NACIONES UNIDAS **E**

Consejo Económico y Social

Distr.
GENERAL

E/CN.4/2002/77/Add.2
5 de marzo de 2002

ESPAÑOL
Original: FRANCÉS

COMISIÓN DE DERECHOS HUMANOS
58º período de sesiones
Tema 11 a) del programa provisional

LOS DERECHOS CIVILES Y POLÍTICOS, EN PARTICULAR LAS CUESTIONES RELACIONADAS CON: LA TORTURA Y LA DETENCIÓN

Informe del Grupo de Trabajo sobre la Detención Arbitraria

Adición

Visita a Bahrein*

RESUMEN

Una delegación del Grupo de Trabajo sobre la Detención Arbitraria visitó Bahrein del 19 al 24 de octubre de 2001. La delegación estaba integrada por dos miembros del Grupo de Trabajo, el Sr. Louis Joinet, su Vicepresidente, y la Sra. Leïla Zerrougui (Argelia), acompañados por el secretario del Grupo. Durante toda la misión, la delegación recibió la plena cooperación del Gobierno de Bahrein. Las autoridades autorizaron el acceso sin restricciones a todas las penitenciarías y a las celdas de las comisarías de policía. Los miembros de la delegación pudieron entrevistarse libremente y sin testigos con presos escogidos al azar.

La delegación se reunió en diversas ocasiones con personalidades del Gobierno. En Manama, se entrevistó con el Ministro de Relaciones Exteriores, el Ministro del Interior, el Gobernador de la capital (Manama), el Director de Asuntos Jurídicos, el Presidente y los miembros de la Comisión de Derechos Humanos de la Asamblea Consultiva (la Choura),

* El resumen del presente informe de misión se distribuye en todos los idiomas oficiales. El informe en sí, cuya versión original está en francés e inglés, se distribuye solamente en árabe y en inglés; el informe figura en el anexo del presente resumen.

GE.02-11289 (S) 210302 140402

miembros de la Comisión de Activación de la Carta Nacional, magistrados y funcionarios del Ministerio de Justicia y de los Asuntos Islámicos, el Director General de Prisiones y miembros de la Comisión de Derechos Humanos del Ministerio del Interior. En cuanto a los contactos con fuentes no gubernamentales, el Grupo celebró reuniones de trabajo con el Presidente del Colegio de Abogados, varios representantes de la sociedad civil femenina y una delegación de la Sociedad de Derechos Humanos de Bahrein.

El Grupo de Trabajo considera que, en lo que respecta tanto al espíritu como a la letra de su mandato, esta misión es una de las más positivas que hayan efectuado sus miembros. La puesta en libertad de todos los presos, en especial de aquellos sobre cuya suerte se había pronunciado el Grupo, ha sido la consagración de ese éxito.

El Grupo de Trabajo formula en el presente informe las siguientes recomendaciones:

a) El Gobierno debería adoptar las medidas necesarias para que se tome en consideración la buena fe del deudor insolvente; debería hacer lo necesario para que se deroguen las disposiciones que autorizan el encarcelamiento por el impago de deudas civiles;

b) El Grupo de Trabajo recomienda al Gobierno que mejore el control del respeto de los derechos humanos de los extranjeros sometidos al régimen de los "visados libres" y aplique los artículos 198 y 302 bis del Código Penal, y que ponga a disposición de la justicia a los patrocinadores que violen la reglamentación y no acaten este régimen;

c) El Gobierno debería revisar el mecanismo que rige los tribunales militares para armonizarlo con las normas universales;

d) El Grupo recomienda al Gobierno que amplíe la competencia del tribunal de menores a los menores de más de 15 años y menos de 18. Recomienda asimismo que se modifique el mecanismo jurídico actualmente en vigor a fin de garantizar a esta categoría de menores la asistencia obligatoria de un abogado, de prever medidas de rehabilitación adaptadas a su edad y de separarlos de los mayores en las cárceles;

e) El Grupo de Trabajo invita al Gobierno a que permita a las mujeres acceder a la magistratura;

f) El Grupo recomienda también que se establezca un mecanismo jurídico eficaz para prevenir y castigar la violencia contra la mujer, en particular la violencia intrafamiliar;

g) Debería darse alta prioridad a la aprobación del proyecto de ley que se está preparando para sustituir la actual Ley sobre las sociedades y clubes de 1987 y la Ley sobre los impresos y las publicaciones de 1978; y, por último,

h) Las autoridades deberían adoptar las iniciativas apropiadas para facilitar el contacto de los detenidos con los servicios consulares locales de sus países de origen y para lograr que los países interesados atiendan sus peticiones en las mejores condiciones posibles.

