

## Chapter XI — Measures and Remedies Undertaken by the Government

### A. Summary of Measures and Remedies

1642. Shortly after the establishment of the Commission, His Majesty King Hamad bin Isa Al Khalifa instructed the Government of Bahrain (GoB) to address the issues raised by the events of February/March 2011.

1643. A number of meetings took place between the Commission Chair, and subsequently the Commission staff, with various government agencies whose object was to initiate investigations by the Commission. In this context, the Commission identified a number of issues that, in the course of the following months, were addressed by the GoB in a positive manner. Some of the measures and remedies undertaken by the Government are mentioned in this Chapter and it is expected that in the aftermath of the Commission HM King Hamad and the GoB will establish follow up procedures to implement the recommendations of this Commission. These recommendations can be found contextually in the Chapters and Sections of this report as well as in Chapter XII, which contains other recommendations not exclusively linked to the subjects discussed in the Chapters and Sections identified above.

1644. The Commission also recognises the efforts undertaken by the GoB during the course of the Commission's work to address a variety of issues and in particular to alleviate the burdens of those who suffered some of the consequences arising out of the events under investigation by the Commission. These include:

- a. the release of 310 persons who had been imprisoned;
- b. the transfer of all misdemeanour cases from the National Safety Court to the ordinary courts;
- c. providing for the right to appeal to ordinary civilian courts from the judgments of the National Safety Courts;<sup>816</sup>
- d. the reinstatement of 1,558 out of the 1,945 public sector employees dismissed;
- e. the readmission of 412 university students who had been expelled from the University of Bahrain and Bahrain Polytechnic (59 remain expelled);
- f. the release of all medical personnel pending their re-trial before the (civilian) Lower Appellate Court and the dropping of charges brought against the medical personnel under articles 165, 168 and 214 of the Bahrain Penal Code;

---

<sup>816</sup> The appellate Court can retry the case

- g. the release of two women pending trial who were subsequently tried and convicted, and again released awaiting appeal;
- h. the initiation of 14 investigations by the Ministry of Interior (MoI) in connection with cases involving the deaths of civilians in the course of the events of February/March 2011, leading to the prosecution of police personnel for their alleged involvement in six of these cases;
- i. the initiation of an investigation by the National Security Agency (NSA) in the case of one death;
- j. the investigation by the Bahrain Defence Force (BDF) of four deaths;
- k. the Military Attorney General investigating the mistreatment of prisoners held at the military corrections facility and Al Qurain on two occasions, after complaints were filed by high-profile political prisoners;
- l. the Military Attorney General assumed direct supervision of the military corrections facility of Al Qurain after receiving complaints of mistreatment by prisoners including the transfer of prisoners held at the MoI's Dry Dock Detention Centre to Al Qurain to ensure their safety and well-being;
- m. the efforts undertaken by the Ministry of Labour (MoL) to reinstate private sector employees who had been terminated during the events of February/March 2011;
- n. the lifting of the State of National Safety two weeks prior to its originally planned expiration, despite the fact that the legislature had voted to extend the state of national safety for a further three months; and
- o. the Commission notes that after its establishment the complaints of mistreatment in detention facilities dropped significantly as a result of efforts by the MoI.

## **B. Transferral of cases from the National Safety Courts to civil courts**

1645. On 15 March 2011, the GoB declared a State of National Safety pursuant to Royal Decree No. 18 of 2011, which, among other things, established a two-tiered National Safety Court with jurisdiction over certain crimes related to the events that occurred in Bahrain during February and March 2011.<sup>817</sup>

---

<sup>817</sup> Royal Decree No. 18 of 2011, art 7. See also Chapter III on the Relevant Aspects of the Legal System and Description of the Enforcement Structures.

1646. The National Safety Courts are composed of a lower court and a higher appellate chamber.<sup>818</sup> Article 11 of Royal Decree No. 18 of 2011 states that “the final judgments issued by the National Safety Courts cannot be challenged”.<sup>819</sup>

1647. The Commission received statements from individuals alleging that several violations of their due process rights occurred during proceedings before the National Safety Courts. Among these are allegations that detainees were not informed of the charges against them. Additionally, the Commission received allegations that individuals were not provided meaningful access to a lawyer.<sup>820</sup> The Commission also received allegations that individuals were not given full access to the evidence presented against them by the prosecution, that they were not permitted to testify in court, and that statements made under torture or the threat of torture were admitted against them.

