

1252. There should be audiovisual recording of all official interviews with detained persons.

1253. The burden of proving that treatment complies with the prohibition of torture and other mistreatment should be on the State.<sup>618</sup>

1254. To ensure future compliance with the Code of Conduct for Law Enforcement Officials,<sup>619</sup> and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,<sup>620</sup> the security forces should be trained in the human rights dimensions of detention and interrogation, and in particular the obligation to refuse to participate in any actions involving torture and other prohibited mistreatment.

1255. The judiciary and prosecutorial personnel should be trained on the need to ensure that their activities contribute to the prevention and eradication of torture and mistreatment.

## **Section E – Detention and Prosecution in connection with Expression, Association and Assembly**

### **1. Factual Background**

1256. Among the approximately 1,300 persons arrested and whose cases the Commission has examined, a number were arrested pursuant to articles 165, 168, 169 and 179 of the Bahrain Penal Code on the basis of “spreading false rumours” or on the basis of public positions they had taken, either at demonstrations or in other ways.

1257. Several persons were arrested and charged with the possession and/or distribution of material calling for the fall of the regime. These individuals provided statements to the Commission in which they outlined the following allegations, for example:

- a. A complainant stated that she was arrested on 1 April 2011 and charged with possession of material that calls for/supports the fall of the regime. The charges included possession of images and text messages on her mobile phone that call for the fall of the regime. The complainant alleged that the police officers who arrested her also verbally abused and degraded her. She stated that she was taken to Roundabout 17 police station where she was beaten, refused access to toilet facilities and made to stand in the sun for hours. She remained there for one month before being transferred to Isa Town Detention Centre for Women. She was sentenced to six months imprisonment.

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<sup>618</sup> Human Rights Committee, General Comment 32 (2007), para 41: “[T]he burden is on the State to prove that statements by the accused have been given of their own free will”.

<sup>619</sup> Adopted by General Assembly resolution 34/169 of 17 December 1979.

<sup>620</sup> Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

- b. A complainant stated that he was arrested at his workplace on 12 April 2011 and taken to Riffa police station. He was later transferred to Dry Dock Detention Centre and then Juw Prison. The complainant alleged that the reason for his arrest was his marriage to the daughter of an opposition leader. He stated that he was interrogated while in custody, and almost all the questions were about his father-in-law and not about him. He was charged with distributing material calling for the fall of the regime. However, he stated that although he had received the material by email in an attachment, it was not proved that he distributed it. He was also accused of attending illegal protests at the GCC Roundabout. He alleged that he was subjected to physical and sexual abuse as well as verbal harassment while in detention. He was sentenced to three years imprisonment, which was reduced to 18 months.
- c. A complainant stated that she was stopped by security forces on 27 March 2011 while driving her car. She recalled that she was playing a CD criticising the regime and HM King Hamad, and was told to step outside the car and to turn off the CD. According to the complainant, at first she refused to turn off the CD and to step outside the car since she had children in the car, but subsequently she stepped out and while talking to the officer she noticed a person dressed in black entering the back seat and as a reflex she grabbed the person to protect her children. Later she understood that this was a police officer trying to turn off the CD player. She was arrested and detained at Riffa police station and then taken to Isa Town Detention Centre for Women. She was charged with assaulting a government employee, possession of a CD calling to overthrow the GoB and inciting hatred towards the regime. She was sentenced to six years imprisonment but the Court of Appeal reduced her sentence to three years. She alleged verbal and physical abuse while in detention as well as lack of access to legal representation.

1258. Several persons were charged with inciting hatred towards the regime. These individuals provided statements to the Commission in which they outlined the following allegations, for example:

- a. A complainant, who was part of the leadership of the Bahrain Teachers' Society (BTS), stated that he was arrested twice during the spring of 2011 due to his political activism and his public support for the protesters. He spoke at the GCC Roundabout on several occasions and wrote several articles criticising the GoB and its reaction to the protests. He was charged with inciting hatred towards the regime and sentenced to 10 years imprisonment. He was detained at Al Qurain Prison and later transferred to Juw Prison to serve his sentence. He alleged that he was tortured while in detention.

