

# Bahrain Monitor

A Monthly Newsletter on the Human Rights Situation in Bahrain



**Bahrain Human Rights Monitor**

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## The Upcoming Elections and Human Rights Future

Bahrain is preparing itself for the new parliamentary elections during which it is expected that political and civil societies, as well as defenders of women's rights, will engage and fiercely compete more than the previous experience of 2006. It is hard to anticipate the turnout of this election considering the pessimistic stance of some Bahrainis about the extent of the public participation. Contrary to this, BHRM believes that this is not going to be the case as there are many new players looking for political positions in Parliament.

It is essential that the political process and election continue in order to help the democratic experience mature and maintain a reasonable amount of respect for human rights.

If the political process loses its credibility in the eyes of the public, or if it is derailed, it will not then be possible to guarantee the protection of human rights and prevent violations. On the other hand, a political process cannot continue or gain respect in an oppressive environment or where human rights are violated.

The political process in Bahrain, which includes elections as one of its main elements, is an umbrella for human rights reforms. It is widely believed that human rights approach represents a real solution for violence, discrimination, assaults and suppression.

The political process manages the interests of individuals and communities, as well as political conflicts and competitions. It also produces legislations that protect citizens' rights and establishes accountability, transparency and freedom of expression. Moreover, it pushes towards developing an independent judicial system. In summary, any state which decides to reform and democratise its political system would gradually develop its human rights.

Conversely, human rights violations take place extensively in totalitarian regimes as it cannot flourish in deteriorated political situations. Therefore, political, social and civil rights can only be protected in a just system. This system must be approved by the public who elect its figures and ultimately decide the fate of the elections.

The political transition and the elections in Bahrain have resulted in a better human rights situation. Despite isolated incidents of violence and riots and human rights violations, the development of the political process in recent years reflects public and official support to the choice of respecting human rights.

Public satisfaction with the political process can be measured in many ways: the extent of public participation in elections such as the number of voters and the diversity of candidates and their genders. It also can be measured through the political process's ability to attract new political players who previously boycotted it. This is in addition to its ability to answer public demands through Parliament legislations and improving the Government's performance.

We hope to see a new Parliament that learns past experiences and succeeds in achieving the ambitions of the voters and all their fundamental rights.

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### Al Byaan Praises the Ministry of Social Development

The Chairmen of Al Byaan Society, Sheikh Mohammed Turki Aman, praised the Ministry of Social Development's funding program; which aims to support and encourage civil society organizations to participate in the development of the Bahraini society. He stressed the fact that this program has proved to be effective in encouraging civil organizations to participate in improving and developing the Ministry's local services. Sheikh Aman also said that Al Byaan is launching a project entitled 'volunteer to develop the country' in order to attract activists in the voluntary field and prepare them through specialised workshop. He also called upon national banks to participate in the funding programs for civil institutions. It is noteworthy that some civil society institutions have demanded an increase in the official support for their activities.

### Dialogue to Solve Foreign Workers' Problems

The Secretary-General of the General Federation of Bahrain Trade Unions (GFTU), Salman Jaffer Al Mahfood, called for solving the problems of foreign workers through the use of dialogue between the Ministry of Labour, foreign workers and unions or the GFTU as representative of Bahrain workers. This took place after some construction foundations called the riot police to deal with strikers protesting against their conditions. Consequently, some workers were deported to their countries and accused of inciting strikes. Mahfood criticised this action and stated that it harms Bahrain's reputation, which is built on being a country of laws and



institutions- especially as strikes take place in a peaceful and civilised manner. He also called for dialogue as a means to solving the problems of foreign workers with regards to payment, accommodation and transport.

### Youth Meeting

The Bahrain Democratic Youth Society organised a meeting to discuss a national strategy for youth, which was adopted in 2004. The meeting was organised by youth societies, the Government and the UNDP. A number of youths, in addition to a representative from the UNDP, participated in the program. The president of the Society, Mohammed Al Ghaib, said that despite the passing of many years since the

### Political Societies and the Question of Electing a Woman!

The Secretary-General of the Supreme Council for Women, Dr Lulu Al Awadi, believes that the announcement of female candidates for the 2010 parliamentary elections came late. She hopes that women will win and stated that the candidates do not rely on their competence but the support of the political societies. She also pointed out that the position of independent candidates is not better than the female candidates who lack the support of political societies.

She also added that the political societies' support for women remains theoretical but in practice women are not part of their priorities. She also stated that political societies do not want to risk a guaranteed seat for women's sake, stressing the importance of women having political presence in Parliament.



adoption of the strategy, it remains inactive. He also called for implementing the strategy despite all obstacles hindering its implementation.

### Anti-Slavery visits Bahrain

Krishna Abadaya from the London-based anti-slavery organisation paid a visit to the Nepalese workers' accommodation in the GCC cleaning company in Salmabad. He was accompanied by the president and members of the workers' union and a representative of the GFTU. The visit was part of a tour to several countries in order to get to know the problems facing Nepalese workers. Abadaya addressed the workers in their native language and stressed the importance of working together with the union in order to organise themselves, achieve their demands in accordance to the Bahraini Labour Law. The President of the union, Ibrahim Al-Saffar, encouraged the workers to present their demands and needs to the Union. He added that the Bahraini Trade Union Law guarantees the freedom to workers to join unions despite their nationalities, and protects their rights. He also advised the workers to use dialogue before engaging in strikes.