1648. In the months following the issuance of Royal Decree No. 18 of 2011, a number of Royal Decrees and Royal Decree Laws were issued to allow for the appeal to the ordinary court system from judgments of the National Safety Courts. First, Royal Decree No. 48 of 2011 obligated the Court of Cassation to review all death sentences issued by the National Safety Courts. If the Court of Cassation decides to repeal the judgment, it automatically reviews the entire case *de novo*. Subsequently, Royal Decree No. 62 of 2011 transferred all cases and appeals that had not yet been adjudicated by the National Safety Courts to the ordinary courts.

1649. On 18 August 2011, however, Royal Decree Law No. 28 of 2011 revised Royal Decree No. 62 of 2011 by stipulating that the National Safety Courts shall continue to hear cases involving felonies in which proceedings had already begun.<sup>821</sup> Royal Decree Law No. 28 of 2011 also affirmed the transfer to ordinary courts of cases involving misdemeanours that the National Safety Courts had not yet adjudicated (misdemeanour cases have indeed already been transferred to ordinary courts by this time).<sup>822</sup> In addition, Royal Decree Law No. 28 of 2011 allowed all convicted persons (whether or not they received a death sentence) and the Public Prosecution to appeal judgments of the National Safety Appellate Court to the Court of Cassation. If the Court of Cassation repeals the judgment of the National Safety Appellate Court and if the case concerns a felony charge, then the case is re-examined by the Supreme Criminal Court of Appeals. For misdemeanours, the case is re-examined by the High Criminal Court.<sup>823</sup>

---

<sup>818</sup> Royal Decree No. 18 of 2011, arts 8-9.

<sup>819</sup> Royal Decree No. 18 of 2011, art 11.

<sup>820</sup> The Commission received a number of reports indicating that, while some of the accused had been provided with legal representation, they were not permitted to speak to their lawyer during the process, or were only permitted to speak to their lawyer for a few minutes and only on one occasion.

<sup>821</sup> Royal Decree Law No. 28 of 2011, art 2.

<sup>822</sup> Royal Decree Law No. 28 of 2011, art 1.

<sup>823</sup> Royal Decree Law No. 28 of 2011, art 3.

1650. In one of the cases previously before the National Safety Court – Case No. 191 of 2011, also known as the “doctors case” – the Attorney General decided that there would be a full retrial, with a full re-examination of the evidence, in the civilian courts. For the retrial, the Attorney General has also decided to drop certain charges and not to rely on confession evidence in order to avoid allegations (as the Commission understands it) that the confession may have been obtained by torture. All defendants in this case have been released and the first hearing in the retrial was held on 23 October 2011. Other cases will be subject to review by the Attorney General to determine whether other re-trials would be in the interests of justice

1651. The GoB reported that 32 felony cases were brought before the National Safety Courts in connection with the events of February/March 2011.<sup>824</sup> In a follow-up report, the GoB stated that all 32 cases had reached completion. Of these, 22 cases were adjudicated at trial level and there was no appeal, nine cases were decided on appeal, and one case was transferred to a civilian court for lack of jurisdiction. The completion of these cases effectively ended the jurisdiction of the National Safety Courts.

### **C. Reinstatement of university students**

1652. Between 5 May and 18 May 2011, the University of Bahrain took disciplinary action against students who allegedly participated in demonstrations at the university. The disciplinary action was based on various grounds, including that the students had participated in the destruction of campus property and attacks on other students. The University of Bahrain informed the Commission that it had initially expelled 427 students, suspended 38 students and issued final warnings to seven students.<sup>825</sup> By 13 June 2011 Bahrain Polytechnic had expelled 54 students, suspended 12 students and issued final warnings to a further five students, notwithstanding that no demonstrations had occurred on its campus.<sup>826</sup> In addition, by 31 March 2011, the scholarships of 97 Bahraini students had been revoked.

