

Section C – Manner of Arrests

1. Factual Background

1123. This Section describes the method and manner in which the MoI and NSA conducted domiciliary arrests during the period from 17 March to 15 April 2011. The question of the legality of the arrests is not discussed in this Section, except for a brief consideration of the applicable law of arrest which follows.

1124. The events that took place in Bahrain during February and March 2011 resulted in a number of arrests during the course of demonstrations and at the scene of protests including, but not limited to, such locations as the GCC Roundabout, the University of Bahrain and SMC. There were also arrests of demonstrators and protesters in different Shia neighbourhoods and villages. Described below are the arrests conducted at the residences of a number of persons and the manner in which these arrests were carried out. These arrests evidence a pattern of behaviour by the involved agencies that was designed to inspire terror in the arrested persons, members of the family and inhabitants of the household. Moreover, this pattern also evidences a practice of destruction and seizure of private property.

1125. The agencies involved in these arrests are the NSA and the MoI, in particular the CID and PSF, which include riot police. One hundred individuals were arrested by the BDF, most of whom were detained for violating the terms of the curfew imposed in parts of Manama or for entering prohibited zones. The BDF also arrested two medical personnel at SMC and two former members of the Chamber of Deputies, one of whom was arrested in the street. The National Guard indicated orally to the Commission's investigators that it performed 103 arrests, all of which were performed in public places, and that the persons arrested were immediately turned over to the custody of the closest police station.

1126. The pattern of domiciliary arrests reveals the following:

- a. The houses were surrounded by security forces: the MoI, NSA, or at times a combination of both. These forces secured the perimeter.⁵⁶⁹
- b. NSA records indicate that it conducted 179 domiciliary arrests, including 42 arrests of persons caught in the act of committing an offence, relating to the events of February/March 2011. With respect to the 179 domiciliary arrests, NSA records indicate that the agency conducted the arrests by itself and that it took the individuals into custody in the NSA basement detention facility. These persons remained in detention for various periods of time ranging from two days to three weeks.

⁵⁶⁹ There are also reported cases of BDF involvement in securing the external perimeter.

Report of the Bahrain Independent Commission of Inquiry

- c. MoI records indicate that it conducted 1,950 arrests relating to the events of February/March 2011. In effecting these arrests, the MoI acted either without the involvement of the NSA or, in some cases, with NSA involvement but under the lead of the MoI. The persons arrested were then transferred to one of three facilities and were detained for periods ranging from days to months.
- d. The arrested individuals were subject to proceedings begun either by the Military Attorney General, if the charge was brought under the National Security Decree, or the Attorney General, if it was under the Bahrain Penal Code. Regardless of the legal grounds for the arrest, the manner of execution of arrest was the same, and the pattern of mistreatment in the MoI facilities was the same as described in Chapter VI, Section D on Treatment of Persons in Custody.
- e. In all reported cases, the individuals performing the arrest wore black hoods covering their heads.⁵⁷⁰
- f. The behaviour of the hooded security forces indicates a common practice, which suggests that they received the same type of training.
- g. In all reported cases, the hooded security forces broke into the houses and through internal closed doors within the dwelling, thus terrorising the inhabitants, including women and children.
- h. Many of these arrests were reported to have occurred between 01:00 and 03:00.
- i. The hooded security forces were armed and the display of their weapons added to the terrorising effect on the inhabitants of the household.
- j. The women in the household were asked to stand in their sleeping garments and were not permitted to cover their bodies. These women were embarrassed and degraded, particularly in light of their religious beliefs.
- k. Children were forced out of their beds screaming and crying and were frequently forced apart from their mothers, which

⁵⁷⁰ The Commission received statements from individuals who were mistakenly identified as relatives of members of the security forces. One individual reported that she and her friend were kidnapped by a group of demonstrators near her home because the kidnappers believed that she had relatives in the military. She alleged that the kidnappers threatened her and her friend with a knife and told them they would be set on fire. She believed that this was in retaliation for the arrest of a poet affiliated with the demonstrations. She stated that when her kidnappers realised they had to pass through a security checkpoint, they released her and her friend and left them on the side of the road, but told her that they would return to kill her. She reported that she and her family were forced to move from their home out of fear.

further caused psychological trauma to both the children and their mothers.

