

Chapter III — Relevant Aspects of the Legal System and Description of the Enforcement Structures

A. Introduction

100. The legal system of Bahrain is a hybrid system deriving from a number of jurisprudential traditions, including Islamic *Sharia*,¹⁴³ Egyptian civil, criminal and commercial law (the Egyptian system itself deriving from the French Napoleonic code, local tradition and custom)¹⁴⁴ and English common law.¹⁴⁵ The first Penal Code of Bahrain was promulgated in 1955 and amended by Decree Law No. 15 of 1976. The Penal Code continues in force today.¹⁴⁶ The Bahrain Civil Code, replacing various ordinances regulating civil transactions, was promulgated on 3 May 2001.¹⁴⁷

101. Islamic *Sharia* courts were Bahrain's first judicial bodies. The *Sharia* courts were the only judicial bodies until 16 February 1922, when the first civil courts were established.¹⁴⁸ The judicial system of Bahrain is divided into Ordinary Courts, which include Civil¹⁴⁹ and Islamic Courts,¹⁵⁰ Bahrain

¹⁴³ Article 2 of the Constitution of Bahrain states: "Islamic *Sharia* is a principle source of legislation." Islamic courts in Bahrain apply both Sunni and *Jaffari* jurisprudence, depending on the sect of the plaintiff at the time the case was filed.

¹⁴⁴ Article 1 of the Bahrain Civil Code, which was promulgated pursuant to Decree Law No. 19 of 2001, stipulates that the primary source of law is legislation, and that in cases where legislation is silent, judges may rule on the bases of custom. If customary rules are unavailable, then judges should resort to the most appropriate juristic opinions of Islamic *Sharia* in light of the realities of the country. If Islamic *Sharia* is silent on the matter, then judges may rule on bases of natural law and equity.

¹⁴⁵ During the period of British protectorate, the British authorities held the power to adjudicate all civil cases. The judicial system at the time was based on a dual court system. The local courts had jurisdiction to adjudicate disputes between Bahrainis and between Bahrainis and foreign non-British nationals. British nationals, however, appeared before British magistrates in accordance with the terms of the Convention between Great Britain and Bahrain of 31 May 1861: 124 CTS 163.

¹⁴⁶ Seven amendments have been made to the Penal Code currently in force. These amendments were promulgated pursuant to the following Decree Laws: No. 21 of 1999; No. 21 of 2000; No. 65 of 2006; No. 8 of 2008; No. 14 of 2008; No. 16 of 2010; and No. 24 of 2010.

¹⁴⁷ The promulgation of Decree Law No. 19 of 2001 automatically repealed the Contracts Code, the Code of Civil Contraventions and the Buildings and Apartments Ownership Code.

¹⁴⁸ See Kingdom of Bahrain, Ministry of Justice and Islamic Affairs, *A Study on the Legal and Judicial System of the Kingdom of Bahrain* (July 2011) p 2 [on file with the Commission].

¹⁴⁹ The Judicial Authority Code divides Civil Courts into four tiers, the first of which is the Lower Courts, followed by the Higher Civil Courts, then the Higher Appellate Civil Court. The Court of Cassation is the highest civil court in Bahrain. These courts adjudicate civil, criminal and administrative law cases, in addition to disputes relating to personal status between non-Muslims.

¹⁵⁰ Islamic Courts are divided into three tiers: the Lower Islamic Court, followed by the Higher Islamic Court and finally the Supreme Appellate Islamic Court. Each of these courts is composed of two chambers for both Sunni and *Jaffari* jurisprudence. These courts adjudicate personal status disputes between Muslims, with the exception of matters relating to estates, which fall under the jurisdiction of the Civil Courts.

Defence Force Military Courts¹⁵¹ and the Military Courts of the Ministry of Interior.¹⁵² Unlike Egypt and other Arab countries, Bahrain does not have a specialised administrative court system.¹⁵³ The Supreme Council of the Judiciary is the highest judicial authority, which is responsible for ensuring the proper administration of the courts and their supporting organs.¹⁵⁴ The Court of Cassation is the highest court in Bahrain, and ensures that the law is applied uniformly by all lower courts. Following the entry into force of the 2002 Constitution, a Supreme Constitutional Court was established to review the constitutionality of legislation.¹⁵⁵

102. The following sections will consider aspects of the legal and judicial system of Bahrain relevant to the work and investigations of the Commission. These include the relevant provisions of the Code of Criminal Procedure, the jurisdiction of the criminal courts, the powers of both the Public Prosecution and law enforcement agencies and applicable international legal obligations. This section will then examine the scope and content of Royal Decree No. 18 of 2011 on the Declaration of a State of National Safety in Bahrain and outline how the decree was applied in practice by organs of the Government of Bahrain.

B. The International Human Rights Obligations of Bahrain

103. Bahrain is party to a number of the main international human rights treaties. These include the International Covenant on Civil and Political Rights

¹⁵¹ Pursuant to article 105 of the Constitution of Bahrain, the Military Courts exercise jurisdiction over “military crimes” committed by members of the Bahrain Defence Force, the National Guard and the Public Security Forces. These courts may not exercise jurisdiction over non-military personnel except when Martial Law is in force. According to article 35 of the Military Penal Code, which was promulgated pursuant to Decree Law No. 34 of 2002, the Military Courts are divided into four levels. The lowest courts are the Special Military Courts, followed by the Lower Military Courts, the Higher Military Courts and finally the Supreme Military Appellate Court, which is the highest Military Court in Bahrain.

¹⁵² See articles 80-90 of Decree Law 3 of 1982 on the Public Security Forces.

¹⁵³ The Bahrain judicial system does not have a specialised administrative courts system like those in France and Egypt. Nonetheless, article 7 of the Judicial Authority Code, which was promulgated by Decree Law No. 42 of 2002, stipulates: “The High Civil Courts shall convene in an Administrative Chamber to adjudicate administrative disputes.” Such disputes include those relating to administrative decisions, administrative contracts, nationality, passports and immigration.

¹⁵⁴ The Supreme Council of the Judiciary was established by Decree Law No. 19 of 2000. The Judicial Authority Code also includes a chapter on the Supreme Council of the Judiciary. In accordance with article 33(h) of the Constitution of Bahrain, the King presides over the Supreme Council of the Judiciary.

¹⁵⁵ Pursuant to article 106 of the 2002 Constitution, the Supreme Constitutional Court was established by Decree Law No. 17 of 2002 as an independent judicial body specialising in the review of the constitutionality of legislation and administrative regulations. The Supreme Constitutional Court exercises *a priori* constitutional review of legislation upon request by the King. *A posteriori* judicial review is exercised upon the request of the Prime Minister or the President of the Consultative Council or the President of the Council of Representatives; or upon an *ex proprio motu request from any court, or upon a request of any of the parties to a case brought before any court.*

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(ICCPR),¹⁵⁶ the International Covenant on Economic, Social, and Cultural Rights (ICESCR),¹⁵⁷ the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD),¹⁵⁸ the Convention Against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT),¹⁵⁹ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁶⁰ and the Convention on the Rights of the Child (CRC).¹⁶¹ Bahrain is also party to a number of the fundamental conventions of the International Labour Organization (ILO).¹⁶² At the regional level, Bahrain is a party to the Arab Charter on Human Rights.¹⁶³

¹⁵⁶ 999 UNTS 171, 16 December 1966. Bahrain acceded to the ICCPR on 20 September 2006 upon promulgation of Decree Law No. 56 of 2006 passing the ICCPR into national legislation. Bahrain has deposited reservations in respect of the following articles of the ICCPR: art 3; art 9(5); art 14(7); art 18; and art 23. The ICCPR is applicable law in respect of events addressed in the following sections of this Report: Chapter VI, Section A on Deaths Arising out of the Events; Chapter VI, Section D on the Treatment of Persons in Custody; Chapter VI, Section B on the Use of Force by Government Actors; Chapter VI, Section F on Allegations of Enforced Disappearances; Chapter VI, Section C on the Manner of Arrests; and Chapter VII, Section A on the Demolition of Religious Structures.

¹⁵⁷ 993 UNTS 3, 16 December 1966. Bahrain acceded to the ICESCR on 27 September 2007 upon promulgation of Decree Law No. 10 of 2007 passing the ICESCR into national legislation. Bahrain has deposited a reservation in respect of article 8(1)d of the ICESCR (right to strike). The ICESCR is applicable law in respect of events addressed in the following sections of this Report: Chapter VII, Section B on the Terminations of Employment; and Chapter VII, Section C on Student Dismissals and Suspensions of Scholarships.