### Call to grant Nationality to Children of Bahraini women

The President of the Bahraini Young Ladies Association, Sameera Abdulla,

called upon the Government to allow the children of Bahraini women married to foreigners to get the Bahraini nationality. She called for the change to coincide with the Kingdom's celebration of the Bahraini Women's Day on the 1st of December.

She added that issuing this important decision during this occasion represents a well deserved appreciation for women. She pointed to the suffering of many divorced women, widowed or abandoned whose children lack the nationality. She stressed women's right to choose their partners despite their nationalities.

The campaign 'nationality is my right; and my child's right', which was launched in 2005, aims to add merely one phrase to Article 4 of the current Nationality Law of 1963. The Article would then read after the addition: 'a person will be considered Bahraini if he is born inside or outside Bahrain to a Bahraini father or mother'.

## Protection of Workers during Summer

On 1 July 2010, the Ministerial Decree No. 24 for 2007 came into force. The Decree prohibits workers in the construction sector from working under the heat of the sun in open spaces between 12 noon and 4 pm during July and August each year. The Minister of Labour, Dr. Majeed Al Alwi, stated that the implementation of the Decree reflects Bahrain's determination to apply international labour standards in order to protect workers; especially during harsh weather

conditions and when the temperature is extremely high. The Under-Secretary, Jameel Hodaydan called upon the employers in the



Jameel Hodaydan

construction sector to comply with the Decree by setting up a timetable in work sites to illustrate the working

hours in a language that is understood by the workers. Hodaydan warned the employers from ignoring the Ministry's Decree and pointed out that the Ministry would take legal actions against any breaches and will refer violators to the Public Prosecutor.

## Monitoring and Funding Elections

The Bahrain Transparency Society

### Financial Disclosure Law

After a long struggle and continued demands by civil society organizations, the Financial Disclosure Law No. 32 for 2010 was finally announced after being signed by the King. The Law applies to the following:

ministers, deputies of the prime ministers, under secretaries and their deputies, directors, governors, chairmen and members of the Shura Council and MPs, members of local councils and municipalities, Judges, Prosecutors, representatives of Government in public institutions and companies, heads and senior officials and directors, Government employees etc.



The issuing of this law illustrates that Bahrain is heading towards greater transparency, the promotion of accountability, integrity and financial and administrative control. It is also making steps to combat financial and administrative corruption in various State apparatus. The Chairman of the Shura Council, Ali Salih Al Salih, highlighted the cooperation of both the Legislative and Executive authorities in the passing of this new law and noted the ratification of the UN Convention against Corruption on 4 February 2010.

requested permission from Government to observe the upcoming elections for municipalities and Parliament expected to take place next October. The Society requested financial support from Government; especially as the Government refuses foreign monitors during elections. According to some sources, the Ministry of Social Development said that monitoring elections is not the responsibility of the Transparency Society. It is worth mentioning that the Transparency Society and the Bahraini Human Rights Society had monitored the 2002 and 2006 elections and intend to do the same in the next elections. Both societies are planning to monitor the upcoming elections despite the fact that the two societies have not been given permission to monitor the elections, according to the President of the Transparency society, Abdul Nabi Al Ekri.. He stated in Al Wasat on 6 July 2010: 'We depended previously on his Majesty the King's permission to monitor the elections and this time we haven't had any official response regarding the matter up till now.'



Ekri disclosed training programme for 200 individuals who will then take the responsibility of training the monitoring groups. In order to reinforce the role of civil society organizations in monitoring the elections, the Transparency Society sent a letter to the Minister of Justice requesting permission to monitor the elections. On the other hand, the Secretary-General of the Bahrain Society for Human Rights, Abdullah Al Durazi, stated that the Ministry of Social Development should not interfere in both societies' work. He said: 'We advise the Ministry of Social Development to not ban or obstruct the societies' work as this will harm Bahrain's good reputation with regards to election monitoring. If the Ministry prevents the joint committee from monitoring the elections, this will harm the democratic process.' (Al Ayam 20 July 2010).

## Bahrain in the AOHR's report

In July 2010, the Cairo-based Arab Organization for Human Rights (AOHR) released its annual report. The following are the main highlights of this report regarding assessment of human rights in Bahrain:

Initially, the report discussed the constitutional and legal developments in the country pointing to the Royal Decree of November 2009 with regard to the establishment of the National Institution for Human Rights (NIHR). It also presented some of its aims and objectives. The report also mentioned the second Royal Decree issued in April 2010 regarding the appointment of the NIHR members. The report highlighted the names of a number of human rights activists who were given the responsibility of managing the NIHR.

The report of the AOHR reflected the opinion of the Bahraini civil society regarding the NIHR stating that 'as usual a number of civil society organizations issued many statements doubting the independence of the NIHR'. However, the AOHR believes that 'judging any national institution depends on its performance and its ability to express society's interests. This is what we hope the Bahraini NIHR is going to achieve'.

The report also pointed to the ratification of the family protection bill on 22 April 2010 by the House of Representatives.

Under the title of: (Fundamental Rights) the report presented a number of issues including the case where the Supreme Court of Appeal revoked the verdict of a Court of First Instance of 13 October 2009, in which the Court of First Instance acquitted 19 persons accused of killing a security man in what is publicly known as the

Carazcan Case. The Court of Appeal sentenced each of the 19 accused to three years' imprisonment.