- l. Security forces conducted searches by breaking into closets and drawers and then seizing personal property, including electronic equipment such as computers, mobile phones and other objects.
- m. Many instances were reported of security forces seizing personal property such as money, jewellery and perfume.
- n. The arrested persons were blindfolded and handcuffed behind their backs before being removed.
- o. Many of the security forces directed verbal abuse and insults at both the arrested individuals and members of their family. With few exceptions, all of the arrested individuals were Shia. The verbal abuse generally involved insulting religious and sectarian beliefs and symbols.

1127. The Commission received 640 complaints alleging the seizure and theft of personal property and the destruction of personal property in the course of these arrests. This included the seizure of cars and, in some cases, wilful damage done to cars that were not seized.

1128. Many complainants indicated that, as of 31 October 2011, property seized at the scene of arrests, including cars, had not been returned to them.

1129. Responses from the two government agencies involved in these arrests, namely the MoI and the NSA, indicate that the property seized was only in the nature of computers and mobile phones, which were deemed necessary as evidence of the crimes. They deny any seizure of other personal property such as money, jewellery or perfume, which would otherwise constitute theft. They also deny any wilful destruction of property inside the houses or damage to cars outside the houses, other than that caused by the use of force necessary to execute searches and arrests. These agencies also stated that the security forces were hooded in order to protect them from being identified for fear of retaliation against them and their families.

1130. A number of arrested persons have also complained that in the course of their arrests they were manhandled, mistreated and insulted. These agencies responded that any claimed mistreatment at the time of arrest was due to resistance by the persons arrested, an allegation that was denied by those arrested persons interviewed by Commission investigators.

a) The Treatment of Women and Children present during Arrests

1131. Witnesses' descriptions of confrontations with the agencies in question reflect a common pattern. Security forces broke down the door and conducted a violent search for the suspect until he was apprehended, generally in the presence of women and children. Once the suspect was identified,

security forces immediately restrained his movement by throwing him on the floor face-down and tying his hands extremely tightly behind his back using plastic handcuffs, which caused a loss of sensation in many cases.⁵⁷¹ The security forces then typically beat the suspect (usually using kicks and punches, and on some occasions striking the suspect with their firearms) in front of his family.

1132. A number of women who provided statements to the Commission said that at the time of the arrest, they were in bed wearing a nightgown and were not allowed to cover themselves when security forces raided the house and searched the rooms. Two women stated that they were instructed to keep their hands down when they attempted to cover their chest.

1133. Many witnesses also reported that security forces interrogated family members with regard to the whereabouts of suspects who were not present in the house, sometimes threatening to take their sons, daughters, brothers or others present in the house in order to lead them to the suspect's location. In a few cases, male witnesses stated that security forces threatened to sexually abuse the women until the men provided information on the whereabouts of the suspect.

1134. In most instances, it was alleged that security forces deliberately terrorised all family members, including women and children, and told them to stay away from the suspect. Security forces sometimes instructed children to go inside bedrooms while threatening to kill other members of the household.

1135. One woman whose husband was arrested by security forces reported as follows:

It was 01:30 in the morning. Around six to eight men broke into the house, all hooded. One stayed in the living room because one of my children was sleeping on the couch. The others entered the bedroom. I was wearing a nightgown and they wouldn't let me get dressed or even cover my chest with my hands. At least four men jumped on my husband and pushed him to the ground. They dragged him to the living room and started beating him. They also pushed one of my children to the ground and pointed a gun at him, demanding that he provide the names of other suspected persons. They broke several items in the house, including pictures of religious leaders and a framed picture of my grandfather, which was of great sentimental value to me. They took all our mobile phones, a camera, portable DVD player and 1,800 Bahraini Dinars, and then they left with my husband. While they were leaving I noticed a large number of riot police surrounding the house. I knew that they were riot police because I recognised their uniforms.