¹⁵⁸ 660 UNTS 195, 7 March 1966. Bahrain acceded to the ICERD on 27 March 1990 upon promulgation of Decree Law No. 8 of 1990 passing the ICERD into national legislation. The ICERD is applicable law in respect of events addressed in Chapter VII, Section B on Terminations of Employment.

¹⁵⁹ 1465 UNTS 85, 10 December 1984. Bahrain acceded to the CAT on 6 March 1998 upon promulgation of Decree Law No. 4 of 1998 passing the CAT into national legislation. Bahrain has deposited a reservation in respect of article 30(1) of the CAT. The CAT is applicable law in respect of events addressed in Chapter VI, Section D on the Treatment of Individuals in Custody.

¹⁶⁰ 1249 UNTS 13, 18 December 1979. Bahrain acceded to the CEDAW on 18 June 2002 upon promulgation of Decree Law No. 5 of 2002 passing the CEDAW into national legislation. Bahrain deposited reservations in respect of the following articles of the CEDAW: art 2; art 9(2); art 15(4); art 16; and art 29(1). CEDAW is applicable law in respect of events addressed in Chapter VI, Section C on the Manner of Arrests.

¹⁶¹ 1577 UNTS 3, 20 November 1989. Bahrain acceded to the CRC on 13 February 1990 upon promulgation of Decree Law No. 16 of 1990 passing the CRC into national legislation. Bahrain also has acceded to the two CRC Optional Protocols (date of accession: 21 September 2004). The CRC is applicable law in respect of events addressed in Chapter VI, Section C on the Manner of Arrests.

¹⁶² Bahrain is a party to the following ILO conventions: International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. These ILO conventions are applicable law in respect of events addressed in Chapter VII, Section B on Terminations of Employment.

¹⁶³ Decree Law No. 7 of 2006 was promulgated to pass the Arab Charter on Human Rights into national legislation.

104. As a State party to these treaties, the Kingdom of Bahrain is obliged to respect, protect, promote and fulfil the human rights of all persons within its jurisdiction. This includes the obligation to provide an effective remedy (including the provision of reparations) to individuals whose rights have been violated. Bahrain is also obliged to undertake genuine investigations into allegations of human rights violations and to hold the perpetrators of those violations accountable.¹⁶⁴

105. On 15 March 2011, the Government of Bahrain declared a State of National Safety, which is one of two categories of states of emergency provided for under the Constitution of Bahrain.¹⁶⁵ Bahrain is bound by article 4 of the ICCPR, which permits derogations from obligations “in time of public emergency, which threatens the life of the nation”. However, derogations from the provisions of the ICCPR are only permissible to the extent strictly required by the exigencies of the situation.¹⁶⁶ The GoB deposited a derogation from articles 9, 12, 13, 17, 19, 21 and 22 of the ICCPR with the UN Secretary-General on 28 April 2011, although the State of National Safety was declared on 15 March 2011.¹⁶⁷

106. According to article 37 of the Constitution of Bahrain, international treaties are concluded by the King who then informs the Consultative Council and the Chamber of Deputies of these treaties. International treaties come into force once ratified and published in the official gazette, after which they have legal force equivalent to national legislation.¹⁶⁸

C. The Criminal Justice System and the Role of the Public Prosecution in Bahrain

107. The criminal justice system of Bahrain is predicated on a two-tiered court system. The criminal court of first instance in Bahrain, the Lower Criminal Court, exercises jurisdiction over contraventions and misdemeanours. The Higher Criminal Court hears appeals from judgments of the Lower Criminal Court; it exercises first instance jurisdiction over cases

¹⁶⁴ See Human Rights Committee, General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004) paras 15-19. See also 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, GA res 60/147, 16 December 2005.

¹⁶⁵ See below, this Chapter, “The Scope and Content of Royal Decree 18 (2011) on the Declaration of a State of National Safety.”

¹⁶⁶ See Human Rights Committee, General Comment No. 29: Article 4 (2001).

¹⁶⁷ Bahrain: Notification under Article 4(3), Depository Notification, UN Doc. C.N.261.2011.TREATIES-5, 28 April 2011, treaties.un.org/doc/Publication/CN/2011/CN.261.2011-Eng.pdf accessed 19 November 2011.

¹⁶⁸ Article 37 of the Constitution of Bahrain identifies those treaties that are not self-executing and require the adoption of national legislation to become directly applicable under national law. These include treaties of peace and alliance, trade, navigation and residency, and treaties affecting the territory of the State, its natural resources, sovereign rights, the budget of the state and the public and private rights of citizens.

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involving felonies. The Supreme Appellate Criminal Court reviews the judgments of the Higher Criminal Court.¹⁶⁹

108. The Court of Cassation receives appeals from judgments rendered by all criminal courts exercising appellate jurisdiction.¹⁷⁰ In addition, all death sentences are automatically subject to review by the Technical Bureau of the Court of Cassation.¹⁷¹

109. According to the Judicial Authority Code, the Public Prosecution, which is headed by the Attorney-General, is an integral division of the judiciary. It is responsible for undertaking pre-trial investigations in all criminal cases and indicting individuals on criminal charges. According to the Code of Criminal Procedure, the Public Prosecution holds the primary authority to initiate criminal trial proceedings¹⁷² and the exclusive authority to undertake the prosecution during criminal trials.¹⁷³ The Public Prosecution is also responsible for overseeing the administration of all facilities designated for the execution of sentences rendered in criminal cases, including prisons.¹⁷⁴

D. Overview of Procedural Guarantees in the Criminal Justice System of Bahrain

110. The Constitution of Bahrain contains a number of provisions designed to ensure the proper administration of criminal justice. These include provisions regulating arrest, detention, searches of persons and places and restrictions on personal liberty and the freedom of movement.¹⁷⁵ The Constitution also proscribes the subjection of any individual to physical or mental torture, undignified treatment or inducements.¹⁷⁶ All statements and confessions that are proven to have been extracted under the threat or use of any of these practices are considered invalid.¹⁷⁷ The Constitution also enshrines the presumption of innocence, the right to access a lawyer and the right to litigate before a court of law.¹⁷⁸ Entry and search of private residences is also proscribed except in accordance with the applicable law¹⁷⁹ and the confidentiality of private correspondences is considered inviolable.¹⁸⁰

111. The Code of Criminal Procedure, which was promulgated pursuant to Decree Law No. 46 of 2002, outlines the guarantees applicable at the various

¹⁶⁹ See Code of Criminal Procedure, art 181.

¹⁷⁰ See Decree Law No. 8 of 1989 on the Court of Cassation, art 27.

¹⁷¹ See Decree Law No. 8 of 1989 on the Court of Cassation, art 40.

¹⁷² While the Public Prosecution enjoys primary responsibility for initiating criminal trial procedures, there are other categories of crimes in which criminal proceedings can be initiated by the plaintiff directly, such as in cases of libel.

¹⁷³ The Public Prosecution was established pursuant to Decree Law No. 46 of 2002 on the Code of Criminal Procedure. Prior to that, the powers of the Public Prosecution were exercised by the Prosecution Department at the Ministry of Interior.

¹⁷⁴ See Judicial Authority Code, arts 49, 50 and 56.

¹⁷⁵ Constitution of Bahrain, arts 19(a) and 19(b).

¹⁷⁶ Constitution of Bahrain, art 19(d).

¹⁷⁷ Constitution of Bahrain, art 19(d).

¹⁷⁸ Constitution of Bahrain, art 20.

¹⁷⁹ Constitution of Bahrain, art 25.

¹⁸⁰ Constitution of Bahrain, art 26.

stages of criminal proceedings, including during the evidence gathering process, the pre-trial investigations that are undertaken by either the Public Prosecution or the Investigating Judge, appeals against judgments rendered by criminal courts and the execution of sentences. The provisions of the Code of Criminal Procedure are generally applicable¹⁸¹ and there is no rule providing for their total suspension under either a State of National Safety or Martial Law. The guarantees enshrined in the Code of Criminal Procedure may not be infringed, except pursuant to a special or exceptional statute,¹⁸² such as the Military Penal Code¹⁸³ or the Martial Law Decree.¹⁸⁴

E. Law Enforcement Authorities and Oversight of Law Enforcement Activities

112. A number of Bahrain statutes identify the organs and officials having the authority to exercise law enforcement powers. The statutes outline the mechanisms for supervising the work of law enforcement officials and prescribe the disciplinary and criminal procedures for holding officials accountable for violations committed during the execution of their responsibilities. These statutes are the Code of Criminal Procedure, the Military Penal Code, the Public Security Forces Law and the Decree Establishing the National Safety Agency.