In addition to this, the Human Rights Watch report on torture was mentioned and how it 'triggered controversies which lead to the society demanding that the authority reveal those responsible for these inhuman practices and hold them accountable for their crimes'.

Among the issues that were mentioned in the report was also Issues related to the Anti-Trafficking Law and the establishment of a national committee for combating human trafficking, were also mentioned in the report. The report described this as a 'positive step', but highlighted concerns of the Bahrain Human Rights Society that 'there are no mechanisms to activate the Law especially with regards to oppressed domestic workers'. The report suggested that there is need to establish a fund to protect victims of human trafficking in order to help them financially during their waiting for court rulings or in appointing lawyers or in providing them with a living income during judicial deliberations. The AOHR report also mentioned the visits of the Bahrain Human Rights Society to the women's detention centre and presented parts of the report, which was issued in May 2009, and its findings and recommendations.

The AOHR covered the issue of the abolishment of the sponsorship system regarding foreign workers, which began in August 2009. Although the step was praised by many, local and international human rights organizations including the AOHR demanded that the Law also include domestic workers.



Moreover, under the title of (Public Freedoms) the report presented some of the debates regarding freedom of expression and highlighted that the Government announced a new legislation for the press in May 2008 and is expected to abolish criminal punishments in most journalistic breaches. However, despite this, the authority continued to use the Press Law (No 47 of 2002) in order to restrict the freedom of journalists and to limit the coverage of controversial issues. The law still provides for criminal punishments for some written and oral comments and can still be used in the case of writings that harm national unity.

The report also said that many journalists were subjected to legal pursuit based on the current law in the context of writing about favouritism and corruption in various Government sectors. It also added that 'journalists working in Bahrain have complained that they have been contacted by officials from the Ministry of Interior regarding their criticisms of Government policies. At times, the Ministry would even interfere to stop the publication of the information. In

April 2009 the authority closed the daily newspaper Akhbar Al Khaleeg with the excuse that it violated the Press Law but removed the ban after 24 hours.

The report also highlighted the legal pursuit of several journalists such as Hussain Sabt who was accused of publically defaming one official. After many court sessions, he was forced to publish an apology in the newspaper. It also mentioned the summoning of the writer Lamees Dhaif to the court who was accused of insulting the judiciary in a chain of articles published in February 2010.

The report stated that restrictions still exist on the use of the internet

and the closure of 1040 websites with the excuse of targeting pornographic sites by the Ministry of Information. According to the report, a closer look at these sites showed that some of them were in fact news sites and journals, debate forums and human rights sites.

### Comments on the report

1- The AOHR report on Bahrain is balanced in its comprehensive coverage and the variety of issues. The report also attempts to draw attention to the positive and negative elements in the Government's performance in a professional

manner.

2- The report also relies on credible information sources and in many cases the information is correct, although there are some shortcomings. For instance, the Ministry of Social Development prevented a workshop by the BHRS on building human rights skills on 27 -29 May 2010. This was based on the excuse that the workshop program contained some political elements and that the Society failed to publish the full details of them. However, the report failed to mention that the workshop was then given permission to take place on 18-21 June 2010.

3- There are also various ways of analysing these cases. For instance, some of the non- pornographic internet websites, which were shut down, incited hatred and violence. With regards to the authority's closure of the Bahraini Nursing Society office in Sulaimania Medical Centre on 23 March 2010, the report stated that the reason for this was the fact that the Society planned to organise a meeting that day in solidarity with the detainees of one demonstration. According to the Ministry of Health, the reason for the closure was due to the accumulation of legal and administrative breaches.

Finally, with regards to the difficulties that face Bahraini Journalists, as mentioned in the report, it is necessary to remember the fact that until now no journalist has been detained since the beginning of the reforms and that the current Press Law does not satisfy journalists. However, both the legislative and executive authorities bear responsibility for the delay in the ratification of a new Press Law, which fulfils the requirement of free journalism and abolishes the punishments that restrict journalists.

### Nazaha Society Sues Ministry of Social Development

The members of the Preparatory Committee of the Bahraini Nazaha Society (which literally means Integrity) have filed a law suit against the Ministry of Social Development. Nazaha claims that the Ministry is delaying the response to their registration request since receiving their application in November 2009. The Ministry responded to the law suit with an official letter in which it rejected registering Nazaha as a civil society. The rejection was justified on the basis that it falls outside the jurisdiction of the Ministry. The letter also stated that the Statue of the Society lacks social objectives- according to the definition of the Ministry of Social Development. Thus, it suggested that Nazaha should request the license from the Ministry of Information instead.

The members of Nazaha expressed their regret regarding the Ministry's decision. Hussain Mansoor - one of the founders - believes that the decision is unconstitutional and

against the law. He also accused the Ministry of being 'an obstacle to the freedom of citizens which is guaranteed by the Constitution and the law. Mansoor also announced



Hussain Mansoor

that they will continue their legal battle against the decision. It is noteworthy that a number of human rights activists, journalists and academics decided to establish Nazaha with the aim to introduce a code of conduct for integrity, monitor integrity during referendums and elections and fight all forms of corruption and favouritism. This is in addition to issuing national legislations, ratifying agreements to promote the values and culture of integrity and supporting the national democratic movement in the Kingdom of Bahrain.