⁵⁷¹ The Commission received a forensic report which indicated that four victims suffered nerve injuries from handcuffs. The report also identified numbness in the radial and ulnar nerve distributions (thumb and fifth finger).

1136. This description of events is typical of the numerous complaints that the Commission received in regard to arrests.

1137. One man testified that he was arrested at Bahrain International Airport in front of his wife and their three children. He was blindfolded, handcuffed and dragged to a nearby office, where he was beaten and interrogated. His statement is detailed in Annex B in regard to allegations of torture and other cruel, inhuman and degrading treatment. His wife described the incident in the following manner:

My children were terrified. The security forces took my husband and me to the CID where we were interrogated for one hour. I kept asking about my children and eventually I was taken to them in a separate office at the CID. They were terrified and crying. I sat with them for a short time before I was taken again and interrogated further. Eventually I was taken home from the CID and I found my children there with their uncle. The following night the house was raided by a number of hooded men in civilian clothes. They searched and ransacked the house looking for laptops, mobile phones, CDs and DVDs. They took a number of personal items including jewellery and 6000 Bahraini Dinars, and they broke several items in the house. They arrested me in front of my children in an extremely aggressive manner.

1138. Commission investigators witnessed one incident in which children under the age of 15 were arrested and detained at Al-Budaie police station. Commission investigators arrived at the police station at around 01:40 in the morning of 1 August 2011 and found a number of teenage boys standing blindfolded and handcuffed. They had all been beaten and one boy, who was 14 years old, had cigarette burns on his chest. The boys told the investigators that they had been arrested while they were sitting at a *ma'atam* learning the Quran from one of the Imams in the neighbourhood. They stated that when they were arrested, security forces ransacked the *ma'atam* and took all of the books and CDs as well as a cassette player and a DVD player. Security forces told Commission investigators that the boys had been arrested for throwing stones at two police cars. The Commission investigators examined the police cars and noted that the damage to them was extremely minor. Upon the intermediation of the investigators, the security forces released the boys. The following day, following a report of the Commission investigators, the MoI suspended the officer in charge of the police station as well as eight additional security personnel.

b) Destruction of Property

1139. Most witnesses stated that security forces broke down the front door and, in some cases, the back door of the house in the course of the arrest. While this was frequently the home of the individual being arrested, there were also instances in which the individual being arrested was in the home of a relative or a friend. A small number of witnesses recalled that the security

forces also rang the doorbell. In a small minority of cases, witnesses reported that security forces entered through windows.

1140. Investigators received photographs of broken doors, windows, furniture (beds, closets, drawers, cabinets, etc) and personal items. The destruction documented in these photographs was not limited to a single room and included living rooms, kitchens, bedrooms and hallways.

1141. Personal items included those of both financial and sentimental value. Many witnesses stated that security forces deliberately broke the *turba* (stone used for prayer amongst Shia) as well as pictures of religious and political leaders. Commission investigators received photographs of some of these destroyed items.

1142. Additionally, investigators interviewed 264 detainees at detention centres and prisons. Most of those detainees alleged that during the arrest security forces intentionally destroyed doors, furniture and other household items. In some instances, these allegations were corroborated by relatives who also provided statements to the Commission.

1143. Some witnesses complained of damage to cars that were parked outside houses. Commission investigators received several videos showing security forces destroying cars outside houses, but those videos were not taken during the period of arrests described in this Section.