113. All of these laws were in force during the period under investigation by the Commission.

1. The Code of Criminal Procedure

114. Article 45 of the Code of Criminal Procedure grants certain officials the authority to exercise law enforcement powers. These officials are divided into the following three categories:

- a. Law enforcement officials enjoying general subject-matter jurisdiction in specific territorial locations. These are Public Prosecutors, Public Security Officers, Border Control Officers, Customs Officers and Governors.
- b. Law enforcement officials exercising limited subject-matter jurisdiction throughout the territory of Bahrain. Officials falling within this category are granted law enforcement powers pursuant to a decree issued by the Minister of Justice.
- c. GoB personnel to whom specific statutes, decrees or administrative orders have extended law enforcement powers. In respect of such personnel, the Code of Criminal Procedure stipulates that the instruments extending law enforcement

¹⁸¹ See Decree Law No. 46 of 2002 Promulgating the Code of Criminal Procedure, art 1.

¹⁸² For instance, the rights and guarantees enshrined in the Code of Criminal Procedure pursuant to a decree or any other administrative act shall not be infringed.

¹⁸³ See Military Penal Code promulgated pursuant to Decree Law No. 34 of 2002, art 1.

¹⁸⁴ See Martial Law Act promulgated pursuant to Decree Law No. 27 of 1981, art 10.

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powers shall be equivalent to a decree by the Minister of Justice.

115. The Code of Criminal Procedure also stipulates that, in executing their responsibilities, all the law enforcement officials considered above shall be subject to the oversight of the Attorney-General.¹⁸⁵ In the case of Public Prosecutors, the Attorney-General also exercises full administrative control over the execution of their law enforcement powers. In the case of other law enforcement officials, administrative control is exercised by their respective government agencies. In cases where the Public Prosecution identifies violations of the Code of Criminal Procedure committed by law enforcement officials, the Attorney-General may inform the relevant agency to investigate the matter and take the appropriate disciplinary action in accordance with the applicable statute. The Attorney-General continues, however, to enjoy the authority to initiate criminal trial proceedings against any law enforcement official violating the Code of Criminal Procedure.¹⁸⁶ Thus, the Attorney-General exercises both administrative control and oversight authority over members of the Public Prosecution. In relation to other law enforcement officials, the Attorney-General exercises oversight authority but not administrative control.

116. Article 63 of the Code of Criminal Procedure identifies the authorities in charge of overseeing the administration of prisons.¹⁸⁷ These are the President of the Supreme Civil Appellate Court, the President of the High Civil Court, the judge responsible for executing sentences and Public Prosecutors. All of these judicial officers have the right to inspect prisons at any time to ensure that there are no wrongfully detained persons, to review prison records, arrest warrants and detention orders and to contact any detained individual to receive their complaints.

2. The Military Penal Code

117. The Military Penal Code, promulgated pursuant to Decree Law No. 34 of 2002, identifies in article 31 five categories of BDF personnel who hold law enforcement powers. These are the following: (1) the Military Prosecution; (2) the Military Police; (3) BDF Intelligence and Military Security officers and personnel; (4) officers authorised by the BDF Commander-in-Chief to undertake law enforcement powers; and (6) BDF personnel granted law enforcement powers pursuant to other statutes or decisions.

118. Article 32 of the Military Penal Code stipulates that the powers of these law enforcement officials are identical to those prescribed in the law, unless otherwise indicated in the Military Penal Code. Article 32 is understood to require that military personnel executing law enforcement

¹⁸⁵ Code of Criminal Procedure, art 44.

¹⁸⁶ Code of Criminal Procedure, art 44.

¹⁸⁷ The term “prisons” in article 63 of the Code of Criminal Procedure is used to denote any place where individuals are held pursuant to arrest warrants or for purposes of detention, incarceration or to execute a sentence.

functions do so in accordance with the Code of Criminal Procedure, the generally applicable law in matters of criminal justice. Article 21 further stipulates that “in applying this law, the Military Prosecution shall perform the duties and enjoy the powers of the Public Prosecution and the Investigating Judge, in addition to any further competencies granted to it.” This means that in executing their powers, BDF law enforcement officials remain under the supervision of the Military Prosecution, which also enjoys the right to oversee the administration of military detention facilities and to inspect individuals arrested or detained pursuant to the Military Penal Code.

119. Pursuant to article 105, the Military Courts have jurisdiction over charges of “military crimes” brought against officers of the BDF, the National Guard and the Public Security Forces. It is proscribed for civilians to be brought before these courts, except during the application of martial law. According to the Military Penal Code, jurisdiction *ratione materiae* of BDF Military Courts extends to all crimes proscribed by Military Penal Code and crimes proscribed by any other statutes when committed by individuals subject to the Military Penal Code.¹⁸⁸ Jurisdiction *ratione persone* is limited to BDF military personnel, BDF civilian employees, reservists, BDF personnel studying abroad, prisoners of war and foreign troops based in Bahrain.¹⁸⁹

3. The Public Security Forces Law

120. As noted above, article 44 of the Code of Criminal Procedure confers law enforcement powers on members of the Public Security Forces (PSF). According to Chapter 4 of the PSF Law, promulgated by Decree Law No. 3 of 1982 and amended by Decree Law No. 37 of 2002, the authority to take criminal and disciplinary action against the PSF for violations committed during the execution of their law enforcement powers is vested in the Legal Affairs and Military Courts Department at the Ministry of Interior.¹⁹⁰ The latter exercises its oversight powers in three categories of cases. The first category includes violations of the PSF Law or of orders issued by either the Minister of Interior or the Commander of the PSF. The second category is military crimes as defined in the Military Penal Code, while the third category encompasses all crimes proscribed pursuant to the Penal Code or any other law when committed by members of the PSF during the execution of their official duties or when in uniform.

121. Procedurally, the Legal Affairs and Military Courts Department commences criminal investigations and disciplinary action against members of the PSF upon the request of the Minister of Interior or the relevant superior officer. Once an investigation by the department is concluded, a recommendation including the proposed criminal or disciplinary action is referred to either the Minister of Interior or the Undersecretary of the Ministry of Interior to take appropriate action. Action may include referring the PSF

¹⁸⁸ See Military Penal Code, arts 13 and 46.

¹⁸⁹ Royal Decree Law No. 34 of 2002, art 12.

¹⁹⁰ See PSC Code on the jurisdiction and procedures of the Disciplinary Courts, art 88.

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member to a Court Martial, taking disciplinary action against the PSF member or dismissing the case.¹⁹¹

122. Chapter 4 of the PSF Law also stipulates that the Legal Affairs and Military Courts Department at the Ministry of Interior is responsible for overseeing the administration of detention centres and penitentiaries.¹⁹² The text of the PSF Law is not conclusive, however, on whether this supervisory power is limited to facilities where members of the PSF are held in custody or whether it also extends to other corrections institutions administered by the Ministry of Interior, which according to the Code of Criminal Procedure are supposed to be under the supervision of the Public Prosecution. More importantly, it is unclear from the text of either the PSF Law or the Code of Criminal Procedure whether, ultimately, authority to oversee detention facilities and to hold law enforcement officials accountable for violations committed during the execution of their duties lies with the Legal Affairs and Military Courts Department of the Ministry of Interior or with the Attorney-General and the Public Prosecution.

123. Information received by the Commission indicates that in practice the Attorney-General and the Public Prosecution have the authority to oversee both the exercise of law enforcement powers by the PSF and the administration of detention facilities. If, however, members of the PSF are found to have committed violations during the exercise of their law enforcement powers, including in the administration of detention facilities, it is the Legal Affairs and Military Courts Department that investigates those violations and takes criminal or disciplinary action against PSF personnel.

4. The Decree Establishing the National Security Agency

124. Decree No. 14 of 2002 established the National Security Agency (NSA) to replace the General Directorate of State Security that was formerly under the authority of the Ministry of Interior.¹⁹³ A 2008 legislative amendment expanded the authority of the NSA by conferring law enforcement powers on the Agency's officers and personnel.¹⁹⁴ NSA personnel are subject to the same administrative oversight as set out in regulations under the PSF Law.¹⁹⁵ The Legal Affairs Department of the NSA was also granted the oversight and regulatory role stipulated in the PSF Law. This is an anomaly when compared to other intelligence agencies, whose functions are limited to information gathering and analysis and do not extend to arrest powers. In the events described below in Section G of this Chapter and in Chapter V, the NSA exercised its arrest powers as a domestic law enforcement agency. This implicated the NSA in the arrest, detention and interrogation of individuals charged with crimes under the Penal Code and the National Safety Decree.