Annex

Report of the Working Group on Arbitrary Detention on its visit to Bahrain (19-24 October 2001)

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Introduction

1. At the fifty-third session of the Sub-Commission on the Promotion and Protection of Human Rights, the permanent representative of Bahrain to the United Nations Office at Geneva announced that his Government had decided to invite the Working Group on Arbitrary Detention to visit Bahrain on dates to be set in consultation with the Working Group. Initially scheduled to take place during the course of 1999, the visit did not take place because of practical problems encountered by the Bahraini authorities. On 6 July 1999, the Bahraini Under-Secretary for Foreign Affairs wrote to the Vice-Chairman of the Working Group asking for the visit to be deferred to a later date. After further consultations, the visit was scheduled for 25 February to 3 March 2001. Because some of its members were unavailable, however, the Working Group had in turn to ask for a postponement, and the visit finally took place from 19 to 24 October 2001. The delegation comprised two numbers of the Working Group, its Vice-Chairman, Mr. Louis Joinet, and Mrs Leïla Zerrougui (Algeria), accompanied by the Group's secretary.

2. Throughout its visit, the delegation enjoyed the full cooperation of the Bahraini Government. The authorities granted it unrestricted access to all prisons and police station holding cells. It was able to speak freely and without witnesses to prisoners it selected at random. It visited all the Bahraini prisons in which men and women are held in pre-trial detention or while serving sentence, and the rehabilitation centres for minors (for more details, see chapter III). The delegation members thank the Bahraini authorities for their cooperation; they also thank the office of the United Nations Development Programme (UNDP) Resident Coordinator in Manama for its help and logistical support.

3. The delegation met Government figures on various occasions. In Manama, it met the Foreign Minister, the Interior Minister, the governor of the capital (Manama), the Director of Legal Affairs, the Chairman and members of the Shura (Consultative) Council's Human Rights Committee, members of the committee responsible for giving effect to the National Action Charter, judicial officers and officials of the Ministry of Justice and Islamic Affairs, the Director-General of Prisons and members of the Ministry of the Interior's commission on human rights.

4. As regards non-governmental sources, the delegation had working meetings with the President of the Bar association, several representatives of female civil society and a delegation from the Bahraini Human Rights Society.

5. The delegation also had working meetings with officials from UNDP, the United Nations Information Centre, the United Nations Industrial Development Organization (UNIDO), the United Nations Environment Programme (UNEP) and the United Nations Children's Fund (UNICEF).

I. SUSPENSION OF THE DEVELOPMENT OF THE RULE OF LAW (1975-1999)

6. Following independence, proclaimed on 16 December 1971, Bahrain adopted a Constitution in 1973 that separated the legislature, the executive and the judiciary, and instituted a National Assembly comprising 30 elected members and 14 ministers who were members ex officio.

7. Relations between the Government and the Assembly became strained in 1974, when the Government submitted a bill on state security measures which the elected members rejected. In response to this opposition, the Amir promulgated the draft by decree – the Legislative Decree on State Security Measures – on 22 October 1974, then dissolved the Assembly and suspended articles 43 to 82 of the Constitution which dealt with the legislature and elections.

8. This was the setting for the promulgation by decree No. 15/1976 of the 1976 Criminal Code, article 185 of which placed matters relating to State security under the jurisdiction of an emergency tribunal, the State Security Court. That Court, established by Legislative Decree No. 7/1976, had rules of procedure that differed from ordinary law; its jurisdiction was later, in 1986 and again in 1996, extended to other offences.

9. This emergency legislation underlay most of the decisions and opinions (six) in which, between 1996 and 2000, the Working Group found that the detention of 34 individuals whose cases had been brought to its attention was arbitrary. The Group held that the main provisions of the legislation so compromised the right to a fair trial as to give the deprivation of liberty an arbitrary character (category III in the Group's revised methods of work). The provisions concerned were the following:

(a) Article 7 of Legislative Decree No. 7/1976, stating "Court decision[s] shall be final and not subject to any kind of appeal";

(b) Article 5 of that Decree, empowering the Court to find an accused guilty solely on the strength of confessions obtained during the police investigation;

(c) Article 1 of the Legislative Decree on State Security Measures of 22 October 1974, which empowered the Interior Minister, acting alone, to issue a ministerial order for the arrest and detention for up to three years of any individual on grounds relating to State security: no appeal against such a decision was permitted for the first three months, and thereafter appeals could be lodged only once every six months;

(d) Article 7 of that Decree, which made it the rule, not the exception, that "the proceedings of the Court shall always be held in camera and shall only be attended by the prosecution, the complainant and his representatives".