1144. A number of complainants reported that their cars were seized in the context of arrests and that they have not been able to recover the cars. The MoI has confirmed that the cars seized in connection with arrests as well as other cars seized in connection with the events of February/March 2011 have all been placed in a stockyard in an area outside the city. A Commission investigator has verified that such a location exists and that it is full of cars, most of which have been damaged, presumably during the seizure and transportation to this location, and that they have been further damaged by having been kept there for periods of up to six months. This form of seizure of personal property is confiscatory and deprives persons of their right to property.

c) *Theft of Property*

1145. The Commission received 16 complaints that members of the security forces stole property from inside the house in the course of the arrest. The stolen property included electronic equipment such as mobile phones, computers and laptops, as well as personal items such as jewellery, perfume and money. The MoI told Commission investigators that the electronic equipment was seized as evidence against the arrested persons.⁵⁷²

1146. Some of the stolen items were subsequently returned to the owners. However, a large majority of those who attempted to retrieve their property were told that security forces had no records of the property having been

⁵⁷² Minutes of meeting between Commission investigators, the Minister of Information and the Head of Legal Affairs, 9 September 2011.

taken. In other cases, detainees stated that they had seen their property in court being used as evidence against them. Some of the witnesses alleged that when they asked about their items, they were told that they were “spoils of war”.

1147. The Minister of Interior assured the Commissioners that security forces always respected the laws of Bahrain. However, he admitted that they had investigated three cases of police misconduct and that the offenders had received harsh penalties.

1148. The NSA denied that any of their personnel had ever stolen anything. However, they indicated that they had heard of some cases of police misconduct, but they had no details to share with the Commission.

2. Applicable Law

1149. This section outlines the international and national legal obligations relating to arrest and detention. In particular, the Commission notes that Bahrain is a State party to the ICCPR⁵⁷³ and the revised Arab Charter on Human Rights (Arab Charter).⁵⁷⁴ Furthermore, inhuman treatment is forbidden under the Constitution of Bahrain, the Bahrain Penal Code and the Code of Criminal Procedure. Entering homes and searching for persons are activities covered by the Bahrain Code of Criminal Procedure (2002). The Constitution of Bahrain also states that dwellings are inviolate.

a) International Law

1150. Article 9(1) of the ICCPR provides: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Article 9(5) provides: “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.” Article 10(1) further provides: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

1151. In regard to the inviolability of the home, article 17(1) of the ICCPR provides: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” Article 17(2) provides: “Everyone has the right to the protection of the law against such interference or attacks.”

1152. Article 14(1) of Arab Charter on Human Rights provides: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.” In regard to the inviolability of the home, article 21 of the Arab Charter mirrors article 17 of the ICCPR.

⁵⁷³ International Covenant on Civil and Political Rights 1966.

⁵⁷⁴ Arab Charter on Human Rights, adopted by the Council of the League of Arab States on 22 May 2004, UN Doc. CHR/NONE/2004/40/Rev.1, entered into force 15 March 2008.

b) National Law

The Constitution of Bahrain

1153. Article 25 of the Constitution provides: “Dwellings are inviolate. They cannot be entered or searched without the permission of their occupants except in cases of maximum necessity as laid down and in the manner provided by law”.

1154. Article 19 (d) provides: “No person shall be subjected to physical or mental torture, or inducement, or undignified treatment”. Further, article 19 (d) provides that a person accused of a crime may not be harmed physically or mentally.

The Bahrain Penal Code

1155. Article 207 of the Penal Code provides for a prison sentence “for every civil servant or officer entrusted with a public service who knowingly searches a person, his residence or premises against his will or in cases other than those provided for or stipulated in the Law”.⁵⁷⁵

1156. Article 309 provides for a punishment of imprisonment for a period not exceeding one year or a fine not exceeding BD 100 for offending one of the religious sects or ridiculing the rituals thereof. Article 311 provides for a punishment of imprisonment for a period not exceeding one year or a fine not exceeding BD 100 for “any person who destroys, damages or desecrates a place of worship for a recognised sect or a symbol or other things having a religious inviolability”.

1157. Relating to women, article 344 provides that life imprisonment shall be the penalty for any person who has sexual intercourse with a female without her consent.