¹⁹¹ See PSF Law, arts 86 and 88.

¹⁹² PSF Law, Ch 4.

¹⁹³ See below on the mandate of the NSA.

¹⁹⁴ See Decree No. 117 of 2008.

¹⁹⁵ Decree No. 117 of 2008, art 1.

5. Conclusions

125. The above review of the legal framework of Bahrain leads to the following conclusions:

- a. There exists in Bahrain a multiplicity of organs holding law enforcement powers. The authority that they exercise derives from a number of statutes, including the Code of Criminal Procedure, the Military Penal Code, the PSF Law and the Decree Establishing the NSA.
- b. The Code of Criminal Procedure remains the generally applicable law during the execution of law enforcement powers, unless otherwise indicated in other statutes.
- c. Administrative control of law enforcement officers during the execution of their duties is exercised by their respective agencies.
- d. There is a duplication of responsibility for the conduct of law enforcement officials. According to the Code of Criminal Procedure, the Attorney-General is responsible for overseeing law enforcement officials and investigating allegations of violations committed during the execution of their duties. However, according to the Military Penal Code, the PSF Law and the Decree Establishing the NSA, each organ is also required to oversee the execution of law enforcement powers by its officers, to investigate allegations of violations arising out of the exercise of law enforcement powers and to take criminal and disciplinary action against those law enforcement officials under its administration and control who are found to have violated an applicable law or procedure.
- e. A similar duplication exists regarding the responsibility to oversee the administration of detention facilities. According to the Code of Criminal Procedure, these facilities are subject to judicial oversight. Other statutes, however, particularly the PSF Law, grant executive organs the authority to oversee the administration of detention facilities, and more importantly, vest these organs with the authority to hold their own law enforcement officials accountable for violations committed during the execution of their powers.
- f. In the case of the PSF Law, which also applies to the NSA, the decision to initiate criminal or disciplinary procedures against law enforcement officials ultimately lies with the Minister of Interior and the NSA Director in relation to their respective agencies, and not with the judiciary or the legal affairs departments of those agencies.

**F. The Scope and Content of Royal Decree No. 18 of
2011 on the Declaration of a State of National Safety**

126. Royal Decree No. 18 of 2011 was issued on 15 March 2011 to declare a State of National Safety in the Kingdom of Bahrain pursuant to article 36(b) of the Constitution of Bahrain. The decision was taken upon the recommendation of the Supreme Defence Council and with the approval of the Prime Minister. The State of National Safety applied throughout the territory of Bahrain and was declared for three months. The State of National Safety was lifted on 1 June 2011 pursuant to Royal Decree No. 39 of 2011 issued on 8 May 2011.

127. On 28 April 2011, the Permanent Mission of the Kingdom of Bahrain to the United Nations in New York informed the UN Secretary General, in his capacity as depositary for the International Covenant on Civil and Political Rights, that a State of National Safety had been declared. On 13 June 2011, Bahrain notified the UN Secretary General of the decision to terminate the State of National Safety.

128. The Commander-in-Chief of the Bahrain Defence Force (BDF) was authorised “to maintain the integrity of the country aimed at ensuring public safety of individuals with full respect for their rights and to quickly secure control of the situation.”¹⁹⁶ The exercise of BDF authority was to be through “written orders” and could be delegated to other officials under specified conditions and constraints.¹⁹⁷ The BDF Commander-in-Chief proceeded to delegate the authority to issue arrest, search and seizure warrants to the Military Attorney-General.¹⁹⁸

129. Article 5 of Royal Decree No. 18 of 2011 listed the measures that authorities empowered to implement the decree were permitted to undertake. These measures were as follows:

- (1) Evacuate or isolate certain areas to maintain security and public order;
- (2) Regulate and ban public gatherings if they are deemed to be a threat to public order or national safety;
- (3) Regulate traffic and movement, impose curfews and places limits on travel outside the Kingdom whenever this is for the benefit of the citizens;
- (4) Temporarily regulate access to certain areas whenever it is in the public interest;

¹⁹⁶ Royal Decree No. 18 of 2011, art 4.

¹⁹⁷ Royal Decree No. 18 of 2011, art 4.

¹⁹⁸ Decision No. 8 of 2011, issued 17 March 2011 on Authorising the Military Attorney-General to Issue Arrest Warrants [on file with the Commission] and Decision No. 9 of 17 March 2011 on Authorising the Military Attorney-General to Issue Warrants to Search Persons and Places [on file with the Commission].

- (5) Organise opening and closing times for shops and public places whenever required by the public interest;
- (6) “Search persons and places when suspicions exist of a violation of the provisions of this Decree or the decision or orders issued by the authority responsible for its implementation”;
- (7) If an alien is deemed a threat to public security and safety or citizen, they may be deported or prohibited from entering the Kingdom;
- (8) If evidence arises that an association, club, union or other legal person is undertaking activity that disturbs public order, or working in the interest of a foreign State, or spreading a spirit of disunity among the citizens to cause disorder or disobedience in the Kingdom, its activity may be suspended;
- (9) If it appears that some of the printed, audio or visual media or informational networks would prejudice national security or undermine the Constitution, social or economic order of the Kingdom, it may be seized and denied publication or broadcast;
- (10) Regulate means of transport by land, sea and air and use them temporarily, provided that the owners and users of these means of transport are fairly compensated;
- (11) “Arrest and detain suspects and persons deemed threatening to the security of citizens”; and
- (12) Withdraw Bahraini citizenship from all those whose presence is deemed to be a risk to public order and security and expel them from the country or detain them at secure locations.

130. Royal Decree No. 18 of 2011 created a two-tiered National Safety Court. The lower court is called the Primary Court of National Safety.¹⁹⁹ The National Safety Appellate Court receives appeals filed by both convicted persons and the Military Prosecution against the judgments of the Primary Court of National Safety.²⁰⁰ Both these courts are composed of a presiding military judge and two civilian judges.²⁰¹ The Military Prosecution was charged with undertaking pre-trial investigations and administering trial procedures before the National Security Courts.²⁰²

131. Pursuant to article 7 of Royal Decree No. 18 of 2011, the National Safety Courts were granted jurisdiction over the following three categories of crimes:

¹⁹⁹ Royal Decree No. 18 of 2011, art 8.

²⁰⁰ Royal Decree No. 18 of 2011, art 9.

²⁰¹ Memorandum on the National Safety Courts submitted to the Commission by the Public Prosecution [on file with the Commission].

²⁰² Royal Decree No. 18 of 2011, art 7.

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a. Crimes that led to the declaration of a State of National Safety

This category includes those acts committed prior to the declaration of a State of National Safety and related directly to the reasons and circumstances that compelled the Government of Bahrain to declare a State of National Safety.²⁰³

b. Crimes committed in violation of the decisions and orders issued by the authority charged with implementing the national safety measures

This category includes any acts committed in violation of the orders of the authorities charged with implementing the national safety measures listed in article 5 of Royal Decree 18 (2011).²⁰⁴

c. Crimes transferred to the National Safety Courts

The BDF Commander-in-Chief issued a directive to transfer the following crimes to the jurisdiction of the National Safety Courts:

- i. Crimes stipulated in articles 220, 221, 333 and from 336 to 340 of the Bahrain Penal Code if the assault is against a public official or those acting in that capacity and if such assault occurs while the person is on duty;
- ii. Crimes committed in violation of the Explosives, Weapons and Ordnances Code;
- iii. Crimes committed in violation of the Code on the Protection of Society from Terrorism;
- iv. Crimes committed in violation of the Code Regulating Public Gatherings, Assemblies and Marches; and
- v. Crimes committed in violation of the Penal Code that relate to the foreign or local security of the State.

132. According to article 10 of Royal Decree No. 18 of 2011, the Code of Criminal Procedure shall govern the process of gathering evidence and shall apply during pre-trial investigations, at the initiation of trials, the notifications of trials, during trial procedures and the execution of sentences. This article states, however, that the Code of Criminal Procedure shall be applied “without prejudice to the provisions” of Royal Decree No. 18 of 2011.

133. Article 11 of Royal Decree No. 18 of 2011 stipulated that the judgments of the National Safety Courts are final and shall not be subject to appeal. In the following months, however, a number of Royal Decrees were issued to allow for the appeal from judgments of the National Safety Courts.