10. For further information on this matter, the delegation conducted interviews with former detainees – some released recently, others a while ago – and with lawyers who had practised at the State Security Court. This enabled it to amass a body of specific, consistent testimony confirming the nature of the violations reported by the Working Group in its communications, i.e. that they seriously compromised the right to a fair trial as defined in the Body of Principles

for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in resolution 43/173 on 9 December 1988, and mentioned in the Group's methods of work.

11. Among the most significant situations the delegation considered, one stands out. After the Working Group's adoption of opinion No. 6/1998 on 14 May 1998, the Government challenged some of the points the Group had made. By letter dated 7 September 1998 (ref. No. 9/23-266), for instance, it stressed that "… Appellants have the right to appoint lawyers to represent them at any time after their arrest, but in practice often wait until they [get] to the Court when the Court is then bound by law to appoint a Defence Lawyer for them free of charge". The delegation discovered that, while many of the former detainees had indeed had a lawyer, mostly one automatically assigned to them, this was only for the judgement hearing, almost never for the decisive phase of the inquiry (pre-trial detention), owing to pressure from some investigators who claimed that there was no point in giving them the assistance of a lawyer at the opening of the inquiry since, whatever transpired, for the first three months the Interior Minister alone could decide, without appeal, whether an arrestee should be detained.

12. Another of the Working Group's concerns that was confirmed by these interviews was that the principle of equality of arms was violated. Two situations of this kind caught the delegation's attention:

(a) Invocation of article 3.4 of the Legislative Decree on State Security Measures, which permitted the State Security Court to set aside testimony for the defence on the grounds that it did not relate to the matter at issue, whereas no such option was available against the State prosecutor;

(b) Another breach of the principle of equality of arms: the lawyer was not given the file until shortly before the hearing – sometimes only the night before – while the State prosecutor, being a part of the Ministry of the Interior, had access to the whole of the file throughout the proceedings.

13. Moreover, article 5, paragraph 9 (b), of Legislative Decree No. 7/1976 held that confessions outweighed other evidence as "proof positive", and this is doubtless the reason why at the time confessions were frequently extracted under torture, especially, according to consistent accounts, at the Security and Intelligence Service (SIS) holding cells and at Al-Quala Fort, the aim being to provide the Court with a file of full written confessions. The Working Group wishes to draw attention here to its opinion No. 34/1994, in which it stated that a conviction based on confessions obtained under torture not only represented a violation of article 5 of the Universal Declaration of Human Rights, which prohibits torture, but also rendered the resulting detention arbitrary.

II. RESUMPTION OF THE DEVELOPMENT OF THE RULE OF LAW (1999-2004)

14. In the light of the foregoing, the Working Group was very pleased to learn of the recent acts of clemency and reforms, such as it had been calling for in its decisions and opinions. These important developments had come about:

(a) First, by doing away with both the causes (emergency legislation and justice) and the effects (arbitrary detention) of the violations that had been brought to the Working Group's attention;

(b) Second, to prevent a recurrence of the violations, by backing up with substantive reforms, both institutional (the National Charter for action and its objectives) and legal (various repeals and reform of the Code of Criminal Procedure), the development of the rule of law that had begun with the proclamation of independence in 1971 but been interrupted between 1975 and 1999. On succeeding his father, who died in March 1999, to the throne, the Amir, H. H. Shaikh Hamad bin Isa Al Khalifa, instituted important changes as part of a transitional process that, to the surprise of many observers, took account of some of the concerns shared by broad sectors of civil society, human rights issues among them.

15. This transitional period – the first, medium-term stage in a process expected to culminate by 2004 in the election of a new National Assembly – was called for in a National Charter submitted to referendum and approved, on 15 February 2001, by 98.4 per cent of the votes in a poll whose fairness was not contested. This pact of popular sovereignty gave the Charter a legitimacy that all three branches of government, the executive, the legislature and the judiciary, will have to take into account pending the adoption of constitutional and, before them, institutional and legislative reforms.