## Similarities and Differences between National Institutions and Human Rights NGOs

The establishment of a national institution for human rights in Bahrain in November 2009 constitutes a huge leap in the path of human rights. For ordinary people in Bahrain, the establishment of a national institution has raised a number of questions particularly with regard to differences and similarities between local organizations already operating in the Bahrain arena for several years, and between the newly established national institution for human rights. This development has created confusion on the one hand and raised expectations of some people unrealistically on the other hand. This article contributes to understanding the distinction between governmental and non-governmental organizations (NGOs), particularly the difference between the National Institution for Human Rights (NIHR) and other human rights organizations (societies) in Bahrain.

Human rights organizations have different names including "institutions", "societies" and "associations". Such different names are used interchangeably. What always matters is how to establish a human rights body, its mission and objectives, the extent of its financial and administrative independence, and the extent of its actual impact in the promotion and protection of human rights in the country concerned.

Generally speaking, human rights organizations are divided into two categories: governmental organizations, and non-governmental organizations (NGOs).

### Non-Governmental Organizations (NGOs)

We will start with NGOs because they are the most visible and prominent in the human rights arena and the public arena as well. NGOs exist in many countries of the world. NGOs are formed from groups of volunteers on voluntary basis. They are not for profit-making, they are created and managed by people with common

interests and goals, both at the local level (i.e. within a single state) or at the international level (i.e. between several States or people from different countries). Both local and global NGOs are private associations working to promote and protect universally recognized human rights principles and values. The mission, objectives and tasks of human rights NGOs evolve around the protection of human rights, and people in charge of them perform voluntary work.

NGOs are divided into two categories: local NGOs (such as the Bahrain Human Rights Society, and Bahrain Human Rights Monitor) and international NGOs (such as Amnesty International, Human Rights Watch, Transparency International, etc.). All NGOs, local and global, are governed by basic law, i.e. a constitution, that defines its mission, vision, objectives, the scope of its mandates, and how they are managed and financed.

In this sense, these organizations are not linked to any government or to any of its organs or institutions. Governments do not make laws and regulations for such organizations, nor do they fund them or exercise control over their activities. They are fully independent from any government influence. Thus, NGOs are built on the personal efforts of individuals who believe and work for the promotion and protection of human rights without financial gain. They also depend heavily on self-financing of its members in addition to donations from supporters away from any government influence. NGOs do not accept contributions from government agencies (except in very limited cases and in accordance with strict conditions) in order to preserve its neutrality. But that does not prevent the existence of cooperation and coordination between human rights NGOs and some ministries and governmental bodies and institutions interested in human rights issues.

### Local NGOs

NGOs work within a state for the promotion and protection of human rights

in various fields: political, economic, social, cultural and development, as well as the promotion and protection of the rights of women and children. They are established in accordance with the laws prevailing in the State, which regulate registration and the work of local NGOs. We will take the Bahrain Human Rights Society (BHRS) as example of local human rights NGOs. The BHRS was founded in 2001. It enjoys cooperative relations with regional and international human rights organizations; it is a member of the Arab Organization for Human Rights, the International Federation of Human Rights (FIDH), the International Coalition for the International Criminal Court (ICC), and works closely with the OHCHR.

### International NGOs

International human rights NGOs are organizations or associations or institutions that cross borders and their activities cover more than one country. They are global bodies entrusted with the task of promoting respect for and protection of human rights throughout the world. Some of them are membership-based organizations, such as Amnesty International, which has more than two million members across the world, and has functioning groups in Bahrain. International NGOs influence international life and politics because of their good reputation, integrity and impartiality. The reports of international NGOs are very influential to the extent that states cannot ignore them.

### Mechanisms of NGOs

Local and international human rights NGOs adopt varied mechanisms depending on the situation, including:

1. Issuance of reports, studies and statements to expose human rights violations.
2. Receive complaints from citizens concerning human rights violations.
3. Organize training courses and publish newsletters and pamphlets to raise

awareness about human rights.

4. Provide legal aid on issues related to human rights.
5. Establish close ties with local, regional and international institutions interested in human rights.
6. Campaign on specific violations in order to draw the attention of local public opinion and the international community to them, and urge the government concerned to correct the situation.
7. Lobby the government, diplomatically and domestically, to address specific violations.
8. Promote a human rights culture through human rights education programmes.

### **Relationship between the Government and NGOs**

Relations between governments and NGOs are always tense with regard to human rights, because human rights NGOs monitor actions of the government and its employees and expose human rights violations in order to create public opinion at the local, regional and international levels to address the situation, hold violators accountable, and compensate the victims. The greater the violations in a State, the greater the larger role played by human rights NGOs.

In many countries around the world human rights NGOs collaborate with governments to strengthen the legal protection of human rights and the development of legal frameworks and mechanisms of justice and the judiciary. Human rights NGOs also contribute in capacity building activities for law enforcement agencies such as the police, prisons officers and the armed forces, on the promotion and respect for human rights for the police, detention centres, prisons and during armed conflicts.

Governments request some advice from human rights NGOs with regard to the development of strategies of human rights education and with regard to some related areas, especially when developing a national strategy to promote and protect human rights. The promotion of positive relations between governments and human rights NGOs, both locally and internationally, helps to bridge gaps and strengthen the means of human rights protection in the country concerned.

