing and leading popular demonstrations as a tool to pressure the government.”²²

The idea that seeking to create a republic through public advocacy and peaceful demonstrations alone can be the basis for a criminal charge and conviction would

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid. The sentence in full reads: “Terrorism is realized in all means of moral pressure, ruin, destruction, or the obstruction of facilities.”

²² Ibid.

criminalize classic tools of peaceful protest. The court appears to have enunciated this ill-founded principle as the basis for the terrorism (and other) convictions because it was unable to find that any specific defendant had any discernable connection to any specific act of violence.²³ Rather, the court concluded only that the defendants had engaged in a variety of acts of political protest—acts that are protected under international and Bahraini law.

The court also found three of the defendants guilty of committing espionage on behalf of Iran and the Lebanese political group Hezbollah, a crime the court defined as occurring when a defendant “contact[s] a foreign state, secretly or publicly, to plot with it, incite it, or supply it with suggestions or advice to prompt it to engage in hostile acts against the kingdom.” With respect to the acts that constituted espionage, the court found the defendants had given information to Iran and Hezbollah “about the internal conditions in the Kingdom of Bahrain,” and had “receiv[ed] directives and orders to commit hostile acts in the country with ... the purpose of overthrowing the system of governance....”²⁴

For example, the court concluded that unnamed Hezbollah agents advised certain defendants to take action to “change the regime.” It also found that Hussain met with Ayatollah al-Sayyed Ali al-Sistani, the prominent Iraqi religious leader, and Ali al-Khamenei, Iran’s Supreme Leader, who, according to the court, “confirmed ... the ... legitimacy of the movement of the people of Bahrain and their demand for their rights.” The court noted that a laptop seized from Mushaima had “publications taken from the internet ... that contained statements by some Iranian officials about the internal situation in the Kingdom of Bahrain in which they disparaged the regime ... [and] criticized its conduct....”²⁵ The court did not find that any defendant engaged in acts that could legitimately be considered “hostile” as a matter of criminal law, given that organizing pro-democracy protests and communicating about such protests—even if outside Bahrain or with the blessing of non-Bahraini parties—is precisely the sort of activity protected by laws guaranteeing the rights to freedom of expression and association.

²³ The court did write that some unspecified individuals, perhaps including unspecified defendants, “incit[ed] ... the commission of hostile acts, including assaults on and resistance to authorities” and “attacked Sunni houses of worship.” The court also wrote that unspecified “demonstrators killed and kidnapped some security personnel and the Asian community was targeted.” According to the court, these acts took place “under the umbrella of the Coalition for a Republic.” Ibid. Such generalized statements do not amount to a finding that any of the defendants actually was involved with violence.

²⁴ Ibid.

²⁵ Ibid.

The court further found certain defendants guilty of other crimes based on their exercise of basic political rights. According to the court, the possession by four defendants of written materials was criminal because the materials included “a simplified study of the system of government ... [that] described the existing regime as tribal and sectarian” and called for the “construction of a new system.” The court found a number of defendants guilty of having insulted the army by describing it as unpatriotic and comprised of “thugs and mercenaries,” of spreading “false news” abroad regarding sectarian discrimination in Bahrain, and of maligning naturalized Bahrainis.²⁶

The Supreme Appellate Court explicitly rejected the defendants’ arguments that they had not acted criminally, but rather were pursuing political reform through peaceful means. The court distinguished between “criticism,” which it said was permissible, and “inciting the overthrow of the regime and changing the constitution of the state and its political system,” which it characterized as criminal. A “critic,” the court ruled, seeks “to persuade others of his opinion, uses arguments and proofs and ... does not impose his words and seeks nothing but to persuade.” An “inciter,” on the other hand, “relies on the intellectual dependence of the listener, and his method is to speak to the emotions, desires, biases, and instincts of his listeners or readers.” The defendants had formed a group with the goal of “establish[ing] a republican system” and had “led demonstrations, which are a type of force.” In this manner, the court determined that the defendants had not pursued a “peaceful course.”²⁷

International human rights law permits restrictions on expression that amounts to “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”²⁸ However, the Supreme Appellate Court’s understanding of what constitutes incitement falls far outside the scope of what international law contemplates. The court, in reaching arbitrary conclusions about the difference between a “critic” and an “inciter” as the basis for criminal convictions and lengthy prison terms, renders principles of freedom of expression meaningless and brings almost any speech critical of the ruling authorities within the ambit of criminal prosecution.

²⁶ Ibid.

²⁷ Ibid.

²⁸ ICCPR, art. 20.

In January 2013, the Court of Cassation affirmed the Supreme Appellate Court's verdict, rejecting all of the defendants' arguments. In large measure, the Court of Cassation found it did not have jurisdiction to evaluate the findings of the lower court for procedural reasons.²⁹

The Court of Cassation did address one defense argument, i.e., that the protest marches underlying the convictions had been sanctioned by Crown Prince Salman bin Hamad Al Khalifa.³⁰ In this regard, the court found that the defendants had "exceeded the legitimacy conferred by the statement on freedom of expression insofar as these marches and assemblies were not peaceful."³¹ However, neither the military court nor the Supreme Appellate Court cited evidence linking any of the defendants to any act of violence, as discussed. The lack of such findings did not trouble the Court of Cassation, which determined that "a valid judgment to convict need not specify the role of all participants in a crime as long as it proved with positive evidence the complicity of each in the commission of the crime...." No explanation was offered as to how an individual defendant's "complicity" in a crime could be proven without specifying the defendant's "role" in the crime. Neither can this notion be reconciled with the presumption of innocence, codified in international and Bahraini law, which requires each element of a crime to be proven beyond a reasonable doubt against an individual defendant.³²

²⁹ Bahrain Cassation Court, Case No. 124/2011, Verdict, January 7, 2013. The Court of Cassation also found that the Supreme Appellate Court "demonstrated the facts of the case and the evidence on which it relied in its ruling adequately and sufficiently, concluding that the elements of the crime alleged against the appellant[s] were present ... It did this with proper reasoning that is compatible with the facts of the case and the letter of the law...."

³⁰ On February 19, 2011, in response to a question posed by CNN as to whether protesters would be allowed to stay in Pearl Roundabout, where they had gathered, Crown Prince Salman said, "Absolutely. We are working to get them a safe place." "Robertson Speaks to Crown Prince of Bahrain," CNN, February 19, 2011, <http://cnnpressroom.blogs.cnn.com/2011/02/19/robertson-speaks-to-crown-prince-of-bahrain/> (accessed November 26, 2013). In remarks made on March 6 on Bahrain National Television, the crown prince reaffirmed that "this is one of the rights of Bahraini citizens, it is their right to gather and walk in peaceful marches. This is protected in the constitution and we have to support it." He stated further that he would "protect the right of a citizen to organize a sit-in even if [he] disagree[d] with him in [his] opinions." "Interview with His Highness Crown Prince Salman (in Arabic)," Bahrain TV, March 6, 2011, video clip, YouTube, <http://www.youtube.com/watch?v=8J3NvT9wpmQ> (accessed November 26, 2013).

³¹ Bahrain Cassation Court, Case No. 124/201, Verdict, January 7, 2013.

³² *Ibid.*; Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), art. 11; ICCPR, art. 14(2); Arab Charter on Human Rights, adopted on September 15, 1994, art. 16; Constitution of the Kingdom of Bahrain, art. 20(c); UN Human Rights Committee, General Comment 32, Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), para. 30 (presumption of innocence manifests itself by the burden of proof, whereby the prosecutor has to prove the defendant's guilt of the charges beyond a reasonable doubt); see also Bahrain Code of Criminal Procedure, 2002, art. 255.

Trial of Medical Personnel

In May 2011, military prosecutors charged 20 doctors and other medical personnel with various crimes, primarily in connection with events at Salmaniya Medical Complex (SMC), the country's largest medical facility, which was the site of demonstrations in February and March 2011, and a government takeover in the days after the declaration of the state of emergency. The National Safety Court, on September 29, 2011, convicted all 20 defendants of offenses in violation of their rights to freedom of expression and assembly, including “[p]ublicly incit[ing] ... hatred and contempt for the governing regime,” “[p]ublicly incit[ing] ... hatred and contempt for a certain class of people,” and engaging in illegal assemblies. It also convicted 14 of the defendants of “broadcast[ing] false and tendentious news ... about the number of injured persons and type of injuries.”³³

The defendants appealed the National Safety Court's verdict to the Supreme Appellate Court. On June 14, 2012, the Supreme Appellate Court upheld certain of the convictions against 10 of the defendants (while acquitting those defendants of other charges) and acquitted 10 defendants entirely. Those defendants whose convictions were upheld in part filed a subsequent appeal to the Court of Cassation.³⁴

The Court of Cassation affirmed the convictions of two defendants for the “crime of promoting the overthrow of the regime.” The court stated that the elements of this crime are: “directing of intentions toward mobilization and promotion of [overthrowing the regime], by force or by writing, supporting and advocating it to persuade the largest number of people, or advocating it in such a way as to attract the largest number of supporters.” The court further stated that “it is not a condition that the offender actually engage in an act of force or violence.” Several of the defendants, the court reasoned, were properly convicted of this charge because they had made speeches and broadcast statements “calling for ... the transformation of the state's political system into a republic or constitutional monarchy, and urging clerics to advocate these principles.” According to the court, advocating “changing the state's political system” constitutes “the commission of a crime.”³⁵ With these findings, Bahrain's highest court again ratified

³³ National Security Courts, Case No. 191/2011, Verdict, September 29, 2011.

³⁴ Court of Cassation, Case No. 191/2011, Verdict, October 1, 2012.

³⁵ *Ibid.*

the lower courts' criminalization of nonviolent political protest and in essence outlawed any pro-democracy advocacy.

The Court of Cassation also affirmed the conviction of defendant Sa'id Mazahir Habib al-Samahiji for "inciting hatred and contempt for a certain class of people," without any discussion of the factual basis for the conviction. Such a broad and vague crime has significant potential to be used by authorities to violate the right to freedom of expression, especially in an environment of sectarian polarization, which has characterized Bahrain in recent years. Moreover, the court held the conviction was proper in the absence of any evidence that a breach of the peace had occurred, even though the relevant penal code provision states explicitly that inciting hate is criminal only "if such incitement undermines the public peace."³⁶

The Court of Cassation further affirmed, without substantive discussion, the guilty verdict against Deya Ibrahim Ja'far, a nurse at SMC. The Supreme Appellate Court had convicted her of taking part in marches and sit-ins as well as destroying a photograph of Prime Minister Khalifa bin Salman Al-Khalifa.³⁷

A number of these defendants alleged that they had made "confessions" due to coercion. BICI had concluded that there was a "discernible pattern of mistreatment with regard to ... some of the medical personnel arrested at SMC."³⁸ The Court of Cassation ruled that such complaints were irrelevant, as was the failure of the Supreme Appellate Court to appoint a medical committee to investigate complaints of abuse, given that the Supreme Appellate Court had not relied on any confessions in convicting the defendants.³⁹

While it appears that the Supreme Appellate Court did not rely on confessions in reaching its verdict, a state has an obligation nonetheless to investigate all credible allegations that a defendant has been tortured or ill-treated. The Convention against Torture requires a prompt and impartial investigation "wherever there is reasonable ground to believe that an

³⁶ Bahrain Penal Code, 1976, art.172; *Ibid*.

³⁷ Court of Cassation, Case No. 191/2011, Verdict, October 1, 2012. See also Human Rights Watch, *No Justice in Bahrain: Unfair Trials in Military and Civilian Courts*, pp. 18-19.

³⁸ BICI report, para. 1230.

³⁹ Court of Cassation, Case No. 191/2011, Verdict, October 1, 2012.

act of torture has been committed in any territory under its jurisdiction.”⁴⁰ A state must also ensure that any victim of torture “obtains redress and has an enforceable right to fair and adequate compensation....”⁴¹ In addition, statements extracted by torture shall not be used as evidence in any proceeding, “except against a person accused of torture as evidence that the statement was made.”⁴²

Case of Mahdi Abu Deeb and the Bahrain Teachers’ Society

In June 2011, the National Safety Court commenced a prosecution against Mahdi Abu Deeb, the president of the Bahrain Teachers’ Society, on the basis of 12 statements the society had issued between mid-February and mid-March 2011. The first statement expressed support for pro-democracy protestors, called for a constitutional monarchy, and condemned the government’s treatment of protestors. Subsequent statements, according to prosecutors, called for teachers to hold sit-ins, for parents not to send children to school, and for the dismissal of the minister of education on the grounds that he had insulted teachers and not provided for their security. Prosecutors also lodged charges against Abu Deeb for attending protest marches. The National Safety Court convicted Abu Deeb on the basis of these protected activities and sentenced him to 10 years in prison.⁴³

On appeal to the Supreme Appellate Court in October 2011, the prosecution dropped some charges that infringed on the right to freedom of expression.⁴⁴ However, based on no alleged conduct other than the activities described above, the appeals court upheld Abu Deeb’s conviction, while reducing his sentence to five years without explanation. In

⁴⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, art. 12.

⁴¹ *Ibid.*, art. 14.