1653. On 27 May 2011, the Ministry of Education (MoE) reinstated all 97 scholarships that were revoked in February and March 2011. The only disruption suffered by some students was a disruption in their monthly stipend, which was reinstated with retroactive pay when the scholarships were reinstated. Students were not otherwise affected by the revocation.

1654. Initially, the MoE had required the reinstated scholars to sign loyalty pledges to the GoB and to the King, or otherwise forfeit their right to attend university. The Commission was informed that the MoE then decided to

---

<sup>824</sup> Decree Law No. 28 of 2011, Annex entitled “Transfer of Cases from National Safety Court System to Regular Court System”, para 7.

<sup>825</sup> Minutes of meeting between the Commission and University of Bahrain administration, 21 August 2011. A final warning is a warning issued to a student regarding conduct that, if repeated, could lead to further disciplinary action in the form of suspension or expulsion.

<sup>826</sup> Minutes of meeting between the Commission and Bahrain Polytechnic administration, 21 August 2011. These students were disciplined for allegedly taking part in the demonstrations at the University of Bahrain.

dispense with such pledges. The Ministry confirmed to the Commission that it would not enforce the pledges that had already been signed by some of the reinstated scholars.

1655. In relation to expulsions and suspensions at the University of Bahrain and Bahrain Polytechnic, each of these institutions set up their own review procedures.

1656. On 25 August 2011, the University of Bahrain announced that it would reinstate 389 students, reverse the suspensions of all 38 students who had been previously suspended, and increase the number of students receiving final warnings from 7 to 120. The University of Bahrain therefore only maintained the expulsions of 38 students.

1657. On 12 November 2011, Bahrain Polytechnic announced that of the 54 expelled students, it would be reinstating 30 students, upholding the dismissals of 21 students.

1658. The University of Bahrain and Bahrain Polytechnic informed the Commission that they only maintained the expulsions of those students who were involved in violent protests and grave breaches of each institution's regulations, including bringing weapons onto campus and threatening other students.

#### **D. Reinstatement of dismissed employees**

1659. Following the events of February/March 2011, the Commission received a total of 1,584 complaints alleging the dismissal or suspension of employees. According to statistics from the MoL, 2,462 employees from the private sector were dismissed.<sup>827</sup> According to statistics from the Civil Service Bureau (CSB), 1,945 employees were dismissed from their jobs in the public sector.

1660. In order to investigate the issue of dismissals, the Commission met with the CSB on three separate occasions and with the MoL on two occasions. During these meetings, the Commission inquired about the dismissals, procedural and substantive safeguards provided to employees, and any subsequent corrective measures, such as reinstatement, that may have been implemented.

1661. The CSB's purview remains only with employees within the public sector, whereas the MoL is responsible for employment matters arising in the private sector. Applicable Bahraini law accords public sector employees substantive rights, including the right to collective action and procedural guarantees to protect against arbitrary dismissal. The CSB and the MoL have both recognised the right of public and private sector employees to strike and participate in demonstrations. Both government agencies have, however, maintained that the dismissal of employees who took part in protests during February/March 2011 was lawful because their absence from work was not due to a demonstration specifically related to labour conditions.

---

<sup>827</sup> Ministry of Labour, Report to the Commission, 30 October 2011.

1662. The CSB is following the legal and regulatory process set out in Decree Law No. 48 of 2010 in reviewing the dismissal of 1,945 public employees. Under the law the CSB automatically reviews all decisions by public bodies to dismiss employees. It was explained to the Commission that as a practical matter the process of review has been slowed down because of the strict requirements for the way each review board must be constituted under the law. It must comprise persons from the same department and at least the same seniority as the person whose dismissal is being reviewed. Nevertheless, the CSB undertook, pursuant to the order of HM King Hamad, to complete the review by the end of November 2011.

1663. On 30 October 2011, the CSB provided the Commission with a report on these dismissals, including confirmation of the news that as a result of HM King Hamad's speech, the vast majority of the dismissed employees would be reinstated and the process of review would be expedited. At time of this report, 522 cases had been reviewed and the decisions in these cases were:

- a. 19 employees were exonerated and had returned to work;
- b. the cases of 213 employees were transferred to the public prosecutor for consideration, but they are still receiving fully pay;
- c. 174 employees were dismissed but it open to them to appeal this decision before the administrative court; and
- d. 116 employees were returned to work.