### **Relationship between NGOs and the United Nations**

Local and international human rights NGOs play an important role in the UN system through the enjoyment of consultative status in the Economic and Social Council of the UN (ECOSOC). This status is not automatic, but only acquired after meeting a number of conditions, including: that the objectives of these NGOs must be in accordance with the spirit, objectives and principles of the UN Charter. Thereafter, the NGOs have the right to attend as an observer at meetings of the ECOSOC, the Human Rights Council and their affiliates. They can also submit written statements that can be circulated as official documents, and they can make oral statements, as well as providing information about the human rights violations in a specific country.

### **Governmental Organizations (GOs)**

The UN system imposes on States to form national institutions for human rights in order to promote and protect human rights. With this understanding, such institutions are “governmental organizations” working in the human rights field. The establishment of national institutions for human rights should be in accordance with the Principles Relating to the Status of National Institutions (The Paris Principles) adopted by the General Assembly of the UN in December 1993. The Paris Principles are the main source for the establishment of national institutions for human rights and have developed frameworks to help national institutions to achieve independence, reflect societal pluralism, be accessible to people, and achieve functional independence etc.

In line with the UN resolution on the establishment of institutions at the national level to contribute to the promotion and protection of human rights and fundamental freedoms, and increasing public awareness about such rights and freedoms, many states have complied with that resolution, including some Arab countries, which have

established national institutions such as: the Advisory Council for Human Rights in Morocco, the National Council for Human Rights in Egypt, the National Centre for Human Rights in Jordan etc.

In November 2009, the King of Bahrain Hamad bin Isa Al Khalifa issued a Royal Decree No. (46) 2009 establishing the National Institution for Human Rights in accordance with the Paris Principles. The Royal Decree provides for the national institution to be independent and operate freely and impartially. The Decree also includes mechanisms to select members of the institution, its objectives, organizational procedures regulating its work, financial resources, etc.

### **The main differences**

The National Institution for Human Rights in Bahrain is still under establishment. However, it is not expected that its working mechanisms will differ from the mechanisms used by human rights NGOs within and outside Bahrain, with minor exceptions.

The greatest differences between local and international human rights NGOs on the one hand, and the Bahrain National Institution for Human Rights on the other hand, include: the powers of the National Institution for Human Rights will be limited in terms of receiving complaints, as well as issuing reports critical of any possible human rights violations in Bahrain; the National Institution for Human Rights will not be able to carry out advocacy campaigns or dissemination of public statements critical of possible violations.

Another difference is that the National Institution for Human Rights will receive the necessary financial support from the Government in contrast to NGOs, where the latter rely on membership subscriptions, donations, grants and unconditional funding from regional and international organizations.

Moreover, the National Institution for Human Rights will not acquire the advisory status in ECOSOC because it is a governmental institution and will be part of the government delegation when any reports concerning the human rights situation in Bahrain are reviewed and discussed in the relevant committees or the Human Rights Council.

## Debate over Judicial Decision on the Ma'ameer Case

Hasan Moosa Shafaei

More than a year has passed since the death of Sheikh Mohammed Riyad, an Asian worker who was attacked with Molotov cocktail by a group of youths during riots in the village of Al Ma'ameer on 7 March 2009. The assault resulted in him sustaining severe burns, which ultimately caused his death.

On 5 July 2010, the High Criminal Court found seven of the ten persons accused in this case guilty and sentenced them to life imprisonment. The lawyers of those convicted appealed against the decision and the Supreme Court of Appeal will consider the appeal on 26 September 2010.

The Court based its verdict on the confessions of the accused and the testimonies of two officers. Crime scene and post-mortem reports were also used to prove that the victim's death was due to the burns caused by the fire. In addition to this, the verdict was delivered under the Penal Code and Combating Terrorism Act of 2006. The Chief of the Defence Counsel, Lawyer Mohammed Al Tajir, believes that the Terrorism Law has increased the punishment to life imprisonment. The punishment would not exceed 7 years if the Penal Code alone was applied, according to the lawyer.

As expected, the verdict triggered a strong reaction. For instance, as soon as the President of the Court Sheikh Mohammed bin Ali Al Khalifa announced the verdict, riots began, according to the police. The families of the accused objected to the sentences and their mothers were in tears. Some reports stated that the police had violated the rights of some of the supporters of the accused.

During the same day, a protest in front of the Court building and the

Ministry of Justice turned into riots and confrontations with the police. On the night of the same day, illegal demonstrations, riots, clashes and burning of tyres and rubbish bins took place in the villages of Albilad Al Qadeem, Sitra, Ma'ameer, Doraz, Sanabis and Bani Jamra. The police was forced to interfere in order to disperse the crowd and re-open the roads.

On 7, 10, 11 and 12 July 2010, more protests, demonstrations and riots took place in several villages on daily base, especially in the village of Al Ma'ameer, which is the home town of most of the accused and the place where the incident originally took place.

The lawyers of the accused objected to the sentences especially with regards to the refusal of the torture allegations and the fact that the accused were not provided with lawyers from the very beginning. The lawyers criticised the investigation procedures because of the absence of lawyers during interrogations. In reply to this, the Court said that the 'accused did not request the presence of lawyers'. Lawyer Al Tajir said that some of the accused were beaten and that the defence file includes pictures to prove this. He pointed out that he requested from the Public Prosecutor, during the first hearing, to medically examine the detainees but that did not take place, according to him.