1158. Relating to theft, article 373 defines theft as “dishonest appropriation of movable property belonging to another with the intent of permanently depriving the other thereof”. In addition, article 374 provides that theft shall be punishable by life imprisonment in the following circumstances:

- a. If committed at night;
- b. If one of the offenders is carrying a weapon;
- c. If committed at residential premises or at premises intended for residential purposes, or annexes thereof, where entry is gained by trespass, break-in or use of original or duplicate keys against the will of their owner, or by assuming a false identity or by alleging to be a public servant or by such other illegal means.

1159. Article 380 provides that a prison sentence of no less than three months shall be adopted if a theft is committed at any of the following designated places: a place intended for worship, residential premises, premises

⁵⁷⁵ Based on a translation provided by the MJIA.

intended for residential premises or premises intended for residential purposes, or annexes thereof.

Bahrain Code of Criminal Procedure

1160. The Bahrain Code of Criminal Procedure is based on the Egyptian Code of Criminal Procedure, which in turn is derived from French criminal procedure. The Bahrain Code of Criminal Procedure prescribes the legal procedures applicable to authorities when conducting a search of a home or person. It also prescribes the legal procedures applicable to police arrests of persons caught in the act of committing an offence. Such arrests are based on the arresting officer's belief that a crime has been committed in his presence or on the basis of objective evidence to his knowledge.

1161. In relation to searches of a home or person, article 65 provides: "Members of the public authority shall not enter any inhabited premises except in the circumstances indicated in the Law or in case of seeking assistance from inside the premises, fire, drowning or such similar events." Article 66 provides: "In circumstances where it is legally admissible to arrest the accused, the judicial arrest officer may search him." If the accused is female, the search must be conducted by a female.

1162. In the event of an arrest, article 67 provides: "In case of felonies and misdemeanours involving persons caught in the act, and punishable by imprisonment for a period exceeding three months, the judicial arrest officer shall be empowered to search the accused's home and to apprehend therein the items and documents that help reveal the truth if it is clear to him that there are strong indications that they are available therein." In addition, article 69 allows for the seizure of objects related to the crime for the purposes of an investigation and this, according to article 70, must be done in the presence of the accused or a representative acting on his behalf.

1163. Article 73 also states that the judicial arrest officers "shall be empowered to seize the documents, weapons, machinery and everything that is likely to have been used in committing [the offence]... Such items shall be shown to the accused who shall be requested to make his comments thereon and a statement to that effect shall be drawn up to be signed by the accused. Where the latter refuses to sign, this fact shall be indicated in the statement".

1164. Chapter Five of the Code of Criminal Procedure outlines the role of the Public Prosecution after the collection of evidence and the procedures for the safekeeping or release of those items or documents. Section Two of Chapter Five relates to the inspection, search and seizure of objects related to the crime. Article 90 empowers the Public Prosecution to issue a search warrant to search the house of the accused upon an indictment against him for items that may have been used in the commission of the crime.

1165. Article 57 provides that an individual arrested pursuant to the Code of Criminal Procedure must be interrogated immediately by the arresting authority and cannot be kept in detention for more than 48 hours, after which time the detainee must either be released or transferred to the relevant judicial authority for questioning. This judicial authority, which in ordinary

circumstances in Bahrain is the Public Prosecution, is responsible for ensuring that the arrest was in conformity with the Code. The Public Prosecution is required to question the detainee within 24 hours, and the detainee has the right to the assistance of legal counsel during this questioning period. After this initial 24-hour period, the Public Prosecution issues a formal order of detention based on the charges proffered.⁵⁷⁶

1166. According to article 147 of the Code of Criminal Procedure, the Public Prosecution may extend the detention period for the purposes of further questioning for seven days. If the Public Prosecution requires further extension, the arrested individual must be brought before a judge, who may authorise further extensions of detention for a period that does not exceed a total of 45 days. Article 148 states that if the Public Prosecution believes that further questioning is required, the arrested individual must be brought before the Higher Criminal Court to decide whether to extend detention for additional periods, each period not exceeding a total of 45 days. Generally, the Code of Criminal Procedure proscribes the temporary detention of individuals for over six months.