⁴² *Ibid.*, art. 15. Bahrain’s Constitution provides that “[n]o person shall be subjected to physical or mental torture, or inducement, or undignified treatment, and ... [a]ny statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void.” Constitution of the Kingdom of Bahrain, art.19(d). Bahrain’s Penal Code criminalizes the use of “torture, force or threats, either personally or through a third party, against an accused person, witness or expert” in order to induce a person to confess to an offense or to offer statements or related information. Bahrain Penal Code, arts. 208 and 232. Bahrain’s Code of Criminal Procedure provides that anyone arrested or detained must be treated “in such a manner as to maintain his human dignity and shall not be subjected to any bodily or psychological harm.” Bahrain Code of Criminal Procedure, art. 61.

⁴³ Supreme Appellate Court, Case No. 406/2011/13, 484/2011/13, 54/2012/22, Verdict, October 21, 2012 (recounting procedural history of the case); “The 1st Instance National Safety (Criminal) Court issues 4 verdicts,” Bahrain News Agency, September 25, 2011, <http://www.bna.bh/portal/en/news/474052> (accessed November 26, 2013).

⁴⁴ These were charges pursuant to Bahrain Penal Code article 165 (publicly inciting hatred of the ruling regime), article 168 (disseminating false statements), and article 173 (inciting the disobedience of laws). Supreme Appellate Court, Case No. 406/2011/13, 484/2011/13, 54/2012/22, Verdict, October 21, 2012.

discussing a conviction on the charge of advocating the use of force to overthrow the ruling regime, the appeals court held that, “It is not a condition that the offender actually engage in an act of force or violence; rather, it is sufficient that the use of force, threat, or other illegitimate means be observable in the realization of the goals the offender advocates.” Indeed, the court did not discuss any act of force or violence that Abu Deeb supposedly took. In essence, the court ruled that it was irrelevant that Abu Deeb had not engaged in or advocated the use of violence; rather it was sufficient that force could possibly be used by anyone at any time to accomplish the goals advanced by the society.⁴⁵ On November 25, 2013, the Court of Cassation rejected Abu Deeb’s final appeal, thereby precluding the possibility of his conviction being reversed.⁴⁶

Plot to “Kill Asians”

It is worth noting one further case that originated in the military courts before reaching a final resolution in the civilian courts. Although not a political prosecution as such, the case involved one of several attacks against South Asian migrant workers on March 13, 2011, immediately prior to the government’s imposition of the state of emergency, and touched on the government’s contention that anti-government protesters engaged in violent attacks on persons and property. Military prosecutors charged 15 defendants with premeditated murder, assault, destroying property, and unlawful assembly in connection with an alleged plot to “kill Asians” that left one Pakistani migrant worker dead and another seriously injured from beatings. Prosecutors presented confessions made by seven of the defendants during interrogations that implicated those seven, and all but one of the other defendants as well. No additional evidence was offered specific to any defendant.⁴⁷

Counsel for the seven confessing defendants told the military court that their clients’ statements resulted from what the military court’s verdict termed “physical duress.” Medical reports demonstrated that five of these seven defendants suffered from “discolorations” on their skin, consistent with ill-treatment. The military court dismissed one of the medical reports, which found that the injuries on the defendant differed from

⁴⁵ Supreme Appellate Court, Case No. 406/2011/13, 484/2011/13, 54/2012/22, October 21, 2012.

⁴⁶ Email correspondence from Jalila Sayed to Human Rights Watch, February 12, 2014.

⁴⁷ The other evidence consisted of testimony from the surviving victim who did not identify any defendant, testimony from a police official who spoke in terms of what the defendants generally did without identifying any individual defendant, and a coroner’s report. National Safety Court, Case No. 65/2011, Verdict, October 3, 2011.

the “type left by shackles,” without seeking to determine the cause of the injuries. The military court noted that the other four medical reports did not date the diagnosed injuries and, for that reason alone, decided there was no “link between these injuries and the confessions of these defendants.” On those grounds, the court found the confessions to be “free of the taint of coercion” and convicted 14 of the defendants of premeditated murder, sentencing them all to life terms on October 3, 2011.⁴⁸

In late 2012, the Supreme Appellate Court found 13 of the 14 convicted defendants guilty of assault rather than murder, without explaining why it found them guilty on a reduced charge, and accordingly amended all the sentences from life to 15 years. The court acquitted one defendant who evidently had been in a coma at a hospital when the crime occurred, making his conviction by the military court particularly egregious.⁴⁹

In convicting the 13 defendants, the Supreme Appellate Court gave great weight to the defendants’ purported confessions, stating that it was assured of the soundness of those confessions and dismissing claims that the confessions had been coerced as “merely unsupported statements unverified by any evidence.” The court ignored the medical reports addressed above because those reports did not date the described injuries. Also, the court reasoned that (1) during questioning by military prosecutors no defendant complained of coercion, (2) the defendants admitted to some of the charges while denying others, which “is incompatible with suspected coercion,” and (3) the defendants’ statements regarding the facts surrounding the death of the victim were consistent with the autopsy report. However, the court cited no evidence against any of the defendants beyond the challenged confessions, despite the fact that the medical reports found that five of the seven confessing defendants had suffered physical injuries.⁵⁰

⁴⁸ Ibid.

⁴⁹ Supreme Appellate Court, Case No. 65/2011, Verdict, December 26, 2012; “Bahraini acquitted of murdering Pakistani,” Gulf Daily News, December 27, 2012, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=344481> (accessed November 26, 2013).

⁵⁰ Supreme Appellate Court, Case No. 65/2011, Verdict, December 26, 2012. The appeals court noted that it had attempted to appoint a committee to conduct medical examinations of the defendants, but that the committee did not perform examinations because “the Ministry of Health did not designate an ophthalmologist and the defense insisted on an [impartial] international committee.” Evidently, the appeals court made no further attempt to explore the defendants’ claims of coercion.

On May 27, 2013, the Court of Cassation upheld the Supreme Appellate Court’s verdict. The Court of Cassation dismissed most of the defendants’ arguments as being related to the merits of the convictions, and therefore not within the court’s jurisdiction, rather than being procedural matters within the court’s jurisdiction. The court rebuffed the defendants’ arguments that the only evidence incriminating them came from confessions that were internally inconsistent and that the medical evidence supported their contention that the confessions had been coerced. In this regard, the court noted simply that the military court had been “persuaded that there was no taint of coercion involved in the confessions.”⁵¹ As such, no judicial body investigated the defendants’ allegations, which were corroborated at least in part by medical records, that the confessions at issue were coerced.

The Court of Cassation also ruled that it is permissible for police officials to offer testimony based on information provided by informers, even if the identity of the informers remains secret during trial and defense counsel are unable to cross-examine them. In the court’s words, such a result is proper as long as the police official “is personally convinced of the truth of the reports and believes the information he received....” By this ruling, the court violated the principle of “equality of arms,” which requires that defendants have an opportunity to meaningfully cross-examine prosecution witnesses.⁵²

Cases Originating in Civilian Courts

While many observers regarded the discontinuation of the National Safety Courts as a positive development, Bahrain’s civilian criminal courts have also failed to provide impartial justice and have repeatedly convicted defendants for exercising basic rights, including in high-profile cases.

February 14 Coalition

In a case with more than passing similarities to the case of the leading activists, described above, on September 29, 2013, the Fourth Superior Criminal Court convicted 50

⁵¹ In its discussion, the Court of Cassation found it was permissible for the lower courts to have disregarded the findings of BICI on this issue. The court also found it was proper for military authorities to have questioned the defendants without counsel because “[t]he documents contain no indication that the [defendants] informed the investigator of their attorney....” Court of Cassation, Case No. 65/2011, Verdict, May 27, 2013. Thus, the court failed to address substantively complaints about torture and the denial of the right to counsel.

⁵² Ibid. Under both international and Bahraini law, a defendant has the right to examine prosecution witnesses under the same conditions as prosecution witnesses. ICCPR, art. 14(3)(e); UN Human Rights Committee, General Comment 32, para. 39; Arab Charter on Human Rights, art.16(5); Bahrain Code of Criminal Procedure, arts. 220-221.

defendants, primarily on charges of establishing and joining a group known as the “February 14 Coalition.” According to the court verdict, the objective of the coalition was to change the constitution by “sowing chaos in the country, committing crimes of violence and sedition, attacking public and private property, intimidating citizens and harming national unity.”⁵³

The evidence to support these charges came in the form of testimony from two investigating officers, confessions of ten defendants, and recordings and photographs. The evidence showed that many of the defendants had organized and participated in protests, and used social media such as Twitter, Skype, and WhatsApp to call on others to participate. Several defendants also gave interviews to traditional media outlets regarding the coalition’s mission. Three defendants were in possession of photographs depicting rallies and, in one case, showing “the organization’s slogan (February 14 Coalition) ... as a backdrop to the platform” from which a defendant gave speeches. With the exception of one defendant, whose circumstances are discussed below, the court did not find that any of the defendants had been involved in any specific act of violence.⁵⁴ As such, the political nature of this prosecution is plain.

Also echoing the case of the leading activists, the court convicted several of these defendants of committing espionage for and soliciting money from Iran. The basis for the convictions on these charges was a finding that those defendants had attended a January 2013 “Islamic awakening conference” in Teheran, during which they went to the office of Supreme Leader al-Khamenei and asked for financial support. They also allegedly agreed to supply al-Khamenei’s office and the Iranian Revolutionary Guard with information about conditions in Bahrain. The evidence purportedly establishing that the meeting with al-Khamenei’s office actually occurred consisted solely of a statement by one defendant that others had gone to the office.⁵⁵

As discussed above, the Supreme Appellate Court ruled in the case of the leading activists that an individual commits espionage when he “contact[s] a foreign state, secretly or publicly, to plot with it, incite it, or supply it with suggestions or advice to prompt it to

⁵³ Fourth Superior Criminal Court, Case No. 5737/2013/07, Verdict, September 29, 2013.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

engage in hostile acts against the kingdom.” Entirely absent from the court’s discussion of the espionage charges in the February 14 case was any allegation, let alone evidence, of a recognizably hostile act against Bahrain.⁵⁶

The court also convicted seven defendants of attending training camps run by the Iranian Revolutionary Guard in Iran and Iraq, and convicted six defendants of “aiding and abetting” that training. The evidence to support these convictions consisted of one defendant’s passport, which showed travel to Iraq in 2013, a purported confession from one defendant that two different defendants had received military training and recruited others for training, and a purported confession from another defendant that a February 14 Coalition leader had sent people to Iraq to receive training.⁵⁷

In light of this evidentiary record, it is highly questionable as to whether prosecutors met their burden to establish guilt beyond a reasonable doubt on these serious charges, as required under international and Bahraini law. It is indisputable that prosecutors failed to meet this burden as to three defendants who were convicted without the court making any factual findings about any actions those defendants took. The court convicted a fourth defendant who it found had done nothing more than opine to another defendant “that they would be victorious.”⁵⁸

Ultimately, the court found that only one of the 50 defendants had committed an identifiable act of violence. Specifically, that defendant was found to have assaulted a policeman during the course of his arrest at his home, causing “cut and scratch injuries” to the officer. The court also convicted this defendant of having “[p]ublicly defamed” public servants for yelling curses at the arresting officers.⁵⁹

Despite the striking lack of evidence of any legitimately criminal activity, the court sentenced 16 defendants to 15-year terms, 4 defendants to 10-year terms, and the remaining 30 defendants to 5 years in prison.⁶⁰

⁵⁶ Ibid.

⁵⁷ Ibid. The defendant whose passport showed travel to Iraq confessed only that he “knew of the military training in Iraq.” The other evidence linking him to the purported training activities was a different defendant’s confession that he was somehow “involved.”

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

Nabeel Rajab

Nabeel Rajab is a 49-year-old small business owner and prominent human rights activist.⁶¹ Rajab, the president of the Bahrain Center for Human Rights, has been active on a range of issues, from the US government's detention of Bahraini citizens in Guantanamo Bay to migrant worker rights and violations of civil and political rights in Bahrain. Since 2010, the Bahraini government has harassed and attempted to intimidate Rajab for his activism, a campaign that intensified in 2012, when authorities began to subject him to a series of prosecutions for his exercise of basic rights.⁶²

On May 5, 2012, police arrested Rajab for "offending an official institution" and, on June 28, a court fined him BD300 (US\$800) for having committed that offense based on his tweeting that police had not protected civilians from attack by an armed group.⁶³ Then, on July 9, another court sentenced Rajab to three months' imprisonment for "insulting" a town in Bahrain after Rajab tweeted that the prime minister no longer enjoyed support there, which prosecutors contended was offensive to town residents.⁶⁴ Hours after the ruling, masked security forces seized Rajab at his home in front of his children and brought him to prison.⁶⁵ An appeals court reversed the conviction and three-month sentence in late August 2012, after Rajab had served much of the sentence.⁶⁶

⁶¹ Rajab is also a member of the Advisory Committee of Human Rights Watch's Middle East and North Africa division.

⁶² In September 2010, the pro-government daily *Al Watan* alleged in a front-page article that Rajab was linked to a "terrorist network," at a time when political detainees were being questioned about their links with the Bahrain Center for Human Rights. "Bahrain: Halt Threats Against Rights Defenders," Human Rights Watch news release, September 7, 2010, <http://www.hrw.org/news/2010/09/07/bahrain-halt-threats-against-rights-defenders>. In December 2010, authorities confiscated Rajab's computer and copied its contents. "Bahrain: End Harassment of Prominent Rights Defender," Human Rights Watch news release, December 7, 2010, <http://www.hrw.org/news/2010/12/07/bahrain-end-harassment-prominent-rights-defender>. In April 2011, unknown assailants attacked Rajab's home with teargas grenades. "Bahrain: Attack on Rights Defender's Home," Human Rights Watch news release, April 18, 2011, <http://www.hrw.org/news/2011/04/18/bahrain-attack-rights-defender-s-home>.