On the day of the verdict, the Court responded to the torture allegations by saying that 'they are untrue and there is no evidence to prove that they were tortured, especially as they were presented to a forensic doctor on the first day of their arrest. The forensic doctor concluded that the marks on



Hasan Moosa Shafaei

the body of the first accused were self-inflicted and a result of his attempt to run away during his arrest. As for the marks on the second accused, they were sustained when he also resisted the police. The injuries of the fourth and fifth detainees were again self-inflicted. The marks on the chest of the fifth detainee were hardly visible and could be as result of a skin disease. The sixth detainee's right toe was inflamed due to hitting a hard surface. As for the seventh detainee it is difficult to determine the nature and cause of the injury'. In addition to this, the Court stated that 'the testimonies of the defence witnesses regarding the torture allegations are unreliable. Moreover, the Court has the authority to admit confessions that are given at any point during the course of the investigation, even if retracted later on, as evidence against the accused, or any other person, if they are deemed to be reliable'.

The lawyers rejected the Court's response and Tajir stated that he will challenge the verdict especially with regards to the Court's dismissal of torture allegations. He added that 'it

is not possible to justify the existence of marks on an accused by saying that it is a skin disease or a result of his attempt to run away'.

On 10 July 2010, the Secretary-General of the Bahrain Human Rights Society, Abdula Al-Drazi described the verdict in the Al-Ma'meer Case as politically motivated decision, which aimed at intimidating the citizens. On 16 July 2010, the opposing political societies, including Al Wifaq Society, issued a joint statement in which they indirectly condemned the violence of the security forces and street violence and incitement. It also stressed the importance of adopting a peaceful approach to political action, avoiding violence and what might hinder national unity and civil peace.



**Protest against the ruling**



**The victim's car that was attacked with bombs**

incident as a criminal case i.e. (individuals attacking a car assuming that it belongs to the police and using bombs with the intention of causing harm). On the other hand, advocates of violence from the opposition believe that the case is political and represents 'a Government's attempt to suppress freedom of expression by accusing individuals who were expressing themselves peacefully of murder'- which is not the case. There is a moderate third party as in the statement of the political societies. Their position takes into consideration their political interests and that is why they had to condemn advocates of violence as this harms society at large and does not help in achieving political goals. But they also had to condemn

criminal perspective alone or merely a political one. For the incident occurred in the context of riots and politicised violence backed by political instigators. Also, the purpose behind riots and vandalism is completely political. In addition to this, those directly involved in violence are perceived politically-motivated. Also, the media coverage of the incident, as well as society, believe that rioting is political and rioters are a tool in politics. In fact, even the backgrounds of the defending lawyers are political. For some of them are not only members, but also leaders in political opposition parties. Therefore, it is not possible to simplify the Al-Ma'ameer case as being a criminal case only.

However, this does not justify the crime and it is not possible to acquit the criminals on the basis that it is a political case. There is concern that the number of innocent victims will increase if such criminals are not punished. Even if the crime can be described as political crime, the lives of people cannot be risked as the very philosophy behind punishment is protecting society, achieving justice and deterrence. Those who demand that the accused be released immediately cannot guarantee that such acts will not occur again by politically incited youths. Perhaps, if not for the legal pursuit of the Ma'ameer and Karazcan perpetrators, the number of Molotov victims would be much higher.

Thirdly: even if there was any shortcoming in any aspect of the trial such as a lack of transparency in the investigation resulting in forced confessions or torture or preventing lawyers from attending investigations, the essential point is that a murder took place and should not be dealt with leniently whether it is described as criminal or political. Also, the accused have the right to a fair trial in all stages of the legal and judicial process.

Despite the fact that the statement expressed its deep respect for the judiciary in promoting truth, freedom and the law, it doubted that just and fair trials can be guaranteed. Thus, during an open and licensed assembly on 10 July 2010, the societies demanded the release of the detainees.

### **What's Criminal?**

### **What's Political?**

The Al- Ma'meer case, or similarly the Karazacan case, would not have triggered this much controversy in the legal and political field, if it hadn't been for the fact that both cases impact on politics. On one hand, the Judiciary insisted on dealing with the Ma'ameer

the verdict and describe it as 'political and unjust'.

It is necessary to highlight the following:

Firstly: what occurred in the Al-Ma'meer and Karazcan cases is the murder of two victims as a result of irrational violence involving the use of bombs with the intention of causing harm. This act is a crime that cannot be justified as a peaceful form of expression. This is something that all parties have agreed upon including the Government, opposition and civil society organisations.

Secondly: the case has two clear sides: criminal and political dimensions. Therefore, it is not possible to approach this case from a

### Programme officer at the APT:

## States are obliged to ban torture and to adopt procedures to prevent its occurrence

**Association for the Prevention of Torture (APT) is an independent NGO, based in Geneva, Switzerland. APT was founded in 1977 and aims to prevent torture and all forms of ill-treatment throughout the world. BHRM interviewed Esther Schaufelberger, Programme Officer for the Middle East and North Africa at the APT and she highlighted several important points about the objectives of APT, how to prevent torture and the role of civil society in that.**

**The APT assists in the drafting and implementation of international and regional legal instruments to prevent torture, such as Optional Protocol to the UN Convention against Torture (OPCAT); the European Convention for the Prevention of Torture and the Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa; have there been any attempts from your organization to create a similar instrument in the Middle East?**

We believe that torture is most likely to occur in places out of the public view, particularly when the safeguards against torture and ill-treatment are weak and when potential perpetrators can act with impunity. Our vision is a world-wide system of independent oversight of all places of deprivation of liberty. In the 1970s, when our organization was created, this idea has initially been dismissed as a dream of some utopians. Nowadays it is a reality in many parts of the world, where independent experts of national, regional and international organizations do regularly visit places of detention. These visits serve to prevent torture and other ill-treatment and help to improve conditions of detention. Detained persons and officials in many countries have come to appreciate the meetings with the independent visitors and do benefit from their advice.