Law No. 58 of 2006 on the Protection of Society from Acts of Terrorism

1167. Law No. 58 of 2006 on the Protection of Society from Acts of Terrorism allows the Public Prosecution to extend detention for an initial period of 60 days. This law also extends the period during which law enforcement officials may detain individuals suspected of committing acts proscribed pursuant to this law to five days, instead of the 48-hour period prescribed in the Code of Criminal Procedure. This period can be extended to another 10 days upon the approval of the Public Prosecution.⁵⁷⁷

Emiri Decree Law No. 3 of 1982 on the Public Security Forces⁵⁷⁸

1168. Article 1 of Emiri Decree Law No. 3 of 1982 on the Organisation of the Public Security Forces provides that 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.”

1169. Article 13 of this Decree Law provides:

Public security forces may bear arms and ammunition provided to them pursuant to orders from the Minister of Interior. These arms may not be used except in the cases and according to the conditions outlined below:

1. To arrest:

⁵⁷⁶ Before a person is submitted to the Public Prosecutor that person can be detained for up to 48 hours by the arresting law enforcement agency. Bahrain Criminal Procedure distinguishes between arrest and detention. Law enforcement agencies can arrest an individual for up to 48 hours, but must transfer the person to the Prosecutor after that period of time. The Prosecutor must, within 24 hours, issue a decision to place the person under preventive detention or release him/ her.

⁵⁷⁷ See Law No. 58 of 2006, arts 26-29.

⁵⁷⁸ Based on a translation by the Commission.

Chapter VI — Allegations of Human Rights Violations Against the Person

- a. Any person convicted of a felony or sentenced to more than three months imprisonment if that person resists arrest;
- b. Any person charged with committing a felony or found committing a misdemeanour, and resists arrest.

2. To protect detainees:

Firearms may be used against detained persons in the following cases:

- a. Confronting an attack or any forceful resistance if no other means are available;
 - b. Stopping prisoners from escaping, if no other means are available.
3. Dispersing rallies, assemblies, demonstrations and riots, according to the provisions of Section Three of Chapter One of the Penal Code.
 4. Lawful self-defence of life, body, property and the lives of others, their bodies and property.

In all aforementioned circumstances, the use of force must be necessary and proportionate to an impending danger, and must be the sole available means of confronting this danger, the existence of which must be ascertained. Force must also be used to disable the source of attack or resistance, and must be preceded with a warning, whenever possible, that firearms will be used, and targeting must not be lethal.

The Minister of Interior shall decide, pursuant to a directive issued by him on the basis of a recommendation by the Undersecretary of the Ministry of Interior and after the approval of the Cabinet, which officials shall have the authority to order the use of firearms and the methods of executing that order.

Royal Decree No. 18 of 2011 on the Declaration of a State of National Safety

1170. Royal Decree No. 18 of 2011 on the Declaration of a State of National Safety was issued on 15 March 2011 to declare a State of National Safety in Bahrain pursuant to article 36(b) of the Constitution of Bahrain. The State of National Safety was lifted on 1 June 2011 pursuant to Royal Decree No. 39 of 2011 issued on 8 May 2011. Royal Decree No. 18 of 2011 was discussed in detail in Chapter III concerning the applicable legal framework.

1171. Four government agencies were primarily responsible for the implementation of Royal Decree No. 18 of 2011. These are the BDF, the MoI, the NSA and the National Guard. Article 5 of Royal Decree No. 18 of 2011 provides that these authorities are empowered to undertake a range of measures to implement the Decree, including the following:

- a. 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; and
- b. Arrest and detain suspects and persons deemed threatening to the security of citizens.

3. Findings and Conclusions

1172. Between 21 March and 15 April 2011, Bahrain security forces systematically raided houses in order to arrest individuals, and in so doing terrified the occupants. The security forces intentionally broke down doors, forcibly entered and sometimes ransacked the houses. This practice was often accompanied by sectarian insults and verbal abuse. Women and children and other family members frequently witnessed these events. In many of the reported cases, the women were asked to stand in their sleeping clothes, which did not adequately cover their bodies, thus humiliating the women, the children and their arrested spouses or relatives. This practice also constitutes a violation of Muslim and in particular Shia religious practices.