In particular, he stated that he was subjected to regular beatings with a hose and kept in solitary confinement for one and a half months. He also stated that he was forced to confess to the allegations against him.

- b. A complainant was part of the leadership of the BTS. She stated that after the attack by security forces against the demonstrators at the GCC Roundabout, the BTS called for a strike. The strike was, according to the complainant, peaceful and in accordance with Bahrain law and the legitimate right to freedom of expression. The complainant stated that she was arrested on 28 March 2011 in her home by men wearing military and civilian clothes, who blindfolded and handcuffed her before taking her to the CID and then to Isa Town Detention Centre. She alleged that she was blindfolded for hours, kept in isolation, deprived of sleep and verbally abused. In addition, she alleged that she did not have adequate access to legal representation nor was she allowed regular contact with family members. She was accused of organising illegal strikes and inciting hatred towards the regime. She was also accused of calling for parents not to send their children to school and calling for teachers to stop working and participate in protests. She was sentenced to three years imprisonment and an appeal in her case will be heard by the Court of Appeal on 10 December 2011.

1259. Several persons were charged with participating in unauthorised gatherings. These individuals provided statements to the Commission in which they outlined the following allegations, for example:

- a. A complainant stated that he has been politically active within the opposition for a long time and that he had been arrested prior to the events of February and March 2011. He was arrested again in March 2011 and taken to Naim police station, Al-Qalaa (NSA), Dry Dock Detention Centre and then finally Al Qurain Prison. He alleged that he was interrogated in detention and tortured to obtain information. In particular, he stated that he was asked whether he was part of the 14 February movement and questioned about his relationship with high profile opposition leaders. The complainant alleged that the authorities had followed his political activity since the 1990s. He maintained that his political activity was not illegal and that he was exercising his right to freedom of opinion and expression. He admitted to having taken part in protests in 1997 and 2011, stating that every person has the right to gather peacefully. He was sentenced to 15 years imprisonment.
- b. A complainant active in the opposition party stated that he was arrested on 5 February 2011 and taken to Al-Qalaa and

later to Al Qurain Prison. He alleged that he was placed in isolation, blindfolded and tortured. He was charged with broadcasting false information concerning the protests and the actions of the GoB, participating in and inviting people to participate in an unauthorised gathering, and inciting violence against the Government. The complainant stated that his political activity took place in the period during which he enjoyed parliamentary immunity and that he stopped all political activity on 22 March 2011. He also stated that all his political activity was licensed and within the boundaries of the law. His case is still on trial before the National Safety Court and a hearing was scheduled for 21 November 2011.

1260. Some persons were also charged with inciting others to attend unauthorised gatherings. These individuals provided statements to the Commission in which they outlined the following allegations, for example:

- a. A complainant stated that he was previously employed at the Supreme Council of Islamic Affairs, but he was critical of the GoB and was forced to live in exile for 20 years. He returned pursuant to a royal pardon and resumed his work, but resigned after two years because of sectarian discrimination and the lack of progress of reform. He stated that he was not active in the protests of February and March 2011 but attended them once during the gathering of religious Shia clerics. He was arrested from his home and detained at Dry Dock Detention Centre. He alleged that he was tortured in detention and subjected to threats and psychological abuse. He was accused of sending SMS messages inciting protests. He stated that the SMS message had called for peaceful protests and for his countrymen to respect the symbols of the country. He alleged that he was interrogated about his participation in the protests and was forced to confess to allegations that were not true, such as being an Iranian agent and bringing weapons from Iran into Bahrain.