⁶³ "Bahrain: Drop Charges Against Rights Activists," Human Rights Watch news release, May 15, 2012, <http://www.hrw.org/news/2012/05/15/bahrain-drop-charges-against-rights-activists>; "Nabeel Rajab in plea against his conviction," *Gulf Daily News*, November 28, 2012, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=342640> (accessed November 26, 2013) (referencing June 28 hearing at which fine was levied). Ultimately, the judgment fining Rajab was reversed. Superior Criminal Court, Case No. 1643/2012/11, Verdict, December 11, 2012.

⁶⁴ "Bahrain: Activist Jailed for Twitter Post," *Reuters*, July 9, 2012, <http://www.nytimes.com/2012/07/10/world/middleeast/bahrain-activist-jailed-for-twitter-post.html> (accessed November 26, 2013).

⁶⁵ "Bahrain: Rights Activist Jailed for 'Insulting' Tweets," Human Rights Watch news release, July 11, 2012, <http://www.hrw.org/news/2012/07/11/bahrain-rights-activist-jailed-insulting-tweets>; Mary Bahrain, "#Bahrain: Masked Riot Police Arrest the HRs Activist Nabeel Rajab," July 9, 2012, video clip, YouTube, <https://www.youtube.com/watch?v=nENlacyy3Sw&feature=youtu.be> (accessed November 26, 2013).

⁶⁶ "Bahrain court acquits protest leader of Twitter insult," *Reuters*, August 23, 2012, <http://www.reuters.com/article/2012/08/23/bahrain-court-rights-idUSL6E8JNLT320120823> (accessed November 26, 2013).

On August 16, 2012, while Rajab’s lawyers attended an appeal in the “insulting” case, authorities brought Rajab from prison to a different courtroom and sentenced him to three years’ imprisonment in three other proceedings for taking part in “illegal gatherings,” i.e., participating in pro-democracy demonstrations without a government permit.

According to the court verdict in one of the three proceedings, on an unspecified date in February 2012, Rajab and others had gathered near the Chamber of Commerce, chanting political slogans, when police ordered them to disperse. Four people, including Rajab, refused to leave and police arrested them. The court made no mention as to what, if anything, the four who remained did other than not leave.⁶⁷ On this basis, the court convicted Rajab pursuant to article 178 of the Bahrain Penal Code, which criminalizes a gathering if it is attended by “at least five persons” and its aim is to commit crimes or undermine public security.⁶⁸ The court also convicted Rajab pursuant to Bahrain’s Law Related to Public Meetings, Demonstrations, and Gatherings, which requires that protest organizers secure government permission for demonstrations or marches.⁶⁹

In a second proceeding on August 16, the court found that, on March 31, 2012, Rajab had called for an unauthorized demonstration in Manama, Bahrain’s capital, in which he participated with approximately 50 others. The court further concluded that Rajab and this group failed to disperse when so directed by the police. As in the first proceeding, the court made no findings that Rajab or any of the other demonstrators committed any violent or aggressive actions.⁷⁰

In the third proceeding on August 16, the court found that, on January 12, 2012, Rajab had urged a group to take part in a protest in Manama and led the protest, during which demonstrators chanted for the release of political detainees. The court stated that the group failed to heed police calls to disperse. The court also concluded that some people threw stones and Molotov cocktails at security forces, but did not suggest that Rajab had taken part in or incited this violence.⁷¹ In none of the verdicts did the court make any

⁶⁷ Third Minor Criminal Court, Case No. 07201203460, Verdict, August 16, 2012.

⁶⁸ *Ibid.*; Bahrain Penal Code, art. 178.

⁶⁹ Third Minor Criminal Court, Case No. 07201203460, Verdict, August 16, 2012.

⁷⁰ Third Minor Criminal Court, Case No. 07201205263, Verdict, August 16, 2012.

⁷¹ Third Minor Criminal Court, Case No. 07201204947, Verdict, August 16, 2012.

reference to Rajab’s having been involved, directly or indirectly, in any act of violence. Nonetheless, the court sentenced Rajab to a three-year jail term.⁷²

Perhaps attempting to bolster its case in the court of public opinion, the government posted videos of some of the protests on YouTube, claiming that “you will find...defendant Nabeel Rajab violating the law.”⁷³ Those videos, which Human Rights Watch viewed, appeared to confirm that the protests were peaceful, even good-natured, and failed to capture Rajab saying or doing anything that could be classified as violent or constituting incitement to violence.

On December 11, 2012, the Superior Criminal Court heard appeals in each of the three cases referenced above. It affirmed the three convictions against Rajab for participating in unlicensed marches pursuant to Bahrain’s Law Related to Public Meetings, Demonstrations, and Gatherings. In two cases, the court found there was no evidence that Rajab had done anything to affect public order and thus acquitted him of charges pursuant to article 178, which, as mentioned, criminalizes gatherings aimed at undermining public security. In each of those two cases, however, the court sentenced Rajab to the maximum penalty of six months’ imprisonment for taking part in unauthorized demonstrations.⁷⁴

In the third case, the court verdict affirmed the conviction for taking part in an unauthorized gathering as well as Rajab’s conviction pursuant to article 178, without explanation, and sentenced him to a one-year term.⁷⁵ According to pro-government media, the presiding judge stated that Rajab was convicted pursuant to article 178 because the “illegal gathering...turned violent” and if there is any violence at a demonstration “all the people who participate in the gathering will be prosecuted and held accountable.”⁷⁶

⁷² The court issued a one-year sentence in each of the above-referenced verdicts.

⁷³ “Nabeel 1,” August 16, 2012, video clip, YouTube, <https://www.youtube.com/watch?v=Me8svo-gfNM&feature=youtu.be> (accessed August 20, 2012); “Nabeel 2,” August 16, 2012, video clip, YouTube <https://www.youtube.com/watch?v=aQsc8tQ3two&feature=youtu.be> (accessed August 20, 2012); “Nabeel 3,” August 16, 2012, video clip, YouTube, <https://www.youtube.com/watch?v=9MOdxEMnywg&feature=youtu.be> (accessed August 20, 2012); “Nabeel 4,” August 16, 2012, video clip, YouTube, <https://www.youtube.com/watch?v=4YuPofQZ7sw&feature=youtu.be> (accessed August 20, 2012).

⁷⁴ Third Superior Criminal Court, Case No. 1899/2012/11, 1900/2012/11, 1901/2012/11, Verdict, December 11, 2012.

⁷⁵ *Ibid.*

⁷⁶ Noor Zahra, “Activist’s jail term slashed,” Gulf Daily News, December 12, 2012, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=343537> (accessed November 26, 2013).

Despite offering no evidence that Rajab had any role in any violence, the Superior Criminal Court sentenced Rajab to a total of two years' imprisonment.

On January 12, 2013, Rajab's lawyers filed an appeal with the Court of Cassation, seeking an "urgent" interim decision suspending Rajab's prison sentence and a final decision reversing Rajab's convictions. More than a year later, on February 3, 2014, the Court of Cassation rejected the request for an urgent interim decision. On March 17, 2014, the Court of Cassation rejected the appeal on the merits, upholding Rajab's convictions and sentence.⁷⁷

Ali Salman

In early November 2013, prosecutors charged Ali Salman, the head of Bahrain's leading recognized political opposition group Al Wifaq with "publicly insulting a public authority (the Ministry of Interior)."⁷⁸ Prosecutors have yet to file these charges with the court to initiate a formal prosecution, but they have given a copy of the charges to Salman. The charges assert that Salman insulted authorities with his remarks at an exhibit organized by Al Wifaq that portrayed abuses against anti-government protesters.⁷⁹ According to Minister of State for Information Affairs Samira Rajab, Salman was suspected of "denigrating and disparaging the Interior Ministry" by alleging human rights violations by police against demonstrators. She added that Al Wifaq's "exhibition showed models, miniatures, and drawings alleging systematic police use of inhuman practices and human rights violations," and that Salman's remarks at the exhibition were "packed with lies ... which represented an affront to the status of the police."⁸⁰

The political nature of such charges is blatant. The conduct attributed to Salman, highlighting human rights abuses by Bahrain's security forces, is the same conduct that BICI engaged in at King Hamad's behest. Human Rights Watch reviewed the remarks by Salman at issue, which constitute nonviolent political speech. Salman said that Bahrain's "revolution" continues toward the "realization of a respectful country that embraces all

⁷⁷ Email correspondence from Jalila Sayed to Human Rights Watch, March 23, 2014.

⁷⁸ Response of the Office of General Prosecutor Ali Fadhul Al Buainian to Human Rights Watch, April 29, 2014.

⁷⁹ "Bahrain charges opposition leader with 'insults' over uprising museum raided by riot police," Associated Press, November 3, 2013, <http://www.foxnews.com/world/2013/11/03/bahrain-charges-opposition-leader-with-insults-over-uprising-museum-raided-by/> (accessed November 26, 2013).

⁸⁰ "Bahrain charges top opposition leader," Reuters, November 3, 2013, <http://news.yahoo.com/bahrain-charges-top-opposition-leader-170548040.html> (accessed November 26, 2013).

Bahrainis without exception, without differentiation, without distinction.” He spoke of the “subjugation of the people” and “violations against demonstrators,” while thanking those who had created the exhibit. He also noted that the exhibit depicted various human rights violations, including many “of which Mr. Bassiouni [BICI head commissioner] reported.”⁸¹ For Bahraini authorities to charge an individual based on such remarks suggests that they consider any speech they find objectionable for any reason to be criminal.

In December 2013, Bahraini officials had stated that Salman would be charged also with “inciting religious hatred” and “spreading false news likely to harm national security.” According to reports, these charges arose from a sermon in which Salman had, among other things, “accused institutions of the state of engaging in illegal practices.”⁸²

Khalil al-Marzooq

On September 6, 2013, Khalil al-Marzooq, the assistant general secretary of the political opposition group Al Wifaq, gave a 28-minute speech at a rally in the village of Saar. On September 17, authorities arrested him and, on October 4, prosecutors charged him with violating Bahrain’s 2006 anti-terrorism law in connection with the speech. Specifically, prosecutors alleged that al-Marzooq “exploited his position ... to call for the perpetration of terrorist crimes,” “supported and endorsed” elements affiliated with the February 14 Youth Coalition, and “incited others to perpetrate terrorist crimes.”⁸³ In its response to a letter of inquiry from Human Rights Watch, the Office of General Prosecutor Ali Fadhul Al Buainain asserted that the charges against al-Marzooq are in response to “the minutes of the investigation, and recorded footage establishing that he represented his political society in a public gathering, and made a speech that included praise for those who have committed terrorist acts....”⁸⁴

Human Rights Watch reviewed a video of al-Marzooq’s speech in which, speaking of the February 14 Youth Coalition, he said, “This coalition was made to last, and if they try to label it as terrorist, I say [to them] you are the terrorists and not the coalition.” He also

⁸¹ “Statement by Shaikh Ali Salman at the Opening of the Museum of the Bahrain Revolution,” October 27, 2013, video clip, YouTube, http://www.youtube.com/watch?v=lrZn6__MFQs&feature=youtu.be&noredirect=1 (accessed November 26, 2013).

⁸² “Bahrain opposition leader Sheikh Ali Salman Charged,” BBC News, December 29, 2013, <http://www.bbc.co.uk/news/world-middle-east-25542387> (accessed January 7, 2014).

⁸³ Public Prosecution Office, List of Charges Against Khalil Ibrahim Salman Hassan al-Marzooq, October 4, 2013 .

⁸⁴ Response of the Office of General Prosecutor Ali Fadhul Al Buainian to Human Rights Watch, April 29, 2014.

stated, “To our dear friends in the coalition, I say: You are here to stay, as an essential component of this revolution. That's why you need to hold onto peaceful activism, as you did today in Manama, which is your right.” Al-Marzooq further stated, “We can only support a movement as long as it's peaceful. We transparently declare: the dividing line for us is violence. Otherwise we are supportive....” Towards the end of the speech, a man in a balaclava handed al-Marzooq a flag that appears to bear the emblem of the February 14 Youth Coalition, which al-Marzooq held for 45 seconds. Al-Marzooq did not promote violence at any point during his recorded remarks.⁸⁵

According to al-Marzooq’s lawyer, the prosecution’s evidence consists of a transcript of al-Marzooq’s September 6 speech, an intelligence report on al-Marzooq, and statements given by the two authors of that report to prosecutors. At the first session of his trial, on October 24, authorities released al-Marzooq from custody on bail, but banned him from travel. The judge adjourned sessions scheduled to take place on December 12, 2013 and January 27, 2014, because a prosecution witness failed to appear in court to testify. On February 18, 2014, the intelligence officers who drafted the referenced report appeared as prosecution witnesses and, according to al-Marzooq’s lawyer, acknowledged that al-Marzooq had expressed support for peaceful protest in the speech, but claimed that this was an attempt to disguise his true intention, which the intelligence officers asserted was to incite violence.⁸⁶

Convictions for “Insulting the King”

On November 12, 2012, the Fourth Minor Criminal Court convicted Ali Abdullah Ahmad al-Hayaki of violating article 214 of the penal code, which mandates a prison sentence for “any person who offends the Amir of the country....”⁸⁷ According to the court, al-Hayaki had “insulted the king” by publishing on Twitter the phrase “[d]own with Hamad – this chant is immortalized, one the ears long for and the heart is gladdened by. May God hasten the fall of this tyrant.” Al-Hayaki also had tweeted, “The people, those who determine the fate of regimes have spoken. Down with Hamad.” The court found further that al-Hayaki had “confessed” to publishing these statements “[d]ue to conditions in the country.” Without

⁸⁵ “Khalil Almarzooq 6-9-2013,” September 19, 2013, video clip, YouTube, <https://www.youtube.com/watch?v=HzXAJM7Tyaw> (accessed November 26, 2013).