²⁰³ A review of the charges made against defendants brought before the National Safety Courts reveals that this category includes crimes that affect the foreign and local security of the State and crimes of murder, kidnapping, terrorism, assault against the bodily integrity of others and crimes involving the use of explosives and ordinances.

²⁰⁴ An example of these crimes is violating the terms of the curfew imposed by the Government of Bahrain on certain areas of Manama after 15 March 2011.

First, Royal Decree No. 48 of 2011 obligated the Court of Cassation to review all death sentences issued by the National Security 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 was issued to transfer all cases and appeals that had not yet been adjudicated by the National Safety Courts to the ordinary courts.

134. 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.²⁰⁵ Royal Decree Law No. 28 also affirmed the transfer to ordinary courts of cases involving misdemeanours that the National Safety Courts had not yet adjudicated.²⁰⁶ In addition, Decree Law No. 28 allowed convicted persons and the Public Prosecution to appeal judgments adopted by the National Safety Appellate Court to the Court of Cassation. If the Court of Cassation repeals the judgement 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.²⁰⁷

G. Agencies of the Government of Bahrain Responsible for the Implementation of Royal Decree No. 18 of 2011

135. Four government organs were primarily involved in implementing the various measures stipulated in Royal Decree No. 18 of 2011. These are the BDF, the Ministry of Interior (MoI), the National Security Agency (NSA) and the National Guard. Each of these organs was given responsibility for particular tasks.

136. In order to understand the events of February and March 2011, it is therefore necessary to understand the organisational structure of these agencies, their command and control systems and their *modus operandi* applied during the implementation of the measures undertaken during the application of the State of National Safety.

1. The Bahrain Defence Force (BDF)

137. The BDF is the principal armed force in Bahrain. It is composed of three main branches: the army, air force and navy. In addition, the BDF Royal Medical Corps provides medical services to military personnel and civilians.

138. The BDF is governed by Royal Decree Law No. 32 of 2002, which outlines its organisational structure, mandate and command and control mechanisms. The King is the Commander-in-Chief of the BDF and has authority to order the BDF to undertake operations inside and outside Bahrain.²⁰⁸ The Commander-in-Chief of the BDF, a position currently held

²⁰⁵ Royal Decree Law No. 62 of 2011, art 2.

²⁰⁶ Royal Decree Law No. 62 of 2011, art 1.

²⁰⁷ Royal Decree Law No. 62 of 2011, art 3.

²⁰⁸ Royal Decree Law No. 32 of 2002, art 3.

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by Field Marshal Sheikh Khalifa bin Ahmed Al Khalifa, is the officer in charge of executing orders issued by the King and implementing the policies and strategies of the BDF. The BDF Commander-in-Chief reports directly to the King.²⁰⁹

139. According to article 16 of Royal Decree Law No. 32 of 2002, the BDF is mandated to defend Bahrain against foreign aggression, to aid in protecting the legitimate ruling authority and the supremacy of the Constitution and to assist the Public Security Forces and the National Guard in maintaining security, order and the rule of law.

140. Defence policy in Bahrain is determined by the Supreme Defence Council, an organ established pursuant to Emiri Decree No. 24 of 1973. The composition of the Supreme Defence Council has been amended on a number of occasions.²¹⁰

141. In 2002, the Military Penal Code was promulgated pursuant to Royal Decree Law No. 34 of 2002.²¹¹ According to article 6 of the Military Penal Code, the Military Justice Corps is composed of the Military Courts and the Military Prosecution. The Military Prosecution is headed by the Military Attorney-General, an office currently held by Colonel Dr Yusuf Rashed Felaifel, and is responsible for initiating and undertaking trial procedures before Military Courts, in addition to overseeing the administration of military detention facilities.

142. The BDF was one of the main organs involved in the implementation of Royal Decree No. 18 of 2011 pursuant to which the State of National Safety was declared in Bahrain. As noted above, the BDF Commander-in-Chief was authorised by the King to oversee the implementation of this decree by all the agencies of the Government of Bahrain. BDF operations during the State of National Safety can be divided into two main categories. The first of these included a broad range of field operations executed by military units, such as assisting MoI forces during the first clearing of the GCC Roundabout, overseeing the second clearing operation of the roundabout, enforcing a curfew in certain areas of Manama, protecting vital locations and manning security checkpoints.

143. The second category of missions that the BDF executed related to certain legal and judicial aspects of the implementation of Royal Decree No. 18 of 2011. Specifically, as discussed above, the Military Prosecution was responsible for issuing arrest, search and seizure warrants for individuals suspected of committing crimes related to the events in Bahrain during the application of the State of National Safety. While most of these arrest warrants were executed by either the MoI or the NSA, BDF units holding law enforcement powers executed arrest warrants against some individuals, including doctors employed by the Salmaniya Medical Complex (SMC) and former parliamentarians. In addition to those individuals, BDF field units

²⁰⁹ Royal Decree Law No. 32 of 2002, art 6.

²¹⁰ See Royal Order No. 2 of 2006, and Royal Order No. 26 of 2008.

²¹¹ See Chapter III(E)(2) on the Military Penal Code.

arrested a number of people at military checkpoints. A total of 100 persons were arrested by BDF personnel. The Military Prosecution was responsible for investigating and questioning suspects arrested pursuant to Royal Decree No. 18 of 2011 and for initiating criminal proceedings before the National Safety Courts. The Military Prosecution is also responsible for overseeing the appropriateness of the circumstances of detention in the Military Corrections Facility in Al Qurain.

2. The Ministry of Interior

144. The MoI is the main organ responsible for the maintenance of order and security in Bahrain. The MoI is governed by a number of laws and regulations, the most important of which is Emiri Decree Law No. 3 of 1982 on the Organisation of the Public Security Forces. According to Decree Law No. 3, the Public Security Forces are a “regular armed service within the Ministry of Interior that is responsible for the maintenance of public order, security and morals inside Bahrain, and the protection of lives, persons and property.”²¹²

145. The organisational structure of the MoI has been revised on a number of occasions. The current structure is based on Royal Decree No. 69 of 2004, which was amended a number of times thereafter. According to Emiri Decree Law No. 3 of 1982, Royal Decree No. 69 of 2004 and other applicable legislation, the MoI is headed by the Minister of Interior, an office currently held by Lieutenant General Sheikh Rashed bin Abdulla Al Khalifa. A number of division chiefs report directly to the Minister of Interior, the most important of whom is the Commander of the Public Security Forces. The Public Security Forces, as noted above, are the principal law enforcement arm of the MoI. The other MoI divisions that report to the Minister of Interior are the General Directorate of Criminal Investigations and Forensic Evidence (CID), the General Directorate for Nationality, Passports and Residency, the Customs Directorate, the Inspector General and the Undersecretary of the Ministry of Interior.

146. Of the various MoI divisions, two are particularly relevant to the events of February and March 2011. These are the Public Security Forces (PSF) and the CID. The PSF are commanded by General Tarek Mubarak bin Dinah and include all MoI field units responsible for maintaining order and security in Bahrain. The following units and departments are among those that report directly to the PSF command: (1) the police departments of the five governorates of Bahrain (Manama, Muharraq, Shamaliyah, Janubiyah and Wusta); the Special Forces Department; the Special Protections Department; the Counter Terrorism Centre; the Traffic Police; the Operations Department; and the Coast Guard.

147. Units of the PSF were involved to a significant extent in the events of February and March 2011. Specifically, PSF units undertook riot control operations throughout Bahrain. Most PSF personnel were equipped with body

²¹² Emiri Decree Law No. 3 of 1982, art 1.

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armour, shields, batons, sound bombs, tear gas and shotguns. On a number of occasions, riot control units also deployed water cannons mounted on armoured vehicles. PSF units took the lead in executing both the first and second clearing operations at the GCC Roundabout and confronted demonstrators in various locations in the vicinity of the roundabout, such as the Bahrain Financial Harbour. Arrests, searches and seizures under MoI authority were also executed by the PSF. In addition, PSF units undertook patrol missions in all areas of Bahrain. Persons who were detained by PSF units were usually transferred either to the local police departments, which as noted also report to the PSF commander.

148. It has been established that the PSF, including both riot control units and special forces, took part in joint arrest, search and seizure operations with other government agencies. In most of these joint operations, PSF units were ordered to assist NSA agents as they executed arrest warrants issued by the BDF Military Prosecutor. The role performed by PSF units was usually to provide perimeter security to the NSA agents and to assist them in the event that the suspect resisted arrest or attempted to escape. In some instances, BDF units also participated in these operations.