1664. More generally, the report confirmed that, following on from HM King Hamad's Eid speech, it was decided that there would be no further dismissals when the remaining 1,423 cases were reviewed. The maximum penalty upon review would be a 10-day suspension from work and salary. In other words, 1,423 dismissals by the public bodies have been overturned by the CSB and these people have already gone back to work on normal pay.

1665. The Commission met with the MoL on two occasions to discuss the dismissals and suspensions of employees in the private sector. The Commission has collected statements from 804 employees who were dismissed or suspended from private sector jobs.

1666. The GoB appointed a committee, headed by the Minister of Labour, to review the dismissals in the private sector.

1667. According to a report submitted by the MoL, a total of 2,462 private sector employees were dismissed. In a follow-up report to the Commission, the MoL reported that of these dismissed employees, 820 had been reinstated and 778 were not yet reinstated, although the committee had recommended the reinstatement of these persons. Of the remaining dismissed employees, 176 were hired elsewhere, retired, or were given financial compensation by their former employers, 88 had been offered financial compensation, 290 did not pursue complaints with the MoL, 51 refused to return to work and 28 were employed by another employer after having received a certificate of good conduct. The MoL also reported that 223 employees were found to have been



dismissed for reasons unrelated to the events of February/March 2011. The employers of seven individuals were no longer in business. The MoL reported that it is continuing its work to ensure the reinstatement of dismissed private sector employees. The MoL emphasised that it has faced some resistance to its recommendations for reinstatement from private companies, would prefer to deal with the issues of reinstatement through normal processes under Bahraini labour law.

## **E. Legislative Reform**

1668. The National Dialogue proposed that the Government undertake revisions of a number of statutes with a view to broadening the avenues for popular participation in governance. Therefore, the Government has prepared a number of legislative amendments that it intends to submit to the National Assembly for consideration.

1669. These amendments include adding a new provision to Royal Decree Law No. 14 of 2002 on the Exercise of Political Rights to allow for civil society organisations to oversee elections.

## **F. Revisions of provisions of the Penal Code infringing the freedoms of opinion, expression and assembly**

1670. Following the events of February/March 2011, a number of individuals were charged under provisions of the Bahrain Penal Code that criminalise activities that constitute the exercise of the internationally protected freedoms of opinion, expression and assembly. These provisions are articles 165, 168, 169 and 179 of the Bahrain Penal Code.<sup>828</sup>

1671. While no Royal Decree was issued officially pardoning individuals convicted of violating these provisions, the Attorney General has dropped the charges that were brought against 48 medical personnel under, *inter alia*, articles 165 and 168 of the Bahrain Penal Code. However, there are 300 other individuals still facing charges on similar grounds.

1672. The GoB has also proposed an extensive set of amendments to the Penal Code to enhance freedom of expression. These proposed amendments include: (i) changing the language of article 168 of the Penal Code; (ii) deleting article 134A of the Penal Code; (iii) deleting article 174 of the Penal Code; and (iv) adding a new provision to the Code, article 169 *bis*. It is proposed that the amendments would apply retroactively where this would be beneficial to the accused in a pending case. Amended article 168 would read as follows:

- a. Imprisonment for a period of no more than two years and a fine not exceeding BD200, or either penalty, may be imposed on any person who deliberately disseminates a false statement

---

<sup>828</sup> See Chapter VI, Section E.

knowing that it may be damaging to national security, public order or public health, and consequently such damage occurs.

- b. A statement can only be subject to criminal penalties for damaging national security under subparagraph (a) if it:
  - i. deliberately incites imminent violence;
  - ii. it is likely to incite such violence; and
  - iii. there is a direct and immediate connection between the statement and the likelihood or occurrence of such violence.