A. Institutional reforms

16. A Constitutional Amendment Committee has been set up to consider what amendments should be made to the current Constitution – partly suspended since 1975 – in view of the four guiding principles laid down in the Charter:

(a) Transformation of the State of Bahrain into the Kingdom of Bahrain, the Amir taking the title of King and the regime becoming a constitutional monarchy (Charter, chap. II-A);

(b) Introduction of a mixed two-house system comprising a decision-making legislative organ made up, for the most part, of members elected in a nation-wide ballot, and responsible for passing laws (the Chamber of Deputies), and a consultative body, the Shura (Consultative) Council, composed of unelected dignitaries and experts, whose function is to give opinions as required (Charter, chap. V). The Shura Council, which is already sitting, has elected from among its members for a four-year term a Human Rights Committee, whose powers the delegation feels it necessary to describe in more detail:

The Human Rights Committee

At a hearing which it granted the delegation, the Committee defined its role as being to consider the texts of bills and other legislation relating to human rights; to cooperate with the authorities concerned with human rights issues; to monitor the progress of human rights issues; to take part in any national or international studies, research and seminars on human rights; to cooperate with national human rights institutions throughout the world, especially in Gulf Cooperation Council countries; to represent Bahrain on the Inter-Parliamentary Union Committee on the Human Rights of

Parliamentarians, in Geneva; and to consider any matters referred to it by the Amir, to whom the Committee reports directly every year. Among the recommendations and opinions brought to the Committee's attention, the delegation dwelt in particular on an opinion relating to a bill that would do away with the requirement for prior authorization from the husband before a wife could be issued a passport, and a recommendation concerning the ratification of the Convention on the Elimination of All Forms of Discrimination against Women. The Committee also has powers similar to those of an ombudsman. At the time of the delegation's visit it was officially dealing with some sixty applications for reinstatement at work and a further ten or so requesting the return of a passport.

(c) Strengthening the independence of the judiciary (Charter, chap. II, para. 6) by the establishment of a Constitutional Court and a Higher Judicial Council, and by making the State prosecution service a part of the Ministry of Justice, rather than the Ministry of the Interior;

(d) Establishing a committee to give effect to the National Charter, under the chairmanship of the Crown Prince, to supervise the implementation and follow-up of the reforms called for in the Charter during the transitional period.

B. Repeal of emergency legislation

17. These reforms consist in the repeal of the emergency laws of 1975 and abolition of the State Security Court, and the associated positive effects of releasing prisoners and allowing exiles to return by means of an amnesty. The delegation also considered the question of the compensation due to victims of human rights violations and the role of civil society.

1. Repeal of emergency legislation and courts

18. The Working Group has been especially pleased to learn of the repeals of two crucial pieces of legislation, since they have put an end to the violations that have been brought to its attention in recent years. They amount to a major political shift in favour of human rights.

(a) Abolition of the State Security Court: the delegation took care to see for itself and take official note that the premises in which the Court formerly sat are now closed;

(b) Repeal of the emergency legislation referred to in paragraphs 8 and 9 above, rejected by the National Assembly before its dissolution in 1975, adopted at that time by legislative decree, then amended in 1982 and 1996 to enlarge its scope; it was this legislation that gave rise to most of the cases of detention that the Working Group ruled arbitrary.

19. It will also be noted that Bahrain has, as it promised the Sub-Commission on the Promotion and Protection of Human Rights, withdrawn its reservation to article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment calling for an inquiry if the Committee against Torture receives information indicating that torture is being systematically practised in the territory of a State party.

2. Amnesties

20. The general amnesty (Legislative Decree No. 10/2001) covers all offences falling under the jurisdiction of the State Security Court other than life-threatening offences covered by articles 333 and 336 of the Criminal Code. Its effects have been far-reaching because it accomplished three things: the release of all detainees, whether held in police custody, pre-trial detention or in prison, serving sentence after conviction; the ending of all proceedings, including those against individuals still at large and unidentified culprits; and the return home of exiles. Even the few individuals facing prosecution for or convicted of blood crimes have benefited from an act of clemency (a pardon), the Amir having decided to defray the costs of compensating victims.

21. In its interviews with former detainees, their lawyers and representatives of civil society, the delegation found that these surprisingly extensive amnesties have been extremely well received, with only a few reservations:

(a) The amnesty appears to extend to fines, which have sometimes been very heavy: the Legislative Decree could usefully have been more specific on this point;

(b) Logically – though the wording again does not make it clear – the bond posted so that individuals could be released on bail pending trial ought to be returned;

(c) Article 3, paragraph 3, of the Legislative Decree proclaiming the general amnesty states that, without prejudice to the rights of third parties, no action at law based on the Legislative Decree or related texts may be entertained. Does this mean that:

1. The amnesty also covers the perpetrators of serious violations of individual rights, including acts of aggravated torture?