1261. Several persons were charged with spreading false rumours likely to disturb public order. These individuals provided statements to the Commission in which they outlined the following allegations, for example:

- a. One complainant was a member of parliament in an opposition party. He stated that he is a supporter of political and social reforms in Bahrain and has been active in the promotion of human rights. He was interviewed by international media during the protests and he criticised the GoB and its reaction to the protests. During the interview, he made statements concerning the number of injured persons admitted to SMC following the first clearance of the GCC Roundabout. The complainant stated that a few days prior to his arrest, a video confession of a detainee had been aired

incriminating the complainant, and he began to fear for his safety. He alleged that on 2 May 2011, he was arrested and taken to an unknown location where he was interrogated about his role in the protests and the political situation in Bahrain. He was transferred to Al-Qalaa and then Al Qurain Prison. He alleged that he was verbally and physically abused, denied access to legal representation and forced to sign a confession. He was accused of spreading false rumours likely to disturb public order, participating in protests without notifying the authorities and participating in unlicensed protests. His case is still on trial before the National Safety Court and a hearing was scheduled for 23 November 2011.

- b. A complainant stated that he is a lawyer and that, due to his political convictions and his representation of clients charged with anti-government activity, he was persecuted for a long period of time and finally arrested. He alleged that he received threats, that he was videotaped sleeping with his wife and that he was threatened that this tape would be made public. On 20 February 2011, he made a speech at the GCC Roundabout in which he criticised the GoB. He told the Commission that as a result of this speech, he was arrested at his home by armed security forces on 15 March 2011. He alleged that security forces searched his house and pointed guns at his family. He stated that he was then taken to the CID where he was blindfolded for two days, forced to stand for long periods of time and verbally abused. He was accused of spreading false rumours, unauthorised assembly and inciting hatred towards the regime. He stated that he was moved to Al Qurain Prison where he was forced to endure poor prison conditions and further abuse. His case is still before the National Safety Court.

1262. In addition, a number of journalists informed the Commission that they were arrested for reporting on the events of February/March 2011.<sup>621</sup> Two journalists died while in the custody of the police or the NSA.<sup>622</sup> Two other journalists who were arrested and detained outlined the following allegations:

- a. A journalist reporting for France 24 and Monte Carlo Radio stated that she was asked to appear at a police station for interrogation on 22 May 2011. She was accused of participating in protests and calling for the downfall of the regime, charges which she denied. She alleged that interrogators insulted and defamed her, and questioned her about journalistic reports she had written for international

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<sup>621</sup> For a detailed discussion of the role of media in the events of February/March 2011, see Chapter X.

<sup>622</sup> See Chapter VI, Section A.

media outlets. She alleged that she was repeatedly kicked and beaten with a rubber hose by a number of police officers. In addition, she alleged that she was electrocuted on her arm, had urine poured on her face, had a shoe forced into her mouth and her head plunged into a toilet to simulate drowning. She stated that at the end of the interrogation, she was forced to sign a document that she was not permitted to read. She later filed a report of the incident with the MoI.

- b. A journalist reporting for the German News Agency and European Press Photo Agency stated that he was arrested while taking photographs of a protest on 11 March 2011. He alleged that he was interrogated and released after one hour. He further alleged that he was detained again on 22 May 2011 and taken to a police station for two hours, during which time he was repeatedly beaten.

1263. The Attorney General has dropped the charges based on articles 165, 168, 169 and 179 of the Bahrain Penal Code with respect to the 48 accused medical personnel of SMC. However, an estimated 300 other persons have been convicted pursuant to these provisions in connection with the events of February/March 2011. Additionally, the GoB has initiated proposals that would amend laws restricting freedoms of expression and association.<sup>623</sup>

1264. A number of persons who have been charged with misdemeanours under articles 165, 168, 169 and 179 of the Bahrain Penal Code, as well as other related charges, have been convicted. They are still detained pursuant to these convictions, pending appeal.

## **2. Applicable Law**

### **a) *International Law***

1265. Article 19 of the ICCPR provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;

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<sup>623</sup> See Chapter XI.



(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

1266. Similarly, article 32 of the Arab Charter on Human Rights “guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.”