⁸⁶ Human Rights Watch telephone communication with Jalila Sayed, March 25, 2014.

⁸⁷ Bahrain Penal Code, art. 214. King Hamad in 2002 decreed a change in his title from amir to king.

any discussion of the right to freedom of expression as established in Bahraini and international law, the court sentenced al-Hayaki to four months' imprisonment and ordered the confiscation of his iPhone.⁸⁸

By way of further example, on November 1, 2012, an online activist received a six-month jail sentence for insulting the king on Twitter.⁸⁹ On March 12, 2013, police arrested 17-year-old Ali al-Shofa for allegedly insulting King Hamad on Twitter and a court sentenced him to a one-year term.⁹⁰ On May 15, 2013, a court sentenced six activists to one year in jail for insulting King Hamad, again on Twitter. One of the defendants, a lawyer named Mahdi al-Basri, sent no tweets himself, but was found guilty because he was the lawyer for a community account from which the relevant material was posted.⁹¹ According to the Bahrain Center for Human Rights, there were 30 prosecutions for "insulting the king" in 2013.⁹² And, in April 2014, a court reportedly convicted Sa'id Mazahir Habib al-Samahiji, one of the doctors whose prosecution with other medical personnel is discussed above, to a year in jail for insulting the king.⁹³

The office of Bahrain's general prosecutor, in response to a Human Rights Watch inquiry, wrote that these prosecutions were justified because the statements at issue did not constitute political criticism, but rather unlawfully targeted the "private life" of King Hamad.⁹⁴ In the prosecutions for which Human Rights Watch has been able to identify the purportedly offending statements, those statements have been solely political (e.g., "Down with Hamad"), with no reference to the king's "private life." The United Nations

⁸⁸ Fourth Minor Criminal Court, Case No. 07201208958, Verdict, November 12, 2012.

⁸⁹ "Bahrain activist jailed for insulting king on Twitter," *The Telegraph*, November 1, 2012, <http://www.telegraph.co.uk/news/worldnews/middleeast/bahrain/9649211/Bahrain-activist-jailed-for-insulting-king-on-Twitter.html> (accessed November 26, 2013).

⁹⁰ "Bahrain student sentenced for insulting king," *Al Jazeera*, June 29, 2013, <http://www.aljazeera.com/news/middleeast/2013/06/2013629164825184368.html> (accessed November 26, 2013).

⁹¹ "Twitter activists jailed in Bahrain for insulting king," *BBC News*, May 16, 2013, <http://www.bbc.co.uk/news/world-middle-east-22541625> (accessed November 26, 2013).

⁹² Bahrain Center for Human Rights, "Limited Freedom of Expression in Bahrain: Arrested For Insulting The King," December 29, 2013, <http://www.bahrainrights.org/sites/default/files/Insulting%20the%20King%2C%20Test%20.pdf> (accessed April 23, 2014), pp. 3, 6-10.

⁹³ "State Department Raises Cases of Bahrain Medics," *Human Rights First*, April 9, 2014, <http://www.humanrightsfirst.org/blog/state-department-raises-cases-bahrain-medics> (accessed April 23, 2014). The office of Bahrain's general prosecutor wrote to Human Rights Watch on April 29, 2014 that 12 individuals had been convicted of insulting the king from the beginning of 2012 through April 2014. As discussed above, that number seems low considering the number of prosecutions that Human Rights Watch has been able to track even without having access to the relevant court records and proceedings.

⁹⁴ Response of the Office of General Prosecutor-General Ali Fadhl Al Buainain to Human Rights Watch, April 29, 2014.

Human Rights Committee, the body of international human rights experts that reviews state compliance with the ICCPR, has concluded that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.”⁹⁵

⁹⁵ UN Human Rights Committee, General Comment 34, para. 38.

II. Prosecution of Security Personnel for Human Rights Abuses

The BICI report included a number of findings and recommendations regarding the responsibility of security forces for the deaths and torture of civilians. According to the report, security forces killed 12 people through the use of firearms and one through a beating between February 14 and April 15, 2011.⁹⁶ BICI also found that five individuals died as the result of torture in custody.⁹⁷ BICI concluded that members of the Interior Ministry-run police force and Criminal Investigations Directorate, as well as officers of the National Security Agency, which reports directly to the prime minister, committed abuses constituting “a deliberate practice of mistreatment” that in some cases “was aimed at extracting confessions and statements by duress, while in other cases ... [was] intended for the purposes of retribution and punishment.” These agencies “followed a systematic practice of physical and psychological mistreatment, which in many cases amounted to torture, with respect to a large number of detainees in their custody.”⁹⁸

Given its findings, BICI made the following recommendation to the Bahraini government:

To conduct effective investigations in accordance with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions of all the deaths that have been attributed to the security forces. Likewise, all allegations of torture and similar treatment be investigated by an independent and impartial body, following the Istanbul Principles. The investigation of both types of alleged violation should be capable of leading to the prosecution of the implicated individuals, both direct and at all levels of responsibility, with a view to ensuring that punishment be consistent with the gravity of the offence.⁹⁹

⁹⁶ BICI Report, paras. 848, 862.

⁹⁷ *Ibid.*, para. 873.

⁹⁸ *Ibid.*, para. 1238. What had been the Interior Ministry’s State Security Investigations Directorate became the National Security Agency, reporting to the prime minister rather than the minister of interior, in 2002.

⁹⁹ *Ibid.*, para. 1722.

In response to this recommendation, Bahrain established the Special Investigations Unit (SIU) within the Public Prosecution Office in February 2012. The Bahraini government characterized the SIU as being “exclusively charged with determining the criminal liability of government officials who committed illegal acts resulting in killing, torture, injury, or abuse, including officials in leadership positions, under the standards of superior responsibility” and being “responsible for all cases arising out of the events of 2011 as contained in the BICI report, in addition to any other case as the Attorney General may deem appropriate to refer ... for any reason whatsoever.” In November 2012, the government reported that the SIU was investigating 92 “death cases” and 122 torture complaints, but provided no details.¹⁰⁰

In December 2013, the Bahraini government reported that the SIU had investigated all 46 deaths cited in the BICI report, which included deaths not specifically attributed to security forces. In addition, the government asserted that the SIU had “referred 39 cases to courts,” involving a total of 95 defendants. Of those defendants, 13 had been convicted and 15 acquitted, with a “total of 25 cases” still before the courts.¹⁰¹

Bahrain’s purported efforts to investigate and prosecute security personnel and officials have been seriously inadequate. To Human Rights Watch’s knowledge, prosecutors have charged only two higher-level personnel as a result of BICI’s recommendations and none has been convicted. As noted in an unpublicized US State Department assessment of August 2013, other than the failed prosecution of Lt. Col. Mubarak Abdullah Bin Huwayl al-Marri and Lt. Shaika Nura Bint Ibrahim Al Khalifa, a member of the ruling family, discussed below, “[t]here is no indication any other officials are being held responsible or prosecuted for overseeing or committing acts leading to abuse, mistreatment, torture, or death.” The State Department document concluded that “Bahrain has thus far not taken meaningful

¹⁰⁰ Government of Bahrain, “BICI Follow-Up Report,” November 2012, pp. 6, 8-9.

¹⁰¹ Government of Bahrain, “BICI Follow-Up Report,” December 2013, pp. 5, 16-17. The Bahraini government has touted this prosecution rate, including by comparison to statistics purportedly from the US Department of Justice concerning prosecutions of law enforcement officers in the United States. However, the cited US data was compiled by a private researcher from media reports, and therefore is not a proper basis for calculating conviction rates. Moreover, the US data cited takes into consideration all complaints levelled against law enforcement officers. See BICI Follow-Up Unit, “Moving Beyond 2011, A Special Report Detailing the Government of Bahrain’s Implementation of the Recommendations of the Bahrain Independent Commission of Inquiry” (Moving Beyond 2011), February 2014, p. 18 (citing The Cato Institute’s National Police Misconduct Reporting Project, 2010 Annual Report, <http://www.policemisconduct.net/statistics/2010-annual-report/#>) (accessed March 21, 2014). By contrast, the SIU’s conviction rate relates only to those cases in which BICI concluded, following its investigations, that there were human rights abuses by security forces.

steps to implement this recommendation [of BICI]” and that “the majority of investigations have targeted lower-ranking officers.”¹⁰²

In February 2014, the Bahraini government reported that the SIU had “recently begun to investigate commanding officers under the doctrine of ‘superior responsibility’ in the cases it is dealing with.” In this regard, the report said that the SIU was investigating senior personnel at the Ministry of Interior in connection with events in February and March 2011, but had only interviewed some of those personnel as of February 2014, nearly three years after the events in question.¹⁰³

In the cases against low-level security personnel, Bahraini prosecutors have brought inexplicably minor charges and, in some cases, charges for which they offered no evidence. Also in these cases, courts have proven willing to ignore evidence and established legal principles to acquit defendants, to convict them of less serious charges, or to impose light sentences incommensurate with the seriousness of the offenses. In its February 2014 report, the government said that the harshest sentence imposed in any case involving deaths that BICI had attributed to security forces was a ten-year term, which actually was reduced to two years on appeal, as discussed below.¹⁰⁴ The US State Department, in its 2013 review of Bahrain’s human rights record, noted that the US was unable to determine whether convicted security personnel were actually held in detention.¹⁰⁵

The cases against security personnel discussed in detail below are those for which Human Rights Watch was able to secure court documents. With one exception, these cases were

¹⁰² US State Department, “Implementation by the Government of Bahrain of the Recommendations by the Bahrain Independent Commission of Inquiry.” The State Department document does not name Al Khalifa and al-Marri, but refers to “one ruling family member and one high-ranking interior ministry official” (p. 2). The document, a response to a Congressional notification requirement, is not publicly available on the State Department website; copy on file with Human Rights Watch.

¹⁰³ Moving Beyond 2011, p. 18. The general prosecutor’s office, in its response to Human Rights Watch, said it is “not true that the SIU has opened investigations only now. These investigations have been ongoing for over two years, and their very nature makes them lengthy in order to cover all incidents and determine all competencies, thereby all criminal and disciplinary responsibilities.”

¹⁰⁴ Ibid., pp. 17-18.

¹⁰⁵ US State Department, “Bahrain 2013 Human Rights Report,” 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dldid=220348#wrapper>, pp. 2, 4 (accessed April 29, 2014) (noting US officials could not substantiate claims by the Bahraini government that convicted security personnel were held in jail). The response of the general prosecutor’s office to Human Rights Watch said that three convicted security personnel are in prison and that some unspecified number of other “[s]entences issued against those convicted have ... been served.” It did not identify any of the security personnel who purportedly have been or are in prison.

addressed in the BICI report as instances in which security personnel killed civilians without justification or subjected civilians to physical abuse.

Death of Hani Abd al-Aziz Juma

According to the BICI report, on March 19, 2011, 32-year-old Hani Abd al-Aziz Juma and other protesters assembled near al-Khamis Roundabout. Police moved to the area and Juma was seen running toward a building with approximately 15 riot police chasing him. The police shot Juma in the hands and legs, and severely beat him. He died several hours later at the Bahrain Defense Force hospital.¹⁰⁶ BICI concluded that Juma's death was due to excessive use of force, given that he was unarmed and shot repeatedly while running away.¹⁰⁷

Human Rights Watch also investigated the circumstances of Juma's death. Juma's father told Human Rights Watch that his son was responding to a cry for help outside just as riot police began sweeping through the neighborhood. Fifteen minutes later, a witness told Human Rights Watch, Juma was seen running from al-Khamis Roundabout pursued by officers in riot gear, including helmets. "Hani was running toward the nearby building, which was under construction, and the police were 15 meters behind him," the witness said, asking not to be named for security reasons. "He ran straight past my house."¹⁰⁸

Another witness said he saw police chase Juma into an empty apartment building under construction, but later realized that Juma had not left the building after the police did. The witness said he raised an alarm, and local residents went to search for Juma. They found him unconscious, lying in a large pool of his own blood, the witness said. Juma sustained massive injuries to his legs and arm caused by being shot at point-blank range with a shotgun, a witness told Human Rights Watch.¹⁰⁹

Witnesses told Human Rights Watch that they rolled Juma onto a carpet and brought him by car to a nearby private hospital, where doctors struggled for nearly two hours to stabilize him after massive blood loss. Juma's father said that, at about 9:20 p.m., an

¹⁰⁶ BICI Report, para. 947.

¹⁰⁷ *Ibid.*, para. 949.