Most prominently, 54 States have now ratified the Optional Protocol to the UN Convention against Torture (OPCAT). The OPCAT sets-up a two-pillar system of regular visits by a UN expert group and independent national visitors. Since the entry into force of the OPCAT in 2006, the

APT focuses its main efforts on getting this world-wide system up and running, while continuing to support the regional mechanisms.

In the Middle East, the idea of independent oversight of detention centres is slowly gaining grounds. The first Middle Eastern State to ratify the OPCAT was Lebanon, in December 2008. In other countries National Human Rights Institutions and civil society organizations have gained access to places of detention. I am thinking for example about the prison visit schemes of the National Human Rights Institutions of Jordan and Morocco, or visits by NGOs such as the two visits that the Bahrain Human Rights Society conducted. Our current strategy in this region is to promote the concept of independent oversight and to support those national and regional actors that are committed to contribute to torture prevention. We have not attempted to create a regional system of oversight similar to what exists in Europe, the Americas or Africa yet, but once a critical mass of supporters of such an idea exist in the region, we would definitely support them in their efforts.

It is worth mentioning in this context that the Arab Charter on Human Rights that entered into force in March 2008 does not



only prohibit torture but also puts a positive obligation on States parties to take effective preventive measures to prevent such acts from happening.

**The APT leads the campaign to ratify and implement the OPCAT which establishes the first global system of detention monitoring. To what extent your organization managed to convince countries in the Middle East to join the Protocol?**

I have to acknowledge that at first sight it looks like we were less successful in this part of the world than elsewhere. So far, Lebanon is the only State party to the Protocol in the region. This is a pity, because I am in fact convinced that the OPCAT is exceptionally well fitted to respond to particular Middle Eastern concerns.

First of all, the OPCAT does not set any new standards, but it is an operational instrument designed to empower States to better implement existing standards that

protect persons deprived of liberty. Since no additional standards are created there is no risk of conflict with specific cultural and social values of the region. Secondly, the vast bulk of detention monitoring under the OPCAT is conducted by national experts who are guided by international, regional

**Esther: Our current strategy in the region promotes the concept of independent oversight of places of detention, and support national and regional actors to contribute to the prevention of torture.**

and national standards and values. Thirdly, the OPCAT with its cooperative and solution-oriented approach is an ideal mechanism to accompany and steer justice reform processes as they are underway in many States of the region.

In general, I can say that several governments in the region are open to the idea. Morocco, Tunisia, Egypt, Saudi-Arabia, Iraq, Qatar and Yemen, for example, have all committed themselves to examine the possibility to ratify the OPCAT in the context of the Universal Periodic Review (UPR) of the UN Human Rights Council. These commitments are a great opportunity to approach these States, sit-down with the officials and explain the advantages of joining the Protocol. But the APT does not have the human or financial resources to follow-up in all States. We are less than 20 staff members, working out in a small office in Geneva, and alone we can achieve very little.

**How active is the civil society in the Middle East and North Africa campaigning for OPCAT ratification?**

Civil society, including National Human Rights Institutions, play a key role in the campaign, all over the world. Our capacity for lobbying from Geneva is limited. Moreover, we often don't know the local context well enough to know how to proceed and which arguments to use. We always work with local partners, from civil society and government, supporting them in their

efforts in obtaining ratification instead of starting our own campaign. In Lebanon, national civil society organizations have played a key role in obtaining the ratification, through targeted campaigns, the building of a coalition and involvement of parliamentarians. We provided the Lebanese NGOs with our publications, some of which they have translated into Arabic, we participated in workshops, but it was a national, Lebanese campaign, not an APT campaign.

In other countries, for example in Morocco or Bahrain, civil society organizations do actively lobby for the ratification of OPCAT and talk to government officials about it. On the other hand, some NGOs in the Middle East and elsewhere are a bit skeptical initially about how OPCAT could work in their countries. And because they used to a more confrontational approach with governments, they find that the OPCAT is a "weak" instrument. It is true, the bodies created under the OPCAT can only make recommendations, they cannot oblige the authorities to implement any of these recommendations. But we have seen all over the world how the dialogue between external experts and detaining authorities does lead to improvements over time.

**The APT set up recently a workshop entitled «Safeguards against torture», which was held in Bahrain in June 2010. Are you satisfied with outcome of the workshop, and do you think the workshop has achieved its intended purpose, and what is the next step in your opinion that should be taken by Bahrain after this workshop?**

The APT has been involved in two different workshops in Bahrain this year. In May 2010 we participated in a workshop organized by the Bahrain Human Rights Society on detention monitoring for human rights activists from the Gulf and Yemen. In June 2010 we facilitated a workshop for

judges and prosecutors about fundamental safeguards against torture. This was the follow-up to a workshop we conducted in May 2009 on the criminalisation and prevention of torture, for which we had been invited by the Ministry of Foreign Affairs.