1267. With regard to the ICCPR, the Human Rights Committee has noted that restrictions on the right to freedom of expression “must be ‘provided by law’; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of [article 19(3)]; and they must conform to the strict tests of necessity and proportionality.”<sup>624</sup>

1268. The Human Rights Committee has also observed that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected... The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law”.<sup>625</sup> The principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination. For instance, the value placed by the ICCPR upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.<sup>626</sup>

## **b) National Law**

### Constitution of Bahrain

1269. The Constitution of Bahrain affirms the right to freedom of expression. Article 23 provides:

Freedom of opinion and scientific research is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or otherwise under the rules and conditions laid down by law, provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused.

1270. Article 24 provides:

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<sup>624</sup> Human Rights Committee, General Comment No. 34: Article 19 Freedoms of Opinion and Expression (2011) para 22.

<sup>625</sup> Human Rights Committee, General Comment No. 27: Freedom of Movement (Article 12) (1999) para 14. See also *Marques de Morais v. Angola*, No. 1128 of 2002; *Coleman v. Australia*, No. 1157 of 2003.

<sup>626</sup> *Bodrozic v. Serbia and Montenegro*, No. 1180 of 2003.

## Chapter VI — Allegations of Human Rights Violations Against the Person

With due regard for the provisions of the preceding Article, the freedom of the press, printing and publishing is guaranteed under the rules and conditions laid down by law.

1271. Article 31 provides:

The public rights and freedoms stated in this Constitution may only be regulated or limited by or in accordance with the law, and such regulation or limitation may not prejudice the essence of the right or freedom.

### Bahrain Penal Code

1272. Most of the complainants identified above were charged with violating articles 165, 168, 169 or 179 of the Bahrain Penal Code during the events of February/March 2011.

1273. Article 165 of the Penal Code provides: “Any person who uses one of the publication methods to incite hatred towards the ruling regime or show contempt towards it shall be punished with imprisonment.”

1274. Article 168 provides:

A punishment of imprisonment for a period of no more than two years and a fine not exceeding BD 200, or either penalty, shall be imposed upon any person who wilfully broadcasts any false or malicious news reports, statements or rumours, or spreads adverse publicity, if such conduct results in disturbing public security, terrorising people or causing damage to public interest.

The same penalty shall be imposed upon any person who possesses, either personally or through others, any documents or publications containing anything provided for in the preceding paragraph, if they are intended for distribution or reading by others, and upon any person who possesses any publishing, recording or promotion device intended, even on a temporary basis, for the printing, recording or broadcast of any of the above.<sup>627</sup>

1275. Article 169 provides:

A punishment of imprisonment for a period of no more than two years and a fine not exceeding BD 200, or either penalty, shall be imposed upon any person who publishes by any method of publication untrue reports, falsified or forged documents or falsely attributed to other person should they undermine the public peace

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<sup>627</sup> See Chapter XI, describing a proposed amendment that restricts what can be considered damaging to national security if: (i) it deliberately incites imminent violence; (ii) it is likely to incite such violence; and (iii) there is a direct and immediate connection between the statement and the likelihood or occurrence of such violence. The amendment also imposes a requirement that the individual not only wilfully published the false statement, but also had knowledge that it would cause the damages enumerated in the proposed amendment.



or cause damage to the country's supreme interest or to the State's creditworthiness.

If such publication results in undermining public peace or causing damage to the country's supreme interest or to the State's creditworthiness, the punishment shall be a prison sentence.

1276. Article 179 provides:

If one or more of those assembled attempt to use violence for the realisation of the purpose for which they have assembled, their action shall be deemed as a riot. The penalty for each person who knowingly takes part in such riot shall be a prison sentence and a fine not exceeding BD 500, or either penalty.

1277. Article 180 provides:

If one of the public authority officers finds that five persons or more have demonstrated with the intent of causing a riot, he may in such capacity order them to disperse. Thereafter, he shall be empowered to take the necessary measures for dispersing those who have not complied with the order by arresting them and may use force within reasonable limits against any person resisting that order. He may not use firearms except in extreme necessity or when someone's life is threatened.