¹⁰⁸ "Bahrain: Investigate Shooting, Arrest of Man Caught Up in Police Sweep," Human Rights Watch news release, March 23, 2011, <http://www.hrw.org/news/2011/03/23/bahrain-investigate-shooting-arrest-man-caught-police-sweep>.

¹⁰⁹ *Ibid.*

ambulance arrived from the Bahrain Defense Force hospital, accompanied by two masked police officers, and the officers announced they were transferring Juma to that hospital. Juma's family never saw him alive again.¹¹⁰

Human Rights Watch examined the scene of the attack on March 22 and found fragments of bone, which a medical expert confirmed to be fragments of knee bone, the condition of which was consistent with shots being fired at close range. Human Rights Watch also found a tooth and pieces of human tissue still stuck to the wall and ceiling of the room in the empty building, apparently the result of the velocity of the shots that ultimately killed Juma.¹¹¹

Prosecutors charged Muhammad Ali Yusif al-Khashram, a lieutenant in the Ministry of Interior, with assault in connection with Juma's death. The court amended the charge to murder at the beginning of the trial.¹¹²

In assessing the evidence presented, the court found that Juma had left a violent protest with two other demonstrators and took refuge in a building under construction, where he threw stones and rods at police. The court concluded that Juma died after being shot three times with a shotgun, and that he had suffered injuries and bruises on his head, face, chest, and shoulder as well as fractured teeth. The court found that the defendant had fired two of the three shots that killed Juma and rejected a self-defense argument. Even if Juma had been throwing objects at police, the court ruled, this did not justify the use of a shotgun. Nonetheless, the court concluded that al-Khashram acted "without intent to kill" and therefore reinstated the assault charge, sentencing al-Khashram to a seven-year term.¹¹³

The absence of an explanation in the court's verdict as to why it convicted al-Khashram only of assault (or why prosecutors initially charged only assault) is notable for several reasons. First, the court rejected explicitly al-Khashram's self-defense argument. Second, the court found, based on a forensic report, that al-Khashram fired two of the fatal shots at Juma from just one meter away, and al-Khashram admitted during the investigation to

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Third Superior Criminal Court, Case No. 719/2012/07, Verdict, September 27, 2012.

¹¹³ Ibid.

having fired twice at Juma's legs. The court concluded, therefore, that al-Khashram unjustifiably fired on Juma multiple times from a shotgun at extremely close range and that Juma died as a result of those shots. Nonetheless, and in the absence of any explanation, the court found that al-Khashram did not intend to kill Juma.¹¹⁴

The court also found, based on forensic reports created at the Bahrain Defense Force hospital where authorities took Juma, that Juma had bruises on the back of his head, face, chest, and shoulders caused by an object resembling a baton. These injuries occurred contemporaneously with the shooting. The forensic reports further found that Juma had "fractures" to his teeth. The court noted that these injuries did not cause Juma's death and then disregarded them, not even raising a question as to whether the defendant or any other security personnel were responsible for them. Nor did the court consider that the severe beating of Juma, in addition to his being shot at close range, at least suggested an intent on the part of al-Khashram to inflict death or severe harm when he fired at Juma from a meter's distance. The court verdict does not indicate that prosecutors raised these questions either.¹¹⁵

The court's decision was questionable for other reasons as well. The forensic report concluded—as did the court—that Juma died as the result of three shotgun blasts. However, the court found that al-Khashram fired only two of the fatal shots. Thus, it is unclear who fired at least one of the three shots that killed Juma. The court did not mention this issue, let alone make an attempt to ascertain the identity of the individual who fired the third shot. Neither, it appears, did prosecutors pursue this point.¹¹⁶

Notwithstanding these issues, in May 2013, an appeals court reduced al-Khashram's sentence for killing Juma from seven years to six months.¹¹⁷ Simply by way of comparison, adultery in Bahrain is punishable by a two-year jail term.¹¹⁸

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Habib Toumi, "Verdict in Bahrain police officer's case reducing jail term challenged," Gulf News, May 27, 2013, <http://gulfnews.com/news/gulf/bahrain/verdict-in-bahrain-police-officer-s-case-reducing-jail-term-challenged-1.1188958> (accessed November 26, 2013).

¹¹⁸ Bahrain Penal Code, art. 316.

Deaths of Isa Abd al-Hassan Ali Hussain and Ali Ahmed Abdullah al-Momen

According to the BICI report, police killed 61-year-old Isa Abd al-Hassan Ali Hussain and 22-year-old Ali Ahmed Abdullah al-Momen when they fired on the two men with shotguns on February 17, 2011. Based on forensic reports, the commission determined that police had shot Hussain in the head from a short distance and had shot al-Momen three times, also from a short distance, including fatal shots to the leg.¹¹⁹ Nazeeha Saeed, a Bahraini correspondent for France 24 and Radio Monte Carlo, told Human Rights Watch that she saw Hussain walking toward police officers at the scene of a confrontation in which protestors threw rocks and police responded with rubber bullets and tear gas.¹²⁰ She told BICI that she observed a police officer train his rifle on Hussain and fire, causing Hussain's head to "explode."¹²¹ The officer wore a helmet which covered his face, she said. Saeed said she did not observe Hussain holding anything in his hand or making any violent gestures.¹²² Saeed's account is consistent with the account of the incident in the BICI report, which attributed the deaths of Hussain and al-Momen to excessive force because the deceased were unarmed and shot at such close range.¹²³

Prosecutors charged police officer Amin Mus'ad with assault for causing Hussain's death and police officer Ahmad al-Dhawadi with assault for causing al-Momen's death.¹²⁴ They were tried together. Mus'ad testified that Hussain had been leaning over and was about to stab a police corporal with a rod when Mus'ad ordered an officer named Mumtaz Faqir Muhammad to fire, at which point several officers fired, hitting Hussain in the head. Mus'ad testified that he was one of those who fired, but only a warning shot. Muhammad testified that Hussain had been leaning over to stab the corporal when he fired a shot at Hussain's legs as other officers also fired. Muhammad also said that he saw Hussain die from a shot to the head, but that he did not know who had fired that shot.¹²⁵

A police lieutenant, Ali Abd al-Karim Abdullah al-Ansari, testified that when a protestor attacked him, he ordered fellow officers to fire with their shotguns and several officers

¹¹⁹ BICI Report, paras. 916-17, 921-22.

¹²⁰ Human Rights Watch Skype interview with Nazeeha Saeed, September 4, 2013.

¹²¹ BICI Report, para. 918.

¹²² Human Rights Watch Skype interview with Nazeeha Saeed, September 4, 2013.

¹²³ BICI Report, paras. 916-24.

¹²⁴ According to pro-government media, Mus'ad is from Yemen. "Officer 'acted in self-defense,'" Gulf Daily News, February 9, 2012, <http://m.gulf-daily-news.com/NewsDetails.aspx?newsid=324249> (accessed November 26, 2013).

¹²⁵ Third Superior Criminal Court, Case No. 1056/2012/07, Verdict, September 27, 2012.

complied, including Dhawadi, who was five to six meters away. As a result, al-Ansari said, two protestors died, one from an injury to the head and another from an injury to the leg. In a statement given to investigators, al-Ansari reported that Dhawadi shot an unidentified person in the leg. Dhawadi also testified that he had shot someone in the leg (not al-Momen) who then fled.¹²⁶

The court, which had amended the charges against Mus'ad and Dhawadi to murder, ultimately acquitted both defendants. The court noted that Mus'ad had denied the charges at all stages and had said that he only fired a warning shot, an account corroborated by officer Muhammad's testimony. The court concluded that it could not establish who actually shot Hussain, especially given the presence of other officers only three meters away.¹²⁷

The court's decision as to Mus'ad was troubling in several respects. The court concluded that Mus'ad was approximately one-and-a-half meters from Hussain at the time of the fatal shot and that the other officers were three meters away. A medical report cited by the court had concluded that Hussain was shot from a distance of no more than two meters. The court did not address the obvious question of how the other officers could have killed Hussain when they were more than two meters away, while Mus'ad was less than two meters away when he fired a shot. The medical report also stated that the shot that killed Hussain had an upward trajectory, a fact that the court recognized as contradicting the testimony of Mus'ad and Muhammad that Hussain was leaning over to stab a corporal at the time of the shooting. Thus, the only non-testimonial evidence rebutted critical testimony of Mus'ad and Muhammad, but the court never addressed, let alone reconciled, this discrepancy or the resultant questions raised about the credibility of Mus'ad and Muhammad.¹²⁸

The court also rejected the testimony of the only civilian eye witness, Nazeeha Saeed, who said that Hussain was not carrying any weapon when police shot him. The court found that Saeed's testimony was not credible, given that she fixed the distance from which the police officer shot Hussain at less than a meter, while it was established that Mus'ad was at least one-and-a-half meters away from Hussain. The court did not explain why this difference of perhaps half a meter rendered her testimony not credible. In this way, the

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

court avoided having to address the fact that Saeed's testimony contradicted the accounts of Mus'ad and Muhammad regarding Hussain's purported aggression.¹²⁹

With respect to defendant Dhawadi, the court said it could not be certain that he had shot al-Momen in the leg as opposed to the arm (where al-Momen also was hit) or even at all. However, the court did not dispute that Dhawadi shot a protestor. The court made no finding that any of the officers had acted in self-defense, which raises the question of why authorities did not institute proceedings against Dhawadi based on the shooting he admitted to committing.¹³⁰

The case raises other questions regarding the conduct of prosecutors as well. Most fundamentally, prosecutors brought a case against Mus'ad and Dhawadi in which they called only witnesses whose testimony exculpated the two defendants. Notably, it was the victims' counsel and not prosecutors who called Nazeeha Saeed as a witness, even though it was well known that she had witnessed Hussain's killing, given that she had tweeted and given numerous press interviews about it.¹³¹ As such, it is not clear that prosecutors actually attempted to present their most persuasive case or that they conducted an adequate investigation at all.

In February 2013, an appeals court affirmed the acquittal of Mus'ad and Dhawadi, following an appeal by prosecutors.¹³²

Death of Fadel Salman Ali Salman Matrouk

The BICI investigation found that Fadel Salman Ali Salman Matrouk was struck in the back by a shotgun round fired from a range of approximately one meter during a February 15, 2011 funeral procession for the first protestor killed by police during the February 2011 protests. Matrouk was immediately taken to Salmaniya Medical Complex, where attempts

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Tweet by @nazihasaheed, September 27, 2012, <https://twitter.com/nazihasaheed/status/251295411887820800> (accessed November 26, 2013); Human Rights Watch Skype interview with Nazeeha Saeed, September 4, 2013.

¹³² Noor Zahra, "Two policemen are cleared of unrest deaths," Gulf Daily News, February 25, 2013, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=348101> (accessed November 26, 2013).

to resuscitate him failed and he was pronounced dead. Matrouk was the second fatality of the protests.¹³³

Prosecutors charged Abd al-Hafiz Mani Ali Hamisan and Muhammad Shahir al-Hamza, two Ministry of Interior police officers, with assault in connection with Matrouk's death. To support these charges, prosecutors offered the testimony of several other police officers. According to the court, each of these officers stated that the funeral procession had attacked police, "pelting them with stones, and clashing with them." In response, the officers said, police fired rubber bullets without effect, until such rounds all had been used. At that point, each of the two defendants fired a round into the crowd, according to the testifying officers and the defendants themselves. Prosecutors also offered a video taken by a security camera near the scene, although the court's verdict does not describe the video other than to say it showed a large crowd obstructing traffic.¹³⁴

The court verdict recounts that representatives of Matrouk, who were pursuing a civil lawsuit in connection with his death, called two additional witnesses. One witness testified that he and Matrouk had been part of the procession when police fired tear gas canisters at the crowd. The witness said that he and Matrouk called for police to stop, at which point a policeman trained his weapon on Matrouk and fired, even though he (the witness) and Matrouk had begun to retreat. The second witness, according to the verdict, testified about the procession generally, but not about the shooting.¹³⁵

On the basis of this evidence, the court concluded that the defendants had acted in legitimate self-defense. Specifically, the court found that a huge crowd had seized a weapon from an officer and had clashed with security forces, "attempt[ing] to kill them" and injuring defendant al-Hamza in the process. The court also found that the crowd had attempted to destroy patrol cars. The police, according to the verdict, responded with tear gas and rubber bullets until their supply of those items was exhausted. At that point, police fired warning shots in the air, but to no avail. Only then, the court found, did the defendants each fire one round into the crowd, "intending to force it back and disperse it."¹³⁶

¹³³ BICI Report, paras. 210-14.

¹³⁴ First Superior Criminal Court, Case No. 5736/2012, Verdict, February 26, 2013.

¹³⁵ Ibid.

¹³⁶ Ibid.

The court's verdict was notable in several respects. First, the court reached factual conclusions regarding the menacing conduct of the crowd that did not appear to find specific support in any of the evidence summarized in the verdict, including in the testimony of police officers. Second, the court discredited without explanation the witness who had testified that a police officer shot Matrouk at close range as Matrouk sought to retreat. Finally, the court's narrative regarding the remarkable restraint security forces purportedly showed in facing a crowd "attempt[ing] to kill" police is at odds with BICI's findings that security forces regularly used excessive force during this period.¹³⁷

This case also calls into question, again, the efforts of prosecutors. As described, prosecutors offered testimony only of police officers, all of whom testified as to the allegedly aggressive nature of the crowd, which provided at least some basis for the court's findings regarding self-defense. Indeed, it was Matrouk's family that called the only witness whose testimony incriminated the defendants. Given these circumstances, it again appears questionable as to whether prosecutors genuinely wanted to secure a guilty verdict.