As you know, States are not only obliged under international law to prohibit torture, international law also lays down a whole series of safeguards that States need to proactively take to reduce the risk of torture. Such safeguards are for example the right of a person forced to remain with the police to have access to a lawyer, to meet with an independent doctor and to inform his family. All of these have to take place from the outset of his deprivation of liberty and regularly thereafter. Video-recording of interrogation sessions is another very effective safeguard. Other protection measures relate to the interaction with the judiciary. As you know, evidence, including confessions, obtain by torture is inadmissible under international law in any legal proceedings. Moreover, judges should never rely on confessions alone for

**Independent oversight of detention centres is proceeding slowly and is less successful in the Middle East. It is unfortunate that Lebanon is the only country that has ratified the OPCAT.**

convictions but they should be obliged to always base their decisions on additional corroborative evidence. Related to this, the system of promotions in law enforcement and other investigative bodies should not depend on a speedy identification and conviction of a maximum of offenders, but on careful and comprehensive search for the truth. We observe that the risk for torture increases dramatically when police and other investigative bodies are under pressure to obtain confessions. Under international law judges have an ex-officio obligation to order a prompt and impartial investigation, wherever there is reasonable ground to believe that an act

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of torture or other ill-treatment has been committed on a person brought in front of them. They have to do so not only when a person alleges to have been tortured, but as soon as they observe any signs or behaviour that leads them to wonder if this could have happened.

In our latest workshop we had fruitful discussions with the participants about if and how these and other safeguards are enshrined in Bahraini law and implemented in everyday practice.

### **Civil society, including national human rights institutions, has played a key role in the campaign to ratify the OPCAT across the world**

Unfortunately, the number of participants was quite limited this year as compared to last year's workshop, which made the discussion less representative and surely lowered the impact of the seminar. It is too early for me to say if the objectives of the workshop have nevertheless been met. The most important result of such workshops are not what happens during the workshop itself, but changes that happen in everyday practice after the workshop.

**Your Organization specializes in the prevention of torture rather than focuses its attention on reporting individual cases, this approach enable the APT to cooperate with the authorities in a particular country, such as: police departments, the judicial authorities, national institutions and NGOs. Is this approach successful in facilitating cooperation with the concerned authorities in the Middle East?**

Accurate and detailed documentation of human rights violations and denunciation of such practices is of primordial importance in the struggle against torture. Courageous human rights defenders all over the world do take risks on a daily basis to bring violations, including torture, to light. But this always happens after violations have already taken place. Our mandate focuses on improving the

system in such a way to reduce the risk of torture and other ill-treatment, so that such horrible, devastating acts do not happen in the first place. We therefore have another approach, we try to bring all actors together who are committed to lessen the risk of torture, be they from government, civil society or the judiciary. And in general it works very well. I think it lies in the nature of mankind that human beings like to get together and join forces to work for a better future.

But I don't want to sound naïve: we are confronted with challenges, in the Middle East and elsewhere, of course. We need to be careful not to be misused for window dressing exercises or for masking political objectives. Let me give you one example of how detention monitoring can be misused. As you know, States parties to the UN Convention against Torture are not allowed to expel, return or extradite a person to another State where he would be in danger of being subjected to torture. But some States try to circumvent this obligation by signing bilateral agreements in which the receiving state assures the sending state that a certain individual will not be tortured. Isn't that absurd – they are already obliged not to torture under no circumstances and by signing such agreements they acknowledge that in general they torture but in this case they will not! Moreover, these agreements do not protect against torture and human rights NGOs are therefore rightly campaigning against them. To diffuse critics, some governments include a oversight obligation for one individual detainee into these agreements. But of course this is an abuse of oversight and no protection against torture for the individual under concern. If we feel our ideas get misused, like in this case, we say that clearly and publicly.

**One of essential conditions contained in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is that States Parties shall**

**ensure the prohibition of torture and the punishment of perpetrators under domestic criminal law. Do you think the contents of domestic criminal law in the Middle East states enough to prevent torture and punish the perpetrators?**

Yes, indeed, the individual criminal responsibility for perpetrators of torture under domestic law is a key obligation under the UN Convention and an important bulwark against impunity. The Committee against Torture therefore requires from States to include a definition of torture in conformity with the Convention. This definition includes the following key elements:

(a) any act by which severe pain or suffering, whether physical or mental, is inflicted on a person;

(b) the pain or suffering must be intentionally inflicted on the person; for a purpose;

(c) the pain or suffering must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

It is not sufficient to have acts of torture covered by other offences, such as assault. If there is no specific definition, the judge has to juggle with different definitions and torturers risk to escape a punishment that corresponds to the real gravity of the act. Moreover, the authorities are confronted with practical problems because important elements of the Convention such as those related to universal jurisdiction will not be implemented. Similarly, states will not be able to track down the impact of torture prevention measures.

States like Jordan and Morocco have recently amended their penal codes to include definitions of torture close to the one of the convention, but most others still have to do so. Many have committed themselves in the front of the UN Committee against Torture or the UPR to undertake such legal amendments, like for example Egypt recently. This opens windows of opportunity for all of us and we definitely want to join forces with others to make use of these windows!