Persons still demonstrating after the issue of the order to disperse while being aware of such order shall be liable for imprisonment and a fine not exceeding BD 300, or either penalty.

Decree No. 47 of 2002 regulating the Press and Publications

1278. Article 68 of Decree No. 47 of 2002 regulating the Press and Publications prescribes imprisonment for any person who blames or criticises HM King Hamad for acts undertaken by the Government or incites to overthrow the regime. This Decree provides:

Without prejudice to any harsher sanction set forth in the penal code or any other law, whoever publishes something embodying any of the following acts shall be sanctioned with imprisonment for a period not less than six months:

- a. Abuse or criticism of the official State religion in its constitution and its foundations.
- b. Criticising or blaming the King for any act undertaken by the Government.
- c. Incitements to commit killings, robbery or arson or crimes against the state security, unless nothing resulted from the incitement.
- d. Incitement to overthrow or to change the regime.

In case of recurrence within three years from the ruling date of the previous crime, the sanction shall be imprisonment for a period not more than five years, without prejudice to imposition of the supplementary penalties set forth in Article 75 of the Decree.

### **3. Findings and Conclusions**

1279. A large number of individuals were prosecuted before the National Safety Courts and imprisoned for violating articles 165, 168, 169, 179 and 180 of the Bahrain Penal Code in connection with the events of February/March 2011. The Commission considers that the GoB used these articles to punish those in the opposition and to deter political opposition.

1280. In the light of the way that these provisions have been applied in Bahrain, the Commission has a number of concerns about their conformity with international human rights law and with the Constitution of Bahrain.

1281. Article 165 of the Penal Code was applied in a way that infringes upon the freedoms of opinion and expression by excluding from the public debate opinions that express opposition to the existing system of government in Bahrain, as well as opinions that call for any peaceful change in the structure or system of government or for regime change.

1282. Paragraph 1 of article 168 places broad restrictions on the exercise of freedoms of opinion and expression by criminalising “any false or malicious news reports, statements or rumours or spreads adverse publicity”. The absence of clear thresholds governing the application of this provision, and the ambiguity of notions such as “malicious news reports”, “rumours” and “adverse publicity”, raise concerns about the overly broad restrictions imposed by this article. These concerns are heightened by the manner in which the provision was applied in connection with the events of February/March 2011.

1283. Paragraph 2 of article 168 criminalises the possession in any way or form of material proscribed by paragraph 1. This has been applied so as to restrict the freedoms of opinion and expression by infringing the right to seek, receive and impart information.

1284. Articles 165, 168 and 169 of the Penal Code also restrict opinion and expression by criminalising incitement to hatred towards the regime or damaging public interest, without requiring any material act that causes social or individual harm. They have been applied to repress legitimate criticism of the GoB.

1285. The Commission communicated these views to the GoB, and on 11 November 2011 the Commission received an official response from the GoB indicating that a number of legislative amendments had been sent from the GoB to the Council of Representatives. These include amendments to articles 168 and 169 of the Penal Code, intended to bring them into conformity with

the ICCPR and the Arab Charter.<sup>628</sup> They also include amendments to 20 articles of the Constitution as well as several amendments to Law No. 26 of 2005 on Political Societies, which regulates the establishment and operation of political societies in Bahrain.

1286. Article 179 of the Penal Code has also been used by National Safety Courts to convict persons who opposed the GoB. The use of article 179 in connection with the events of February/March 2011 was similar to the use of articles 165, 168 and 169 as discussed above, namely as a means of repressing freedom of assembly and punishing those who seek to exercise that right. Article 179 criminalises acts that constitute “attempts” to participate in violence, which this provision characterised as rioting. However, this definition does not include a key element of the crime of attempt, namely the taking of material or tangible steps towards the commission of the crime. Thus, article 179 can be used against persons seeking to exercise their internationally guaranteed right of freedom of assembly, without the need to prove the commission of material or tangible conduct. Moreover, article 179 criminalises attempts to commit acts of violence, without requiring any act leading to violence to have been committed.