1173. When the MoI was asked about its role in these arrests, it stated that it was merely assisting the NSA and that no joint operations were carried out. However, the witness statements provided to the Commission indicate that the MoI did in fact take part in these raids.

1174. Most of the arrests described in this section were based on Royal Decree No. 18 of 2011 on the Declaration of a State of National Safety, which gives the authority to the Military Attorney General to issue arrest warrants for an indefinite period of time, without having to state the evidentiary basis supporting the arrest and without having to secure any judicial authorisation. The assumption under this Decree is that the Military Attorney General is a judicial officer. Based on this reasoning, the National Safety Decree did not provide for any judicial oversight. In addition, the National Safety Decree does not require the arresting officer to produce an arrest warrant issued by the Military Attorney General, nor is there any requirement for obtaining a search warrant to search the premises of the person arrested. On its face, this type of arrest constitutes arbitrary arrest under article 9 of the ICCPR. In all of the cases in which arrests and incidental searches of residential premises and seizures of property were made, no arrest or search warrant was shown to the person arrested or the person whose premises were searched. As discussed in Chapter III, the constitutionality of Royal Decree No. 18 of 2011 has been challenged by every defendant who has been charged under it, and the Commission recommends that the constitutionality of this Decree be reviewed by the Supreme Constitutional Court.⁵⁷⁹

1175. While most of the arrests described in this Section were conducted on the basis of the National Safety Decree, some were conducted on the basis of the Code of Criminal Procedure. Neither the Attorney General nor the Military Attorney General have been able to provide an explanation as to why

⁵⁷⁹ See Chapter III on Legal System and Enforcement Structures.

some persons were arrested pursuant to the National Safety Decree and others pursuant to the Code of Criminal Procedure. The 179 cases of arrest officially performed by the NSA were all conducted pursuant to the National Safety Decree.

1176. With respect to arrests performed by the MoI pursuant to the Code of Criminal Procedure, the records provided to the Commission reveal that arrest warrants were contained in the judicial records of the persons who subsequent to their arrest were charged with crimes. However, in none of the cases investigated were these warrants shown to the arrested persons, nor is there any record that security forces followed the requirements of the Code of Criminal Procedure subsequent to the first 48 hours of arrest, as described above.

1177. The MoI and NSA advised the Commission that that they had appropriate procedures in place to deal with arrests, including situations where family members are present in the course of an arrest. The Commission was not given a copy of these procedures. Assuming that such procedures existed, and in the light of the overwhelming evidence of abuse that was inflicted, it is clear that they were not followed.

1178. In conclusion, the Commission finds that a substantial number of the arrests made pursuant to the pattern described above violated international human rights law and Bahrain law. In particular, security forces carried out the arrests without presenting an arrest or search warrant. The Commission finds that in many cases, the manner in which the arrest was performed involved unnecessary excessive force, accompanied by terror-inspiring behaviour on the part of the security forces in addition to unnecessary damage to property. All of these factors reveal a failure to follow the appropriate procedures identified by the MoI and NSA. In regard to the seizure of items in connection to arrest, the agencies involved did not provide any records of the seized items. The Commission investigators were also not informed of any investigation commenced by the respective agencies on the basis of complaints by the persons arrested or members of their families. This evidences a pattern of disregard for violations of any procedures that may have existed as well as disregard for Bahrain law and international human rights law pertaining to fairness and due process in connection with arrests.

1179. Furthermore, the very fact that a systematic pattern of behaviour existed indicates that this is how these security forces were trained and how they were expected to act. This could not have happened without the knowledge of higher echelons of the command structure of the MoI and NSA.

1180. The failure to investigate these practices effectively, and the failure to take adequate measures to prevent violations by security forces, could constitute the basis for superior responsibility.