149. The other significant MoI department as relevant to the present Report is the CID. The CID includes a number of units that specialise in operations against specific criminal activity, such as narcotics and economic crimes. The CID contains a Criminal Investigations Unit and a Forensic Evidence Department, both of which were active during the events of February and March 2011. The latter was responsible for evaluating evidence from crime scenes, while the former was involved in gathering information on demonstrations and protests and in questioning detainees about their participation in these and other events. The Commission received a significant number of allegations of mistreatment during interrogation by the CID.

3. The National Security Agency

150. The NSA was established by Royal Decree No. 14 of 2002, which amended Emiri Decree No. 29 of 1996 on the Organisation of the MoI. Pursuant to Royal Decree No. 14, the General Directorate of State Security, which operated under the MoI, was replaced by the NSA.²¹³ The NSA is headed by a director, currently Shiekh Khalifa bin Abdulla Al Khalifa, whose rank is equivalent to a cabinet minister.²¹⁴ According to its governing law, the NSA reports to the Prime Minister, HRH Sheikh Khalifa bin Salman Al Khalifa.²¹⁵

151. The NSA is essentially an internal intelligence and counter-espionage agency. According to its mandate, the agency is required “to detect and uncover all activities that undermine the national security of the Kingdom, its institutions and its regime, or that threaten the security and stability of the

²¹³ Royal Decree No. 14 of 2002, art 1.

²¹⁴ Royal Decree No. 14 of 2002, art 3.

²¹⁵ Royal Decree No. 14 of 2002, art 2.

nation, or its interests or accomplishments. The agency may also prepare the requisite security plans to face any security threats in normal and exceptional circumstances in cooperation with other government agencies.”²¹⁶

152. In 2008, Royal Decree No. 117 of 2008 was issued to amend and expand the mandate and powers of the NSA. Specifically, article 5 of Royal Decree No. 117 granted NSA agents law enforcement powers in relation to crimes within the jurisdiction of the agency, which meant that NSA operations expanded beyond the bounds of an intelligence and information gathering agency. Under Royal Decree No. 117 of 2008, the NSA can carry out arrest, search and seizure operations, and it has power to detain and question suspects.

153. During the events of February and March 2011, the NSA performed a variety of roles. Available information indicates that prior to the declaration of the State of National Safety, the NSA was responsible for gathering intelligence information and analysing the unfolding situation in Bahrain. The NSA also monitored the activities of individuals and groups thought to constitute a threat to national security, in addition to evaluating threats of foreign intervention in Bahrain and proposing responses to any such threats. The NSA did not arrest any individuals during the period 14 February - 15 March 2011.

154. After the promulgation of Royal Decree No. 18 of 2011, the NSA expanded its operations to include the execution of arrest, search and seizure warrants issued by the BDF Military Prosecutor. The NSA arrested 179 individuals pursuant to arrest warrants issued by the BDF Military Prosecutor. The persons arrested, who included leading political opposition figures and individuals allegedly implicated in espionage activities on behalf of a foreign country, were questioned by NSA agents. During the execution of most of these arrest warrants, NSA agents were accompanied by PSF units and at times BDF personnel for the purposes of perimeter security and to protect the NSA agents. These armed units also assisted NSA agents in cases where the suspect resisted arrest.

155. In addition, under their law enforcement powers, NSA agents arrested 42 individuals pursuant to articles 55, 56 and 57 of the Code of Criminal Procedure, which allow for the arrest of individuals without a warrant for 48 hours in certain circumstances.²¹⁷

²¹⁶ Royal Decree No. 14 of 2002, art 4.

²¹⁷ Article 55 of the Bahrain Code of Criminal Procedure provides as follows: “Law enforcement officials may arrest individuals who are caught *in flagrante delicto* committing a felony or misdemeanour punishable by over three months imprisonment if sufficient evidence is available to press charges against that individual.”

Article 56 of the Bahraini Code of Criminal Procedure provides as follows: “In situations not covered by the previous provision, if sufficient evidence is available to charge a person with committing a felony, or the misdemeanours of theft, fraud, aggravated assault or the possession of narcotics in a manner not sanctioned by the law, law enforcement officials may arrest that person.”

Article 57 of the Bahrain Code of Criminal Procedure provides as follows: “Law enforcement officials must immediately hear the testimony of arrested individuals. If the arrested

156. Commission investigations also indicated that plain clothed NSA agents were active during the first and second clearing operations at the GCC Roundabout.

4. The National Guard

157. The National Guard was established in 1997 pursuant to Emiri Order No. 1 of 1997 and is governed by Emiri Decree Law No. 20 of 2000. According to Emiri Decree Law No. 20, the National Guard is a regular independent military armed force, which “acts as a strategic military depth to the Bahrain Defence Force and a security shield to the Public Security Forces to defend the nation and protect its security, stability and territory.”²¹⁸

158. The National Guard is composed of three brigades, each of which comprises around 400 personnel. Given the relatively smaller size of the National Guard compared to other armed services, its role in normal times is limited to securing certain important facilities and patrolling specific areas, most of which are situated in the south of Bahrain.

159. In the weeks preceding the outbreak of demonstrations in Bahrain, the National Guard was ordered to undertake additional tasks, most of which related to providing security to a number of important sites and locations. For example, the National Guard provided perimeter security to the Juw and Al-Had Prisons in February 2011. National Guard units were also ordered to assist in the protection of the premises of both the Council of Representatives and the Council of Ministers at various times after the beginning of demonstrations on 14 February 2011.

160. Following the declaration of the State of National Safety on 15 March 2011, the National Guard was ordered to expand its operation to include protecting the premises of various government agencies and important locations throughout Bahrain. Among other tasks, it secured and sealed the GCC Roundabout, which was renamed Farouk Juncture after the events of February and March 2011, and providing perimeter security to SMC. One National Guard brigade also provided rear protection to the MoI and BDF units executing the second clearing operation at the GCC Roundabout.

161. The National Guard was not ordered to execute any arrest, search or seizure operations. National Guard units manning field checkpoints did, however, arrest 103 individuals who violated the terms of the curfew imposed in parts of Manama following the declaration of the State of National Safety. Those individuals were transferred to the closest police station upon arrest.

individual fails to refute the charges made, that person must be transferred to the Public Prosecution within 48 hours. The Public Prosecution must question that individual within 24 hours, after which it must either order that the person be detained or released.”

²¹⁸ Emiri Decree Law No. 20 of 2000, art 2.

H. The Interpretation and Implementation of Royal Decree No. 18 of 2011

162. The present Section considers how Royal Decree No. 18 of 2011 was applied in practice. This includes examining how the various government agencies involved in implementing the measures stipulated in the decree coordinated their activities, how law enforcement authorities interpreted relevant provisions of the decree and how operations undertaken by government organs during the State of National Safety were conducted.

1. The Interpretation Royal Decree No. 18 of 2011

163. According to the Constitution of Bahrain, the King may resort to two categories of exceptional measures in times of emergency. The first option is to declare a State of National Safety, while the second is to apply Martial Law.²¹⁹ The resort to either of these measures must be through a Royal Decree and does not require the consent of the National Assembly, except to extend the application of either of those measures beyond an initial period of three months.²²⁰

164. The text of the Constitution does not stipulate the circumstances in which the Government can declare a State of National Safety. Furthermore, the Constitution is silent on the exact measures that may be taken by the GoB during a declared State of National Safety. The explanatory memorandum attached to the Constitution does, however, clarify some of the powers enjoyed by the King during times of National Safety. The memorandum states that measures can be taken “within the limits of what is necessary to face the exceptional circumstances” and that restrictions “on individual rights and freedoms must be less than those applied in cases of Martial Law.” The memorandum also states that the King may “issue, pursuant to a Royal Decree, orders that may be necessary under the circumstances for the purposes of defending the Kingdom, even if those orders violate applicable laws.”

165. Outside these general statements, there is no statute that identifies the measures that may be taken by the Government during a declared State of National Safety. Conversely, the declaration and application of Martial Law is governed by Emiri Decree Law No. 28 of 1981, which details the measures that may be implemented in these situations.

166. Therefore, once the King had declared a State of National Safety on 15 March 2011, the agencies charged with implementing the provisions of Royal Decree No. 18 of 2011 were faced with a legislative lacuna. In the absence of any codes governing the application of the State of National Safety, these government bodies were compelled to develop interpretations of Royal Decree No. 18 of 2011 and to identify and ascertain the powers that they possess pursuant to that decree. Commission investigations and

²¹⁹ Constitution of Bahrain, art 36(b).