1287. In the light of the way that these provisions have been applied in Bahrain, the Commission considers that the cumulative effect of articles 179 and 180 of the Penal Code is to place overly broad restrictions on the right of assembly, which is protected by the Constitution of Bahrain,<sup>629</sup> the ICCPR<sup>630</sup> and the Arab Charter.<sup>631</sup> Law enforcement officials have, under these two articles, have the authority to take forceful measures to disperse individuals who have not committed specific acts of violence or taken substantial steps in that direction.

1288. Finally, the Commission considers that the GoB’s record in the cases outlined above demonstrates substantial inconsistency. Upon inquiry by Commission investigators, the Attorney General has not provided a reasonable explanation for this disparity in treatment and unequal application of the law. This raises the issue of whether the law has been applied fairly to all persons charged with crimes that fall within the protected area of freedom of opinion, speech and expression.

1289. The estimated 300 persons who were convicted under article 165, 168, 169 and 179 of the Bahrain Penal Code and charged with misdemeanours received sentences of one year imprisonment per charge. Because of the multiplicity of the charges, most received a cumulative consecutive sentence of three years imprisonment. The Commission is also concerned that the imposition of penalties in misdemeanour cases, in the application of articles 165, 168 and 169 of the Penal Code, has been cumulative for multiple charges

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<sup>628</sup> This may also be the reason why the GoB dropped the charges under these articles against the 14 top political opposition figures convicted by the National Safety Courts. However, these charges have not been withdrawn with regard to over 300 individuals who have already been convicted of misdemeanours but are awaiting appeals.

<sup>629</sup> Constitution of Bahrain, art 28(b).

<sup>630</sup> ICCPR, art 21.

<sup>631</sup> Arab Charter, art 24.

arising out of the same conduct, thus resulting in punishment equivalent to that of felonies. This, in the view of the Commission, is disproportionate to the objectives and interests that these articles seek to protect.

1290. The Attorney General has not dropped these charges nor has he requested the Court of Appeals to reduce the sentences. The Commission has been informed that at the next hearing the Attorney General will request the Court of Appeals to reduce the sentences to time served. This means that the longest penalty will be a few months imprisonment, but the validity of the convictions will not be affected. Consequently, such persons will be deemed to have a past criminal conviction with all attending personal and professional consequences.

#### **4. Recommendations**

1291. The Commission recommends that all persons charged with offences involving political expression, not consisting of advocacy of violence, have their convictions reviewed and sentences commuted or, as the case may be, outstanding charges against them dropped.

### **Section F – Allegations of Enforced Disappearances**

#### **1. Introduction**

1292. The Commission received 169 reports from individuals making allegations relating to enforced disappearances. In addition, Al Wefaq National Islamic Society (Al Wefaq) submitted a report to the Commission which suggested that approximately 1,000 individuals were subjected to enforced disappearance. The Al Wefaq report contained a list of 500 names which allegedly related to victims of enforced disappearance. The mandate of the Commission to investigate these allegations of enforced disappearances is contained in article 9(7) of Royal Order No. 28 of 2011, which provides that the Commission's report shall contain an "[e]xamination of allegations of disappearances".

#### **2. Factual Background**

1293. The 169 reports received by the Commission included allegations that persons were arrested and detained without acknowledgement or in facilities the location of which was not disclosed to the detainees or their families. These individuals were subsequently released or held in police custody or detention centres. The majority of the reports were provided by individuals who either were still detained or had recently been released from detention. The periods of time during which it is alleged that the locations of the detainees were unknown ranged from one day to a few weeks and, in a few cases, months. The Commission also received reports of cases in which the very fact of the detention was not known to the families for a period ranging from days to two weeks and in which the individuals were subjected to legal proceedings or investigations in unknown locations. In addition, all of the 169