Deaths of Ali Saqer and Zakaria Rashid Hassan al-Asherri

According to the BICI report, Ali Saqer, 31, turned himself in at a police station on April 5, 2011, after police had raided his home several times looking for him.¹³⁸ His family told Human Rights Watch that they heard nothing from or about him thereafter until April 9, when the Ministry of Interior announced that Saqer had died from injuries he suffered while security personnel were trying to bring him under control. In a statement that appeared in the Bahraini media, the ministry said Saqer had "created chaos" in a detention center. A medical notification issued to Saqer's family by the Bahrain Defense Force hospital on April 9 listed the cause of death as "hypovolemic shock" caused by "multiple trauma." Human Rights Watch viewed Saqer's remains during a ritual body washing preceding his burial in the village of Sehla on April 10, and his body showed signs of severe physical abuse.¹³⁹

¹³⁷ Ibid.

¹³⁸ BICI Report, para. 994.

¹³⁹ "Bahrain" Suspicious Deaths in Custody," Human Rights Watch news release, April 13, 2011, <http://www.hrw.org/news/2011/04/13/bahrain-suspicious-deaths-custody>. On April 10, the Ministry of Interior announced it was investigating Nabeel Rajab for allegedly circulating via Twitter "a fabricated image of Ali Isa Saqer" – a photo that showed Saqer's body in the same condition witnessed by Human Rights Watch. Ibid.

Several days later, a BBC report contained images of Saqer's body, showing extensive injuries. When a BBC journalist raised questions regarding Saqer's death in a public forum with Fatima al-Baloushi, the Bahraini cabinet minister then responsible for human rights matters, al-Baloushi said that images of Saqer's body had been "Photoshopped." Only when the journalist said that he had personally seen Saqer's body and that it was "absolutely shocking" did al-Baloushi say she would "ask for an investigation."¹⁴⁰ Bahraini authorities subsequently, on April 28, and despite the relatively high level of publicity surrounding his death weeks earlier, broadcast a "confession" Saqer had given.¹⁴¹

The BICI investigation concluded that Saqer's death was attributable to torture and mistreatment while in custody.¹⁴²

According to the BICI report, 40-year-old Zakaria Rashid Hassan al-Asherri was in custody at Dry Dock Detention Center when he died on April 9, 2011.¹⁴³ Al-Asherri had administered a blog, www.aldair.net/forum, which carried critical commentary on government policies and which Bahraini authorities blocked in the country. Masked men arrested him at 2 a.m. on April 2 at his home in Dair village, according to his brother Ali al-Asherri.¹⁴⁴

Al-Asherri's death certificate cited heart failure due to complications from sickle cell anemia as the cause of death, but a forensic examination found that al-Asherri had suffered significant bruises on his back, thighs, face, and hands.¹⁴⁵ BICI concluded that al-Asherri's death was attributable to torture.¹⁴⁶

Prosecutors charged police officers Abd al-Rashid Rasul Bakhsh and Muhammad Ihsan Muzaffar with assault without intent to kill in connection with the deaths of Saqer and al-Asherri.¹⁴⁷ Given the evidence, discussed below, of the horrific and ultimately fatal injuries

¹⁴⁰ "Bahrain's security clampdown divides kingdom," BBC Newsnight, April 15, 2011, <http://news.bbc.co.uk/2/hi/programmes/newsnight/9459029.stm> (accessed November 26, 2013).

¹⁴¹ Human Rights Watch, World Report 2012, (New York: Human Rights Watch, 2012), Bahrain chapter, <http://www.hrw.org/world-report-2012/world-report-2012-bahrain>, p. 537.

¹⁴² BICI Report, paras. 848(b), 875, 996.

¹⁴³ *Ibid.*, para. 997.

¹⁴⁴ "Bahrain: Suspicious Deaths in Custody," Human Rights Watch news release, April 13, 2011 <http://www.hrw.org/news/2011/04/13/bahrain-suspicious-deaths-custody>; BICI Report, para. 999.

¹⁴⁵ BICI Report, paras. 997-98.

¹⁴⁶ *Ibid.*, para. 1000.

¹⁴⁷ Fourth Superior Criminal Court, Case No. 12730/2011/07, Verdict, March 12, 2013.

security personnel inflicted upon Saqer and al-Asherri, there is no apparent legitimate reason why prosecutors did not file more serious charges.

The court found that Saqer had been non-compliant at the Dry Dock Detention Center and attempted to assault security personnel. According to the court, officers gained control of Saqer and then the two defendants beat him severely, causing shock that led to his death. The court reached these findings based on incriminating statements the defendants had given to investigators, testimony from other police officers who witnessed the incident, and medical reports. The court convicted both defendants of assault without intent to kill in connection with Saqer's death and pronounced 10-year jail terms.¹⁴⁸

The court, which had legal authority to amend the charges presented by prosecutors, offered no explanation for its conclusion that the defendants acted without intent to kill Saqer, even though the evidence cited by the court called that conclusion into question for several reasons.¹⁴⁹ First, defendant Muzaffar told investigators, in a statement credited by the court, that defendant Bakhsh had beaten Saqer, including with a hose, "until his [Bakhsh's] strength was spent." It is unclear why a police officer beating a subdued victim until the point of exhaustion does not suggest an intent to do more than just subdue or injure the victim. Second, Muzaffar told investigators that, after Bakhsh had beaten Saqer, he (Muzaffar) beat Saqer with a hose. For Muzaffar to have beaten Saqer with a weapon after Bakhsh had exhausted himself beating Saqer also suggests an intent to do more than commit a simple assault. Third, there are the obvious questions of whether the defendants, as police officers, had any legitimate reason to possess a hose and whether possessing the hose did not indicate an intent to inflict serious (and potentially fatal) injuries. Fourth, a forensic report found that Saqer had "many ... blunt-force contusions," including on his nose, cheek, chest, stomach, back, buttocks, thighs, eyelids, arms, and legs. Some of the contusions were caused by a rectangular blunt object and some could have been caused by kicks. According to the court's verdict, these injuries led to tissue hemorrhage and shock, resulting in death.¹⁵⁰ Given that the injuries suffered by Saqer reflect a comprehensive and brutal beating, and in light of the other issues identified

¹⁴⁸ Ibid.

¹⁴⁹ The court did state that Bakhsh hit Saqer only three or four times on the back, but the court did not base its conclusion regarding intent on this finding, which is questionable in any event, given the evidence addressed in the main text. Article 259 of the Bahrain Code of Criminal Procedure gives the court authority to amend charges lodged by prosecutors.

¹⁵⁰ Fourth Superior Criminal Court, Case No. 12730/2011/07, Verdict, March 12, 2013.

above, the court's unexplained conclusion that the defendants acted without intent to kill Saqer appears unjustified.

With respect to the death of al-Asherri, the court referred to the autopsy report, which found that al-Asherri had "blunt-force contusions on various parts of his body, a result of impact with a hard, blunt object(s)." In addition, al-Asherri had "blood effusions on the back of his skull and his stomach as a result of the impact with a hard, blunt object." Relying on the autopsy report, the court concluded that these wounds, rather than complications from sickle-cell disease, caused al-Asherri's death.¹⁵¹

The court acquitted the two defendants of the charges involving al-Asherri because it found that no witness indicated the defendants had assaulted al-Asherri.¹⁵² The court verdict does not reflect the existence of any evidence directly tying the defendants to al-Asherri's death. The decision of prosecutors to bring charges against the defendants on this count without any reasonable expectation of a conviction reflects, it would appear, an inadequate investigation and a disinclination to hold anyone accountable for al-Asherri's death, which indisputably resulted from severe physical abuse inflicted upon him while in government custody.

Prosecutors did not appeal the acquittal of Muzaffar and Bakhsh on the charges relating to al-Asherri's death, but the defendants did appeal their convictions for Saqer's death. On September 29, 2013, the appeals court issued its decision, recounting the gruesome injuries al-Asherri and Saqer suffered, the defendants' confessions to investigators, and the incriminating statements of other officers. Based on this evidence, the appeals court affirmed the defendants' assault convictions with respect to Saqer.¹⁵³

Then, however, the appeals court proceeded to reduce the ten-year prison terms pronounced by the trial court to two-year terms. To explain this ruling, the court offered one sentence:

¹⁵¹ Ibid.

¹⁵² Ibid. The court also acquitted three other police officers who had been charged with failing to report the assault.

¹⁵³ Supreme Appellate Court, Case No. 119/2013/13, Verdict, September 29, 2013.

In the matter of punishment, given the circumstances of the case and that the appellants committed this crime during and because of their professional duty and while preserving the life of detainees, among them the victim, and the security of society as a whole, the court is led to amend the punishment levied by the judgment under appeal to grant clemency to the defendants....¹⁵⁴

The notion that Bakhsh and Muzaffar deserved clemency because they were “preserving the life” of a man they beat to death is devoid of logic. Similarly, the concept that police officers who killed a person in custody deserved clemency for doing so while on duty is both perverse and contrary to Bahraini law, which provides that an assault committed by a civil servant while performing his or her duties can be punished with a term that is double the normal maximum term.¹⁵⁵

Death of Abd al-Karim Ali Ahmed Fakhrawi

Abd al-Karim Ali Ahmed Fakhrawi was a 49-year-old businessman whose commercial interests included a bookstore that supplied materials to the University of Bahrain and a construction company that built the Iraqi embassy in Bahrain. He also was one of the founders of *Al-Wasat*, an independent daily.¹⁵⁶

On April 3, 2011, Fakhrawi went to the Exhibition Center police station to discuss why security forces had surrounded a relative’s home he had been visiting the previous day. Later on April 3, when family members went to the station to ask for Fakhrawi, officers there told them that he was not being detained. The next day, family members made similar inquiries of the Public Prosecution Office, but were provided no information. Finally, on April 12, an unknown person called Fakhrawi’s secretary and said that his family should go to the SMC hospital. There, a policewoman told a relative that Fakhrawi had arrived at the police station in poor health and died as a result of kidney failure.¹⁵⁷

¹⁵⁴ Ibid. The court cited article 72 of the Bahrain Penal Code, which provides that a sentence can be reduced “[i]f an offense is committed under extenuating circumstances and the judge feels the need for clemency....”

¹⁵⁵ Bahrain Penal Code, arts. 75-76.

¹⁵⁶ BICI Report, para. 1002.

¹⁵⁷ Ibid.

On April 13, according to the BICI report, family members collected Fakhrawi's body, which they said showed clear marks of torture. The family was threatened that they would "end up like him" if they took any photographs of the body.¹⁵⁸ At Fakhrawi's funeral later that day, mourners concerned that he had been tortured demanded to see his body, wrested his shrouded body from pallbearers, and took photographs, which depicted severe and extensive injuries to Fakhrawi's body.¹⁵⁹

The BICI investigation determined that Fakhrawi had died at the Bahrain Defense Force hospital after being transferred there from the custody of the National Security Agency and that his death was attributable to torture while in the National Security Agency's custody.¹⁶⁰ The National Security Agency conducted an investigation that the BICI commissioners found did not satisfy "the relevant obligations under international law."¹⁶¹

Subsequently, prosecutors charged National Security Agency officers Khalid Muhammad Sabt and Ahmad Badi Ahmad with assault in connection with Fakhrawi's death. As in the case of Saqer and al-Asherri, prosecutors did not seek a murder or a torture conviction, but simply an assault conviction.¹⁶²

According to the court verdict, the two defendants had escorted Fakhrawi to the bathroom while he was detained at the National Security Agency. After Fakhrawi had taken "some time" in the bathroom, defendant Sabt had "called out to him," which "angered" Fakhrawi. As a result, the court said, Fakhrawi removed a toilet seat and attacked the police officers with it. The court concluded that officers were able to subdue Fakhrawi, but that the two defendants continued to beat Fakhrawi after he was subdued. More particularly, Sabt hit Fakhrawi with the toilet seat on the arms, and both defendants kicked Fakhrawi.

The court found that this beating caused Fakhrawi's death, but that the defendants did not intend to kill Fakhrawi and were thus liable only for assault, pronouncing seven-year sentences. Although Bahrain's penal code stipulates that the standard seven-year

¹⁵⁸ Ibid.

¹⁵⁹ "Bahrain: Investigate New Death in Custody," Human Rights Watch news release, April 13, 2011 <http://www.hrw.org/news/2011/04/13/bahrain-investigate-new-death-custody>; Human Rights Watch Skype interview with lawyer Mohamed al-Tajer, October 28, 2013. Photographs on file with Human Rights Watch.

¹⁶⁰ BICI Report, paras. 877, 1005.