1673. The GoB's proposal also sets out to delete articles 134A and 174 from the Penal Code in their entirety. There will be no new crimes that replace these provisions. Article 134 states that:

A punishment of imprisonment for a period of no less than 3 months and a fine of no less than BD100, or either penalty, shall be imposed upon any citizen who has attended abroad in whatever capacity and without authorisation from the Government, any conference, public meeting or seminar or has participated in any manner whatsoever in the deliberations thereof with the intent of discussing political, social or economic conditions in Bahrain or in any other state so as to weaken financial confidence in Bahrain or undermine its prestige or standing or to worsen political relations between Bahrain and these countries. The same punishment shall be inflicted upon any person who liaises abroad without any authorisation from the Government with representatives or delegates of any foreign country, association, organisation, society, federation, union or institution with the intent of discussing any of the matters contained the preceding paragraph.

1674. Article 174 of the Bahrain Penal Code states that:

A punishment of imprisonment for a period of no more than 2 years and a fine not exceeding BD200, or either penalty, shall be inflicted upon any person who produces or possesses, with the intent of trading, distribution, positing or display, any pictures designed to cause offence to the country's reputation whether by a presentation that is contrary to the truth, by giving an improper description, presenting unbecoming aspects or by any other method. The same penalty shall be inflicted upon any person who imports, exports, copies deliberately, either personally or through any others, any of the above for the aforesaid purpose, or any person who advertises such materials, displays them for sale, trading therein even in a secretive manner, and any person who provides such items directly or indirectly even free of charge and in any way whatsoever. The same penalty shall be inflicted upon whoever distributes or delivers such materials for distribution by any means.



1675. The GoB has also prepared a new article 169 *bis* to ensure that the provisions of the Penal Code that relate to the exercise of the freedom of expression, as well as other laws relevant to freedom of expression, shall be interpreted in light of what is needed in a democratic society, and that practising the right to freedom of expression in this manner precludes punishment. The provision would read as follows:

Restrictions defined in this or any other law on the freedom of expression shall be construed as limited to those which are compatible with the values of a democratic society. The exercise of the freedom of expression can only be punished through restrictions that are so limited.

1676. A number of other individuals were convicted for violating article 214 of the Penal Code, which criminalises insulting the King, flag or national emblem. On 28 August 2011, HM King Hamad gave a speech to the nation in which he announced, “There are those who were charged with abusing us and senior officials in Bahrain, and we today announce that we forgive them as we hope that they understand that abusing us and others in fact offends everyone and achieves nothing.”<sup>829</sup>

## **G. Establishment of the National Fund for the Reparation of Victims**

1677. In response to the allegations of human rights violations that emerged as a result of the events of February/March 2011, HM King Hamad issued Royal Decree Law No. 30 of 2011 establishing the National Fund for the Reparation of Victims on 22 September 2011. In the preamble of this Decree Law, reference is made to Bahrain’s obligations under the ICCPR as well as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>830</sup> The Decree Law states the rights created under it are in addition to those already existing under Bahraini law.

1678. The Fund was created to provide remedies for those that have suffered any type of material, psychological or physical damage as a result of infringement of their rights, either at the hands of a public security officer or ordinary citizens. Article 3 of this Decree Law identifies the following categories of victims who may make claims for reparations from the fund after there has been a final judgment rendered by a court convicting a person of a crime:

---

<sup>829</sup> *HM the King Speech on the Occasion of the Last Ten Days of the Holy Month of Ramadan*, Bahrain News Agency (28 August 2011), <http://bna.bh/portal/en/news/470288> accessed 20 October 2011.

<sup>830</sup> The Basic Principles and Guidelines were adopted in GA res 60/147 (2005) 16 December 2005.

- a. Any person who has suffered material, psychological or physical damage caused by a member of the public security forces or public officials;
- b. Any member of the public security officer or any public official who has suffered material, psychological or physical damage inflicted by persons in the course of fulfilling their duties;
- c. Any other person who has suffered material, psychological or physical damage as a result of the violent events of February/March 2011 in Bahrain, or as a result of violent events of a similar nature that occur after that time.