²²⁰ Constitution of Bahrain, art 36(b).

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discussions with the government agencies revealed that a variety of laws were either applied or referred to during the State of National Safety. The result was that a number of legal frameworks were developed which were simultaneously applicable during the period in which Royal Decree No. 18 of 2011 was in force.

167. An examination of the procedures governing arrests and detention periods provides an illustrative and illuminating clarification as to how the Government interpreted and applied Royal Decree No. 18 of 2011.²²¹ As discussed above, during the application of the State of National Safety, the Military Prosecution was charged with issuing arrest warrants for individuals who were deemed to pose a threat to public order or suspected of violating the provisions of the Royal Decree. Therefore, warrants were issued which permitted the NSA to arrest certain individuals, many of whom were high-profile political figures. Despite the fact that this was the procedure governing arrests, the NSA and other agencies continued to exercise their powers pursuant to articles 55, 56 and 57 of the Code of Criminal Procedure. In other words, although Royal Decree No. 18 of 2011 required law enforcement agencies to arrest individuals pursuant to arrest warrants issued by the Military Prosecution, in reality these agencies continued concurrently to exercise their powers pursuant to other laws, such as the Code of Criminal Procedure.

168. The question of extending detention periods for the purpose of interrogation further reveals the methods of operation of Bahrain security organs during the application of the State of National Safety.²²² Article 10 of Royal Decree No. 18 of 2011 states that, the Code of Criminal Procedure shall be applicable during pre-trial investigations, prosecutorial investigations and trial procedures. Commission investigations revealed, however, that the periods spent by detainees under interrogation by security agencies exceeded the limits stipulated by the Code of Criminal Procedure. The pertinent government agencies, particularly the Military Prosecution and the NSA, justified this by contending that article 5(11) of Royal Decree No. 18 of 2011 did not prescribe any temporal limits on detention periods.²²³ Therefore, according to the Government, individuals may be detained without referral to a judicial authority for unlimited periods of time as long as the State of National Safety was in force.

169. The effect of this interpretation of Royal Decree No. 18 of 2011 is that the Code of Criminal Procedure was effectively deactivated insofar as it relates to limitations on detention periods. The Code of Criminal Procedure was reactivated only once detainees were transferred to the Military Prosecution for investigation. Furthermore, despite the fact that the explanatory memorandum attached to the Constitution states that measures undertaken pursuant to a State of National Safety must be less restrictive than those implemented during the application of Martial Law, in reality Royal Decree No. 18 of 2011 was interpreted in a manner that granted government

²²¹ See Chapter VI, Section C on the Manner of Arrests.

²²² See Chapter VI, Section C on the Manner of Arrests.

²²³ Article 5(11) states that the authorities implementing Royal Decree No. 18 of 2011 may “[a]rrest and detain suspects and persons deemed threatening to the security of citizens.”

agencies powers that exceed those stipulated in Emiri Decree No. 27 of 1981 on the Application of Martial Law. This was particularly evident in relation to the authority to indefinitely detain individuals without recourse to a judicial authority.²²⁴

2. The Implementation of Royal Decree No. 18 of 2011

170. Upon the promulgation of Royal Decree No. 18 of 2011, a National Safety Council (NSC) was established to oversee the implementation of the measures stipulated therein. The BDF Commander-in-Chief presided over this body in his capacity as the officer assigned the responsibility of maintaining order in Bahrain pursuant to Royal Decree No. 18 of 2011.

171. The NSC was composed of the following officials:

- a. The Minister of Interior;
- b. The Deputy Prime Minister Sheikh Khaled bin Abdulla Al Khalifa;
- c. The Minister of State for Defence;
- d. The Director of the NSA;
- e. The Commander of the National Guard; and
- f. The BDF Chief of Staff.

In addition, advisers to these officials and officers from various government agencies participated in meetings held by the NSC.

172. Throughout the period during which a State of National Safety was in force, the NSC acted as a forum for information-sharing and coordination between the agencies involved in implementing the measures prescribed in Royal Decree No. 18 of 2011. The NSC held a total of 12 meetings between 16 March and 30 May 2011. During these meetings, which usually convened on a weekly basis, each of the participating agencies presented its evaluation of the unfolding situation in Bahrain, briefed the other agencies on the measures it had undertaken and outlined its proposals regarding future measures that should be taken to restore order in the country. At the conclusion of these NSC meetings, specific tasks and missions were assigned for execution by these agencies either unilaterally or jointly with other government bodies.

²²⁴ For example, article 5 of Emiri Decree No. 27 of 1981 obligates the government agency executing arrests to refer detainees to the Lower State Security Court within 10 days of arrest. The judge may order the release of the detainee on bail, or may extend detention periods indefinitely. This article also grants individuals detained pursuant to a judicial order the right to appeal their detention before a judicial authority 30 days after the beginning of detention. If that appeal is rejected, the detainee enjoys the right to resubmit further appeals every 30 days. None of these procedural guarantees, especially the right to appear before a judicial authority, are included in Royal Decree No. 18 of 2011 pursuant to which a State of National Safety was declared in Bahrain.

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173. One example of a mission that was executed by each of these agencies independently was the setting up and manning of field checkpoints in various areas of Bahrain. These checkpoints, particularly those operated by BDF units, were the scene of a number of killings that occurred during the period under investigation by the Commission. These cases are discussed in detail in the present Report under Chapter VI, Section A on Deaths Arising out of the Events. In addition, many individuals were arrested at these checkpoints on charges that included violating a curfew, undermining public order and entering a prohibited area. The information provided by the MoI, BDF and National Guard confirms that there was no unified system of command and control of the checkpoints and that each checkpoint therefore remained under the separate command and control of the respective government agency.

174. The Commission also identified cases of arrest operations that were executed unilaterally by some security agencies, including the NSA and the BDF. For example, the BDF undertook unilateral arrests of individuals, including former members of the Council of Representatives and SMC medical staff.

175. There were numerous cases of operations undertaken jointly by the agencies tasked with implementing national safety measures. For example, the second clearing of the GCC Roundabout, which occurred on 16 March 2011, was a joint operation in which units from the MoI, BDF and National Guard were involved, albeit in different roles. This operation was executed under the direction and supervision of the BDF Commander-in-Chief.

176. Another example of these joint operations is the joint arrest, search and seizure operations that were undertaken by security agencies and military units of the Government. While a detailed description of these operations and an analysis of their legality is included in Chapter VI, Section C on the Manner of Arrests, it should be noted here that during most of these operations armed units from the MoI and BDF escorted teams from the NSA to execute arrest warrants. In most cases, these armed units were deployed to provide perimeter security while NSA teams arrested the suspects. During some of these operations, the armed security and military units dispatched to support the NSA personnel participated in entering and searching residences and seizing the suspects. The Commission was unable to identify the existence of any unified rules of engagement, standard operating procedures or standing orders that were issued to govern the execution of these operations and that applied to all the participating agencies. It is likely that these operations were undertaken after security and/or intelligence agencies identified persons suspected of constituting a threat to national security. Consequently, warrants were issued either by the BDF Commander-in-Chief or the Military Attorney-General to arrest such persons. Thereafter, a determination was made as to the nature of the units that were needed to undertake the arrest. In some cases, units from one agency, such as the MoI, NSA or BDF, were dispatched to execute the arrest. In other cases, where a determination was made that a greater armed presence was necessary, joint units were deployed to provide greater security.

177. The information available to the Commission indicates that each of the government agencies participating in the implementation of Royal Decree No. 18 of 2011 maintained control over units under its command. Situation evaluations and operational plans were prepared by each agency independently and then shared with other agencies for coordination and consultation purposes. It is evident that the general contours of the missions, tasks and operations to be undertaken by the various government agencies were discussed and agreed at the NSC. However, the deployment orders were issued to the units and personnel of the various agencies from their commanding officers, who also oversaw the execution of those orders and reported to the heads of their respective agencies. The heads of those agencies would then brief other members on the implementation of the tasks assigned to their agencies during the weekly NSC meetings. Day-to-day coordination also occurred between these government agencies at the operational level, especially during the execution of joint/multi-agency operations. Nonetheless, the armed units and security agents of the BDF, MoI, NSA and National Guard remained under the direct control of the heads of those agencies and the field commanders overseeing operations. There is little evidence to suggest that there existed a unified command and control structure that encompassed and unified the relevant agencies of the Government.

3. Challenges to the Constitutionality of Royal Decree No. 18 of 2011

178. A significant number of defendants appearing before the National Safety Courts raised questions challenging the constitutionality of Royal Decree No. 18 of 2011. The National Safety Courts refused all requests to refer this decree to the Supreme Constitutional Court for review. The present Section summarises the constitutional arguments and concludes with the observations of the Commission on this matter.