¹⁶¹ Ibid., para. 877

¹⁶² First Superior Criminal Court, Case. No. 1631/2012/07, Verdict, December 30, 2012.

sentence for assault may be doubled when the assault is committed by a government official in the line of duty, the court, without discussion, did not take this “aggravating circumstance” into account when determining the sentences of these defendants.¹⁶³

The court’s conclusion that the defendants had no intent to do anything beyond assault Fakhrawi is undercut by the medical evidence that the court cited. The court heard testimony from Muhammad Akmal Abd al-Hamid, the National Security Agency’s director of medical services, who had examined Fakhrawi. Al-Hamid said that Fakhrawi’s body had “bruises all over it, which caused a breakdown of muscle tissues ... [which caused] kidney failure and heart palpitations,” leading to death.¹⁶⁴ The BICI report noted that Fakhrawi’s kidney failure resulted from muscle tears and blood poisoning, and that the kidney issues could have been resolved with proper medical treatment.¹⁶⁵ This evidence, in conjunction with the photographs taken of Fakhrawi’s body during his funeral (to which the verdict makes no reference), indicate that the defendants beat Fakhrawi in a sustained and purposeful manner, while taking no steps to address his obviously grave physical condition thereafter. The court did not even attempt to address these undisputed facts in offering its conclusion that the defendants intended only to assault Fakhrawi.¹⁶⁶ Nor did the court or prosecutors address witness statements gathered by the BICI investigation relating to the alleged torture of Fakhrawi in detention. Specifically, witnesses who had been detained in the same cell as Fakhrawi told BICI investigators that they heard Fakhrawi screaming “Allahu Akbar” after each blow he received, until he was silent. The witnesses also recounted that, after Fakhrawi stopped screaming, they heard one person say to another, “You killed him.”¹⁶⁷

On October 27, 2013, the Supreme Appellate Court reduced the seven-year prison terms the trial court had imposed on Sabt and Ahmad to three-year terms. The appeals court offered no explanation for its decision, other than to say that “the court sees fit to grant clemency to the appellants....”¹⁶⁸

¹⁶³ Bahrain Penal Code, arts. 75-76. The court found this particular “aggravating circumstance” to be applicable, but, without discussion, did not enhance the defendants’ sentences. First Superior Criminal Court, Case. No. 1631/2012/07, Verdict, December 30, 2012.

¹⁶⁴ First Superior Criminal Court, Case. No. 1631/2012/07, Verdict, December 30, 2012.

¹⁶⁵ BICI Report, para. 1004.

¹⁶⁶ First Superior Criminal Court, Case. No. 1631/2012/07, Verdict, December 30, 2012.

¹⁶⁷ BICI Report, para. 1003.

¹⁶⁸ Supreme Appellate Court, Case No. 1631/2012/07, Verdict, October 27, 2013.

Abuse of Medical Personnel

The Salmaniya Medical Complex, Bahrain's largest medical facility, was one site of anti-government protests in February and March 2011. Military and security forces took the institution over shortly after authorities imposed the state of emergency on March 15, 2011. At that time, security forces arrested many medical personnel, and authorities charged some with crimes, including in the prosecution addressed above. A number of these medical personnel later lodged complaints with the Public Prosecution Office, alleging that they had been subjected to physical and psychological abuse during interrogations. One doctor told Human Rights Watch that a prosecutor with the Special Investigation Unit, which the government created to investigate allegations of torture and unlawful killings as per a BICI recommendation, refused to enter her complaint into the record, and threatened to expel her lawyer from the meeting when he objected.¹⁶⁹ The BICI investigation found a "discernible pattern of mistreatment with regard to certain categories of detainees, including some of the medical personnel arrested in connection with the events at SMC."¹⁷⁰

The Public Prosecution Office eventually brought charges against Lt. Col. Mubarak Abdullah Bin Huwayl al-Marri of the Ministry of Interior in connection with the alleged torture of four medical personnel. Prosecutors also charged Lt. Shaika Nura Bint Ibrahim Al Khalifa, a police officer and member of the ruling family, with the alleged torture of two other medical personnel. Both defendants were acquitted on all counts in July 2013.¹⁷¹

The Public Prosecution Office's charging decisions in this case were questionable and significantly limited the chances of securing convictions. In particular, prosecutors brought charges in connection with certain victims without presenting evidence that the defendants themselves had abused, or ordered the abuse of, those victims. As to other victims, prosecutors did not bring charges even though there was evidence directly implicating the defendants.¹⁷²

For example, prosecutors charged Al Khalifa with the torture of Khulud Dirazi. Dirazi testified that a female officer had interrogated and beaten her, and she believed the officer

¹⁶⁹ Human Rights Watch Skype interview with Nada Saeed Abdulnabi Dhaif, October 10, 2013.

¹⁷⁰ BICI Report, para. 1230.

¹⁷¹ Third Superior Criminal Court, Case. No. 7895/2012/07, Verdict, July 1, 2013.

¹⁷² *Ibid.*

was Al Khalifa. Dirazi also testified that she had seen the uniform of a man when she was being beaten while partially blindfolded; she said she believed it was al-Marri. The court concluded that Dirazi did not definitively observe either defendant when she was being abused. While not disputing the fact that Dirazi had been assaulted, the court acquitted Al Khalifa of the charges involving Dirazi (al-Marri was not charged in relation to Dirazi).¹⁷³

In a similar vein, prosecutors accused al-Marri of torturing al-Saeed Marhun Majid al-Wadai, a victim who did not appear at trial and who, according to the court, could not definitively identify al-Marri to investigators as her abuser. Al-Marri was acquitted on this charge.¹⁷⁴

On the other hand, Nada Saeed Abdulnabi Dhaif and Nira Sarhan testified as witnesses in this case. According to the court, Dhaif testified explicitly that she could positively identify Al Khalifa as the person who had abused her, including by hitting her while attempting to secure a confession. Sarhan similarly identified Al Khalifa as the person who hit her and administered electric shocks to her body. Prosecutors never charged Al Khalifa with the abuse of Dhaif or Sarhan, even though their testimony as to Al Khalifa was far more incriminating than that of Dirazi.¹⁷⁵ It is difficult to discern a proper basis for the Public Prosecution Office's determination not to pursue cases that would seem to have had a stronger evidentiary basis than the cases it did pursue.

Putting aside charging decisions, the court's reasoning was highly questionable as well. For example, Ahmad Abd al-Aziz Imran, whom al-Marri also was accused of abusing, told investigators that al-Marri had threatened that he would suffer the same fate as other detainees who had been beaten unless he confessed and that al-Marri had made him stand for an extended period of time. The court acquitted al-Marri of the charges in relation to Imran because they were "not supported by evidence." In making this assertion, the court ignored Imran's statement, which indisputably was "evidence," the testimony of others that Imran was standing for an extended period, as well as a medical report that documented discoloration on Imran's legs. The court noted that another alleged victim had accused al-Marri of hitting him with a rubber hose and concluded that, because Imran did not also accuse al-Marri of hitting him with a hose, both individuals'

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

statements were false; the court cited no evidence or reasoning to support the proposition that two alleged victims should automatically be found not credible simply because they did not complain of the same exact abuse. Ultimately, the court concluded that Imran might be fabricating testimony due to “maliciousness,” based on the undisputed fact that he had been mistreated.¹⁷⁶

The court similarly chose to discredit testimony relating to alleged abuse of Zahra Ahmad al-Sammak by Al Khalifa. Al-Sammak testified that Al Khalifa had hit her in the face several times. In finding this charge to be “unsupported” and without “any evidence,” the court again ignored the victim’s statement, finding that it was marked by the “maliciousness that has seized the heart and conscience of the victim due to [Al Khalifa’s] work and mission.” The court also chose not to believe a witness who testified to having heard Al Khalifa question and beat al-Sammak because the witness’s testimony was “tinged with maliciousness in light of the police procedures experienced by [her].” In essence, the court found that victims of torture or other abuse are less credible for having been victims, a principle that finds no support in law.¹⁷⁷

The court’s apparent bias in this regard was underscored by its granting credence to testimony from purportedly exculpatory witnesses, including several police personnel who testified that they worked in the same facilities at which the medical personnel were held and that they had witnessed no abuse of or injuries to the detainees. None of these personnel claimed to have been personally involved with the questioning of the victims and some said that they had only by chance seen one or two of the victims. As such, their testimony seemed of little value. Moreover, the court recognized that at least some of the victims had suffered physical injuries, rendering highly suspect testimony about the lack of injuries on any victims and the propriety of all interrogation procedures.¹⁷⁸

Following his acquittal, al-Marri met with Prime Minister Khalifa bin Salman Al Khalifa at a celebratory event, which unidentified persons video-recorded and posted online. During the meeting, and as reflected on the recording, al-Marri said to the prime minister, “When issues get big, you are the one with a solution.” In response, the prime minister said, “You

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

know, those laws ... Nobody could apply them to you. No one can touch this bond between us. Whoever applies these laws to you applies them to us. We are one body.”¹⁷⁹

In late December 2013, according to media reports, the Supreme Appellate Court affirmed the acquittals of Al Khalifa and al-Marri.¹⁸⁰ Human Rights Watch has been unable to secure a copy of this verdict.

Abuse of Nazeeha Saeed

On May 22, 2011, police summoned Nazeeha Saeed, the France 24 and Radio Monte Carlo correspondent who witnessed the killing of Isa Abd al-Hassan Ali Hussain, to a police station in West Riffa for questioning. There, according to Saeed, officers interrogated her, demanding that she admit to working with Iranian television stations as part of a terrorist cell that sought to overthrow the ruling regime and to filing false media stories. Saeed told Human Rights Watch, and testified in court, that during this interrogation she was subjected to serious physical abuse, including being slapped, hit with fists, kicked, and struck with a hose. Ultimately, Saeed signed a “confession,” while blindfolded, that she did not read.¹⁸¹

Authorities released Saeed at 3 a.m. on May 23 without charge and she filed a complaint with the Ministry of Interior the following day. In connection with an investigation conducted by the Ministry of Interior, Saeed identified a number of police personnel who she said had participated in the abuse, including Sara Mohamed Isa al-Musa, a second lieutenant with the Ministry of the Interior.¹⁸² Eventually, prosecutors brought charges, but only against al-Musa.

At al-Musa’s trial, presiding judge Shaikh Mohamed Bin Ali Al Khalifa asked Saeed to recount her experiences in custody, but terminated the examination after only a few

¹⁷⁹ “Statement by His Highness Sheikh Khalifa bin Salman Al Khalifa, the Prime Minister, delivered to Lt. Col. Mubarak Bin Huwayl,” July 7, 2013, video clip, YouTube, <http://www.youtube.com/watch?v=YVundvyyNS8> (accessed November 26, 2013). Human Rights Watch has been unable to determine who made the recording and uploaded it on YouTube. To Human Rights Watch’s knowledge, neither the government nor either of the two individuals quoted above has contested its authenticity.

¹⁸⁰ “Bahrain court acquits princess on trial for torturing doctors,” Reuters, December 27, 2013, <http://www.reuters.com/article/2013/12/27/us-bahrain-princess-trial-idUSBRE9BQ04R20131227> (accessed January 7, 2014).

¹⁸¹ First Superior Criminal Court, Case No. 4938/2012/07, Verdict, October 22, 2012; Human Rights Watch Skype interview with Nazeeha Saeed, September 3, 2013.

¹⁸² Human Rights Watch Skype interview with Nazeeha Saeed, September 3, 2013.

moments, denying Saeed the opportunity to explain in any detail what had happened. A police officer testified that he had heard the defendant screaming at Saeed to confess during questioning. The court also considered a statement made to investigators by Nahid Ghalum Jasim Hussain, who had been detained with Saeed. Hussain said that after Saeed's statement was taken, Saeed returned to the detention room crying, with her clothing torn and her hair tousled. Finally, al-Musa herself acknowledged that she had yelled at Saeed in an effort to secure a confession.¹⁸³

The court also reviewed a forensic medical report, which confirmed that Saeed had suffered injuries that "could have resulted from blows by a hand and the use of a hose at a date contemporaneous to the incident."¹⁸⁴ Although the court considered only this report, Saeed had been examined by two different physicians from the Bahraini government and one physician from Doctors Without Borders, each of whom noted injuries consistent with the abuse she described.¹⁸⁵

On October 22, 2012, the court acquitted al-Musa of all charges, in part because of purported "[i]nconsistencies between narrative evidence and technical evidence that are difficult to reconcile." The court rejected the one medical report it considered because the report did not state that Saeed had suffered injuries on all parts of her body that she had claimed were struck and "did not state decisively ... that the injuries ... resulted in a way consistent with the victim's portrayal of the incident."¹⁸⁶ The court simply ignored the fact that the report largely corroborated Saeed's account, given that the report found she had injuries that "could have resulted from blows by a hand and the use of a hose at a date contemporaneous to the incident."

In addition, the court affirmatively mischaracterized the one medical report it considered. First, the court asserted that the report made no mention of injuries to Saeed's feet, which she claimed were struck by a plastic hose, when in fact that report (and the other two reports referenced above) documented foot injuries. The court also wrote that the medical report made no reference to injuries to Saeed's back, contrary to her

¹⁸³ Ibid.; First Superior Criminal Court, Case No. 4938/2012/07, Verdict, October 22, 2012.

¹⁸⁴ First Superior Criminal Court, Case No. 4938/2012/07, Verdict, October 22, 2012.

¹⁸⁵ Ibid.; Reports on file with Human Rights Watch.