1679. Victims who may seek relief from the Fund include the direct victim as well as family up to and including fourth degree relatives, dependants of the direct victim, and persons who have suffered harm intervening to assist victims in distress or to prevent victimisation. The remedies provided extend beyond compensation and include: (i) reparation; (ii) restitution; (iii) compensation; (iv) rehabilitation; (v) satisfaction; and (vi) guarantees of non-repetition. Victims may seek compensation for economic harm. Additionally, the Decree Law is both backward-looking and forward-looking, and contains no time limit for making a claim. However, a final criminal conviction must be rendered against the perpetrator of the human rights violation for the victim to receive compensation.

## **H. Rebuilding of Places of Worship**

1680. On 22 May 2011, HM King Hamad announced that new Shia places of worship would be built. The statement was made shortly after several religious structures were demolished by the GoB.

1681. A committee was formed to study the rebuilding of places of worship on an area-by-area basis across Bahrain. On 13 November 2011, the Minister of Justice announced that the committee had examined the situation in Hamad Town (the first area for rebuilding) and was in the process of allocating building licences and plots of land for new places of worship there. The statement also indicated that the GoB would shortly make funds available for the building of mosques and *ma'atams* in that area.

## **I. Reforms to the Police Training Program**

1682. The MoI informed the Commission that it has undertaken a complete overhaul of its training program for police officers to take into account the lessons learnt from the arrests and detentions in February and March 2011. The revised program aims to be comprehensive, covering all aspects of a policeman's day-to-day duties. The program lasts for twelve weeks and teaches an internationally recognised protocol for policeman called "Systems Approach to Training". The MoI instituted the new program in May 2011, and the first batch of trained policeman completed the program in August

2011. The MoI has announced that it will continue to provide human rights training regularly, and is examining ways in which to improve the training given to policeman further. Further training programmes that the Commission was informed about were:

- a. The Commission was shown a copy of a circular from the MoI dated 6 September 2011, in which it was announced that the police training curriculum would include revised modules on “Police Safety Training”. The Academy of Police of the MOI has stressed the importance of incorporating human rights issues its training curriculum.
- b. The Ministry of Interior has announced that the following refresher courses will be available as part of its overhaul of the police training programme:
  - i. A refresher course for officers from the rank of second lieutenant to the rank of captain. This is an eight-week full-time course for 20-30 participants consisting of field training, theoretical lectures and field visits. The course is designed to improve the participants’ knowledge of the topics covered, including the subject of human rights.
  - ii. A criminal investigation techniques course for officers from the rank of second lieutenant to the rank of captain. It is a one-week, full-time course for five to eight participants and its aim is to provide training on the development of investigation techniques according to the latest procedural and legal regulations and to make participants aware of human rights principles that may apply to criminal investigations.
  - iii. A course on arrest and search procedures is offered to officers from the rank of second lieutenant to the rank of captain. It is a one-week, full-time course for five to eight students. It is designed to offer training on the legal rules regulating the conduct of arrests and searches focusing on compliance with international human rights principles.
- c. In addition it is planned that non-commissioned officers will be able to take a range of training programmes, including a treatment of prisoners course, which is for 15-25 participants, and takes the form of theoretical and practical lectures focusing on the legal rules and human rights principles regulating the conduct of arrests and searches.

**J. Steps taken by the Ministry of Interior to make detention centres safe**

1683. On 20 April 2011, the MoI established an internal committee to supervise and review its detention centres (long term and police stations). This committee is required to conduct spontaneous inspections of each detention centre in order to ensure that appropriate safety and security safeguards are in place and that each detainee's rights are respected. This committee reports approximately twice monthly to the General Inspector. This report is required to identify any problems found during the random inspections.

1684. In August 2011, the Ministry of Interior finalised posters setting out, in detail, the rights of detainees under Bahraini and international law, as a reminder to all prison officers. The Commission was informed that these are now on display in all prisons and detention centres.

**K. Constitutional Reform**

1685. The National Dialogue recommended that the 2002 Constitution of Bahrain be revised to address some of the criticisms that had been levelled against it. Therefore, as part of the measures that it plans to undertake to implement the recommendations of the National Dialogue, the GoB has prepared 20 amendments to the Constitution. The proposed amendments extend to the following articles: 42; 46; 52; 53; 57; 65; 67; 68; 83; 85; 86; 87; 88; 91; 92; 102; 103; 109; 115; and 120.