179. According to the Constitution of Bahrain, the King exercises his powers and prerogatives through four legal mechanisms. These are Special Royal Decrees of a Constitutional Nature,²²⁵ Royal Decree Laws,²²⁶ Decrees²²⁷ and Royal Orders.²²⁸

²²⁵ Special Royal Decrees of a Constitutional Nature may only be issued to address the regulations governing the process of succession to the Throne of the Kingdom of Bahrain.

²²⁶ Royal Decree Laws can be issued in two circumstances. The first, identified in Article 38 of the Constitution of Bahrain, allows the King to issue Decree Laws when circumstances requiring immediate action arise when the legislature is not in session or when the Chamber of Deputies is disbanded. According to article 87 of the Constitution, Royal Decree Laws can also be issued when the two chambers of the National Assembly are unable to reach a decision within 15 days on an urgent matter relating to economic or fiscal issues.

²²⁷ The King is authorised to take the following measure by a Decree: appointing and dismissing ministers (art 33); declaring a defensive war (art 36); declaring a State of National Safety (art 36); concluding international treaties (art 37), issuing statutory and administrative regulations (art 39) and repealing and mitigating court sentences (art 41).

²²⁸ Matters that may be regulated by a Royal Order include appointing the Prime Minister, members of the Consultative Council and judges (art 33). In addition, Royal Orders may be issued to regulate the operations of the Royal Court, open and close the sessions of the

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180. A State of National Safety was declared in Bahrain pursuant to Royal Decree No. 18 of 2011 of 15 March 2011. This was undertaken in accordance with article 36(b) of the Constitution of Bahrain, which provides that in order to declare a State of National Safety, there must be issued a Royal Decree, which, as a matter of law, carries lesser value than a law passed by the National Assembly or a Royal Decree Law.²²⁹

181. Article 31 of the Constitution places a blanket obligation on the GoB not to regulate the practice of any of the basic human rights or fundamental freedoms enshrined in the Constitution except by means of a law. In addition, many other provisions relating to a variety of civil and political rights forbid placing any restriction on the enjoyment of these rights except by means of a law.

182. Defendants have referred to constitutional provisions, including article 31, in arguing that despite being of lesser legal value than an act of law, Royal Decree No. 18 of 2011 allowed certain measures to be taken that imposed restrictions on the enjoyment of basic human rights and fundamental freedoms. The measures under Royal Decree No. 18 of 2011 to which the defendants drew attention are as follows:

- a. Searching individuals and places upon suspicion of violating the provisions of Royal Decree No. 18 of 2011 on the Declaration of a State of National Safety.²³⁰ This was argued to contravene articles 19(b) and 25 of the Constitution, which respectively prohibit the searching of individuals and the entry and search of private homes except in accordance with an act of law.
- b. Arresting and detaining suspects and individuals deemed to be a threat to the security of citizens.²³¹ This was also argued to contravene article 19(b) of the Constitution prohibiting the arrest, detention or restriction of liberty of individuals except in accordance with the law and under judicial supervision.
- c. Article 5(12) of Royal Decree No. 18 of 2011 allowing authorities to revoke Bahraini citizenship from any individual deemed a threat to public order and security, to exile them from the country or to detain them in a secure location. This was argued to violate article 17 of the Constitution, which provides: “Bahraini nationality shall be determined by law. A

National Assembly (art 42) and disband and reconstitute the Chamber of Deputies (arts 42 and 64).

²²⁹ The explanatory memorandum appended to the Constitution states that when declaring a State of National Safety, the King may issue orders contravening laws in force. This power is not prescribed in the text of the Constitution, but only appears in the appended memorandum. A question arises whether it is proper for an interpretative memorandum to bestow such an authority on the King, as it would appear to amend, alter or add to the provisions of the Constitution itself. On the legal value of the appended memorandum, see Introductory Note by HM King Hamad bin Issa Al Khalifa to the 2002 constitutional amendments.

²³⁰ Royal Decree No. 18 of 2011, art 5(6).

²³¹ Royal Decree No. 18 of 2011, art 5(11).

person inherently enjoying his Bahraini nationality cannot be stripped of his nationality except in case of treason and other cases as prescribed by law.”

- d. The criminalisation, pursuant to article 6 of Royal Decree No. 18 of 2011, of any breaches of the orders issued by the authorities charged with implementing the Royal Decree. This was said to contravene (a) of the Constitution, which enshrines the principle that there can be no crime committed, and no punishment, unless there was a violation of the law as it existed at the time of the alleged offence (*nullum crimen, nulla poena sine lege*), one of the central tenets of criminal justice.
- e. The establishment of the National Safety Courts and the appointment of judges to those courts by the BDF Commander-in-Chief.²³² This was said to violate article 105 of the Constitution, which provides that the regulation of courts and their jurisdiction shall be pursuant to a law.
- f. The expropriation of private property used in the commission of crimes.²³³ This was said to violate article 9(d) of the Constitution, which provides that “public expropriation of property is prohibited, and private expropriation shall be a penalty only by a judicial ruling in the cases prescribed by law.”

183. Questions have also been raised as to whether Royal Decree No. 18 of 2011 conforms to the spirit of the Constitution insofar as the latter envisions that measures undertaken during a State of National Safety would be less restrictive than those under Martial Law.²³⁴ Individuals advancing this argument have pointed to provisions of Royal Decree No. 18 of 2011 that mirror the measures stipulated in Emiri Decree Law No. 27 of 1982 on the Application of Martial Law,²³⁵ and other provisions that appear to grant

²³² Royal Decree No. 18 of 2011, arts 7, 8 and 9.

²³³ Royal Decree No. 18 of 2011, art 14.

²³⁴ This is affirmed by the text of the explanatory memorandum appended to the Constitution, which states that the principal difference between Martial Law and a State of National Safety is that during the latter, restrictions “on individual rights and freedoms must be less than those applied in cases of Martial Law.”

²³⁵ Examples of the similarities between Royal Decree No. 18 of 2011 and Emiri Decree Law No. 27 of 1982 include the following:

1. The 12 measures prescribed in article 5 of Royal Decree No. 18 of 2011 are almost identical to those stipulated in article 3 of Emiri Decree Law No. 27 of 1981. The only measure included in the latter statute but not prescribed in Royal Decree No. 18 of 2011 is the authority to subject individuals to forced labour.
2. The authorities charged with implementing Royal Decree No. 18 of 2011 are identical to those responsible for enforcing a State of Martial Law, namely the BDF and PSF.

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government authorities powers and prerogatives even greater than those granted under the Martial Law decree.²³⁶

184. In light of the above, the Commission recommends that the constitutionality of Royal Decree No. 18 of 2011 on the Declaration of a State of National Safety be reviewed by the Supreme Constitutional Court.

185. The Commission also recommends that the legislative lacuna caused by the absence of a statute stipulating and regulating the measures to be undertaken during the application of a State of National Safety be addressed by the passing of a statute on the matter, provided that such a statute remains within the bounds of the Constitution and the international legal obligations of Bahrain.

²³⁶ The powers set out under Royal Decree No. 18 of 2011 that exceed the powers granted pursuant to Emiri Decree Law No. 27 of 1981 are as follows:

1. The State Security Courts referred to in Emiri Decree Law No. 27 of 1981 are composed of judges from ordinary courts. In exceptional cases, the authorities responsible for enforcing martial law may appoint military judges to serve on these State Security Courts, which continue to be presided over by a civilian judge. The appointment of these judges is by consultation between the Ministers of Defence and Justice. The National Safety Courts, however, are presided over by a military judge, and their composition is decided by the BDF Commander-in-Chief without consultation with any civilian authorities.
2. Royal Decree No. 18 of 2011 assigned responsibility for initiating and overseeing criminal proceedings at the National Safety Courts to the Military Prosecution. There is no similar stipulation in Emiri Decree Law No. 27 of 1981.
3. Article 11 of Royal Decree No. 18 of 2011 states that the judgments of the National Safety Courts are final and may not be appealed. This is unlike article 12 of Emiri Decree Law No. 27 of 1981, which provides for the establishment of a specialised bureau that is headed by a Supreme Civil Appellate Court judge and includes a number of lawyers to review the judgments of the State Security Courts, ensure the proper administration of justice by these courts, and prepare a memorandum on these matters to the authorities charged with enforcing martial law before the judgments of these courts are ratified.