¹⁸⁶ First Superior Criminal Court, Case No. 4938/2012/07, Verdict, October 22, 2012.

testimony.¹⁸⁷ In fact, the medical report considered by the court (as well as the report by Doctors Without Borders and an additional investigatory report by a police officer) all spoke of bruises on Saeed’s back.¹⁸⁸

The court also rejected Saeed’s testimony on the purported basis that, in various statements given to investigators, she had accused different officers of abuse.¹⁸⁹ According to Saeed, however, she consistently identified the officers who abused her from the outset of the Ministry of Interior investigation; she identified the officers in person when they were brought to her at Ministry of Interior offices.¹⁹⁰ Saeed also told Human Rights Watch that there was no discussion of purportedly inconsistent statements during the trial.¹⁹¹

Finally, the court claimed not to find credible the two witnesses whose testimony supported Saeed’s allegations. The court described as “speculation” testimony of the witness who described seeing Saeed crying and with torn clothing after being questioned, because that testimony did not “conclusively prove that the defendant had assaulted or tortured the victim.” While it is true that this witness did not claim to have personally observed any abuse, there was no basis for the court to dismiss as “speculation” testimony based on what the witness did claim to see, i.e., Saeed’s condition after questioning. The court similarly did not lend credence to the statement of the police officer who reported that the defendant had screamed at Saeed to confess, a remarkable conclusion, considering that, as the court noted, the defendant herself had told investigators that she yelled at Saeed to compel a confession.¹⁹²

In sum, there is no dispute that Saeed suffered serious physical injuries during questioning or that al-Musa acknowledged she had questioned Saeed aggressively. Nonetheless, neither al-Musa nor any other officer was held accountable for inflicting Saeed’s injuries. Given the court’s reasoning in reaching its verdict, including its

¹⁸⁷ Ibid.

¹⁸⁸ Reports on file with Human Rights Watch.

¹⁸⁹ First Superior Criminal Court, Case No. 4938/2012/07, Verdict, October 22, 2012.

¹⁹⁰ For reasons of access discussed above, Human Rights Watch has not been able to retrieve copies of the allegedly inconsistent statements given by Saeed.

¹⁹¹ Human Rights Watch Skype interview with Nazeeha Saeed, September 3, 2013.

¹⁹² First Superior Criminal Court, Case No. 4938/2012/07, Verdict, October 22, 2012.

mischaracterization of medical reports and testimony, the court does not appear to have acted in an impartial manner.

On June 23, 2013, an appellate court upheld the acquittal, calling the argument on appeal “groundless.” According to the appeals court, the evidence was “unfit as substantiating evidence” and thus the lower court was free to doubt its veracity and to acquit.¹⁹³ Prosecutors have refused to appeal from the appellate court’s decision, telling Saeed’s counsel that they agreed with the decision.¹⁹⁴

¹⁹³ Supreme Appellate Court, Appeal No. 373/2012/13, Verdict, June 23, 2013.

¹⁹⁴ Human Rights Watch Skype interview with Nazeeha Saeed, September 3, 2013.

Acknowledgements

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Appendix I: Human Rights Watch Letter to Attorney General Ali Fadhul Al Buainain, April 8, 2014

April 8, 2014

Dr. Ali Fadhul Al Buainain
Attorney General
Kingdom of Bahrain

Via fax: +973-17-840-078

Dear Dr. Al Buainain,

Human Rights Watch is preparing a report regarding Bahrain's implementation of certain key recommendations of the Bahrain Independent Commission of Inquiry (BICI). We would like to reflect the government's perspective on our findings and therefore hope that your office will be able to respond to the comments and questions that follow.

Our first concern is BICI's recommendation that "all persons charged with offenses involving political expression, not consisting of advocacy of violence, have their convictions reviewed and sentences commuted or, as the case may be, outstanding charges against them dropped." Human Rights Watch has documented many cases since November 2011 in which the government has prosecuted, and judges have convicted, defendants accused of "crimes" of speech, association, and assembly; we also note that the Supreme Appellate Court has left undisturbed many such convictions. For example, in the case of the 13 protest leaders of 2011, neither the military nor civilian courts that heard the case cited any specific actions by the defendants involving violence, instead convicting the defendants almost exclusively for engaging in speech, association, and assembly activities protected under international human rights law.

The following questions relate to this first concern:

- 1) How many individuals have been convicted of insulting the king, per article 214 of Bahrain's Penal Code in 2012? In 2013? So far in 2014? Does the government consider that a criminal offense of "insulting the king" is compatible with article 19 of the

International Covenant for Civil and Political Rights (ICCPR), to which Bahrain is a state party?

- 2) Could you please provide the charging instrument in the November 2013 case brought against Shaikh Ali Salman, leader of the Al Wifaq political society, for allegedly “denigrating and disparaging the Interior Ministry,” in the words of one high official?
- 3) With regard to the criminal charges against Al Wifaq Deputy Secretary General Khalil al-Marzooq for allegedly inciting terrorist acts, could you please provide the “intelligence report” introduced by the prosecution during a hearing on February 18, 2014?

A second area of concern involves the BICI finding that Bahraini security forces were responsible for deaths of protesters from excessive use of force. Here BICI recommended criminal investigations into such deaths “with a view to bringing legal and disciplinary action against such individuals, including those in the chain of command, military and civilian, who are found to be responsible under international standards of ‘superior responsibility.’”

BICI also found “a deliberate practice of mistreatment” of persons in custody, including deaths resulting from torture, and recommended that “an independent and impartial body” conduct investigations “capable of leading to the prosecution of the implicated individuals, both direct and at all levels of responsibility.”

According to the government’s December 2013 BICI Follow-Up Report, the Special Investigations Unit (SIU) in the Public Prosecution Office brought charges against 95 individuals in connection with the 46 deaths documented in the BICI report, but these prosecutions have almost exclusively involved low-ranking officers, and even those have foundered, resulting in acquittals or disproportionately light sentences.

The following questions pertain to this concern:

- 1) Against how many of those 95 defendants referenced in the December 2013 report was assault the most serious charge?
- 2) How many of the 95 were charged with murder? Please provide their names and ranks.
- 3) Could you please provide the name and rank of any security official convicted of any charge in connection with the 46 deaths documented in the BICI report?
- 4) Of the individuals identified in response to the immediately preceding question, how many have served or are serving prison sentences in connection with their convictions?

What is the longest sentence in connection with these cases, how many persons are serving that sentence, and what are the charges underlying those sentences?

- 5) A February 2014 government report stated that the SIU had “recently begun” to conduct criminal investigations of security or government officials in connection with at least some of the 46 deaths documented in the BICI report pursuant to the principle of superior responsibility. Can you indicate why these investigations are only now beginning, three years after the events in question?
- 6) Have any security officials been charged criminally pursuant to the principle of superior responsibility in connection with any human rights abuses cited in the BICI report other than the 46 deaths? If so, please identify any official(s) who has been convicted and identify the charge of conviction.
- 7) Has the Ombudsman Office for the Ministry of Interior referred any cases of alleged abuses to the SIU or the Public Prosecution Office for investigation? If so, please provide details.
- 8) Has the Ombudsman Office for the National Security Agency referred any cases of alleged abuses to the SIU or the Public Prosecution Office for investigation? If so, please provide details.

We would very much appreciate any information your offices can provide regarding these questions and the issues they raise. In order to reflect your responses in our report we would need to have them no later than April 28, 2014. We thank you in advance for your consideration.

Sincerely,



Joe Stork
Deputy Director, Middle East and North Africa division
Human Rights Watch

cc:

Nawaf Abdullah Hamza, head of Special Investigations Unit
H.E. Ambassador Shaikh Abdullah bin Mohammed bin Rashid Al Khalifa, Ambassador of the Kingdom of Bahrain to the United States

**Appendix II: Response of the Office of General Prosecutor
Ali Fadhul Al Buainain to Human Rights Watch,
April 29, 2014**

Kingdom of Bahrain
Ministry of Foreign Affairs
Legal Directorate/Human Rights

April 29, 2014

Very Urgent

The ministry sends its best regards to the Bahrain embassy in Washington, DC. Pursuant to the embassy's memo No. 6/2, dated April 8, 2014, regarding requests for information from Mr. Joe Stork, deputy director of the MENA division in Human Rights Watch, which were addressed to H.E. the General Prosecutor, Dr. Ali Bin Fadhul Al Buainain, about the human rights situation in the Kingdom of Bahrain,

It pleases the ministry to attach the General Prosecution's response to the afore-mentioned questions, hoping the embassy will convey the response to the concerned party.

1. **Those convicted of the charge of insulting the King under article 214 of the penal code, in the period from the beginning of 2012 to the present.**
 - The number of those convicted during the identified period is 12.
 - Whether this is consistent with article 19 of the ICCPR: the criminalization in article 214 of the Penal Code is not concerned with political criticism, but rather with the simple injury suffered by the official without regard to her/his official capacity, and with no bearing on the exercise of the lawful right to criticism, which requires 1) that the criticism in question envisages a public interest, and 2) that it does not overstep the boundaries of public office, in order to target - unlawfully - the private life of the official concerned. Those convictions have therefore been consistent with article 19 of the Covenant, in whatever duties and responsibilities it imposes on the person exercising the right to free speech, and in the allowance it makes for national laws to impose restrictions for the purpose of respecting the rights and reputations of others, and protecting national security, and public order and morals.

2. **Concerning the prosecution of Ali Salman by the Ministry of Interior, the General Prosecution has charged Mr. Salman with publicly insulting a public authority (the Ministry of Interior), which is a punishable crime under article 216 of the penal code. No further action has yet been taken in the case.**

3. Regarding the lawsuit brought against Khalil al-Marzooq, the Prosecution has charged him with instigation to terrorist crimes, with abusing his position as manager of a lawfully-established society to call for the commission of terrorist crimes, and with the promotion of actions that constitute terrorist crimes. This comes in light of the facts established in the minutes of the investigation, and of recorded footage establishing that he represented his political society in a public gathering, and made a speech that included praise for those who have committed terrorist crimes, some of whom are currently facing trial, and of the fact that he publicly hoisted the flag of the terrorist organization adopting those criminalized acts, to which the defendants belong.

Mr. al-Marzooq was referred to trial, and the case is still being tried in the competent court, which adjourned it to a May 22, 2014 hearing. Please note that he was accompanied by lawyers during both the general prosecution's interrogation sessions, and the court hearings.

4. In response to the questions concerning the Special Investigations Unit (SIU):

- About the statistical details requested, recourse should be had to the February, 2014 follow-up report of the Bahrain Independent Commission of Inquiry (BICI), concerned with the implementation by the Government of Bahrain of the Commission's recommendations, and also the BICI's follow-up report of December 2013, in addition to statements made by the SIU. (Attached are copies of both reports and the statements in question).
 - Sentences issued against those convicted have largely been served. Only three remain in prison in fulfillment of their sentences, but the rest have been released after serving them in full.
 - With regard to opening investigations in the command responsibility for incidents mentioned in the BICI's report, it is not true that the SIU has opened investigations only now. Those investigations have been ongoing for over two years, and their very nature makes them lengthy in order to cover all incidents and determine all competencies, thereby all criminal and disciplinary responsibilities. The investigations are underway, in the incidents of deaths and all others.
5. The Ombudsman's office of the National Security Agency has not referred any complaints of abuses, neither to the SIU nor to the General Prosecution, outside of the incidents being investigated by the SIU, which were revealed in the BICI's report.

CRIMINALIZING DISSENT, ENTRENCHING IMPUNITY

Persistent Failures of the Bahraini Justice System Since the BICI Report

In July 2011, Bahrain's ruler King Hamad bin Isa Al Khalifa established the Bahrain Independent Commission of Inquiry (BICI), comprising five international jurists, to investigate allegations of human rights abuses in connection with the government's suppression of pro-democracy demonstrations that erupted in February 2011. In November 2011, BICI released a report which concluded that Bahraini courts had convicted hundreds of people solely for exercising the rights to free expression and peaceful assembly; that security forces had killed at least 13 demonstrators without justification; and that detainees were routinely abused in detention, including five who died as a result of torture. King Hamad accepted BICI's findings and recommendations, and pledged to institute reforms that included holding officials accountable for serious abuses and ending the prosecution of individuals for exercising rights recognized in international law.

Criminalizing Dissent, Entrenching Impunity, based on numerous court documents as well as interviews with defense lawyers and victims of abuse, finds that two years later authorities continue to prosecute defendants for "crimes" based solely on the expression of dissent, including on charges such as "insulting the king," and engaging in peaceful assembly. The few prosecutions of security officials have focused almost exclusively on low-ranking personnel and have merely resulted in acquittals or disproportionately light sentences. Protest leaders who called for making Bahrain a republic are serving life terms, while police officers convicted of killing a protester by firing at close range, or beating a detainee to death, have received sentences of six months and two years, respectively. The stark contrast between the results of prosecutions of security personnel and prosecutions for "crimes" of speech and peaceful protest present a harsh indictment of Bahrain's criminal justice system.

Human Rights Watch calls on Bahrain to release all individuals convicted for exercising their rights to free expression and peaceful assembly and expunge these convictions, amend penal code articles used in such prosecutions to comply with international law, and hold accountable all government personnel implicated in unlawful killings, torture, and other serious abuses, including high-level officials responsible for the policies that led to these crimes.



Dr. Fatima Haji (right) hugs Dr. Zahra Ahmad al-Sammak, after hearing the verdicts announced by a Bahraini appeals court in Manama, Bahrain on June 14, 2012. The court upheld convictions of ten medical personnel based on their participation in pro-democracy protests.

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