2. Compensation to former prisoners, including those who, as the delegation members were able to witness, show indisputable physical or psychological traces of their ordeal, is ruled out?

How, in other words, is Legislative Decree No. 10/2001 to be construed vis-à-vis those guilty of aggravated torture, and on the subject of victims' right to compensation?

22. On 26 June 2001, speaking on the occasion of the United Nations International Day in Support of Victims of Torture, the Amir, H.H. Shaikh Hamad bin Isa Al-Khalifa, said: "Torture is a heinous crime that is outlawed by Bahraini law, just as it is rejected by the teachings of our Islamic religion and condemned by our traditions and our cultural heritage."

23. The delegation members, welcoming the resolute clarity of this statement, feel that the matter needs to be addressed in the light of the points below:

(a) Article 19 (d) of the Constitution, prohibiting torture, which remains in force (see para. 33 below);

(b) Chapter I, article 2.3, of the National Charter, reading: "No person shall be subject to any kind of moral or physical torture, or to any inhuman, degrading or humiliating treatment, under any circumstances. Any confession or utterance obtained under torture, threats or persuasion shall be null and void. An accused shall not be subjected to physical or moral harm. The law guarantees punishment of those who commit torture or physically or psychologically harmful acts";

(c) Regarding those who commit torture: acts of torture did not fall within the jurisdiction of the State Security Court, and their perpetrators would therefore not appear to be covered by article 1, paragraph 3, of Legislative Decree No. 10/2001, which uses the criterion of the Court's jurisdiction to determine the scope of application of the amnesty;

(d) One may therefore deduce that, applicable statutory periods of limitation notwithstanding, because acts of torture are covered by the ordinary law their perpetrators cannot claim that proceedings against them cannot be entertained by virtue of article 3 of Legislative Decree No. 10/2001, since that article applies only to judicial proceedings based on the Legislative Decree.

24. In actual fact, however, the delegation had the impression during its interviews that the prevailing opinion in many parts of civil society is that, the current process being still so fragile, priority should be given less to judicial proceedings of this kind than to the removal from office of Bahraini or foreign police officers to whom acts of torture are manifestly attributable. As just mentioned, mainstream opinion puts the highest priority on victims' right to compensation, inter alia for torture, and in particular to medical care with specific physical and psychological attention.

3. Return home of exiles

25. The return, announced in the interests of national reconciliation, took place in phases depending on the legal status of the various categories of people concerned. It is now complete, in the sense that to the delegation's knowledge the only people continuing to live abroad are those exiles who have, for the time being, given up the idea of returning to Bahrain for personal reasons (family, career etc), and they – according to the authorities – can return later to settle permanently or stay as long as they like.

26. The few difficulties that the delegation did come across related to the issuance, renewal or return of passports, and these matters have been put before the Shura Council's Human Rights Committee.

27. The question of the cancellation of international search warrants, which is linked to the effects of the amnesty, was raised at the hearing granted to the delegation by the Foreign Minister in view of its international or, rather, bilateral ramifications. Lists of (now amnestied) individuals were previously sent to neighbouring countries (chiefly Saudi Arabia and Kuwait). Just before the delegation's visit, a person mentioned on one such list had been imprisoned in Kuwait. The Minister, who knew of the problem, assured the delegation that instructions had been given to cancel the lists, and that odd delays here and there were due solely to the fact that they were being handled bilaterally.

4. Compensation due to victims of human rights violations

28. Following the amnesty, the delegation observed that a great many former prisoners and exiles were finding it very hard to find work or return to their former jobs, especially in the civil service, or to reclaim their homes or professional or commercial premises. The worst situations involved individuals who had suffered disabilities due to torture; these people must be given access to medical care including physical and psychological attention. (The delegation has already come across a score of cases in Manama in which short-term care is required.) Heartened by H.H. the Amir's statement that the State of Bahrain "¼has [¼] upgraded its close relations and active cooperation with the United Nations" (speech on the occasion of the United Nations International Day in Support of Victims of Torture, see above), the Working Group urges the United Nations Voluntary Fund for Victims of Torture to look favourably upon any application for financing that satisfies its criteria. According to the Fund's guidelines, applications for support for assistance to victims of torture can be submitted by any non-governmental organization; projects financed by the Fund can cover a variety of kinds of assistance and expenditure, including the salaries of specialized practitioners who have, where necessary, previously received training for the purpose through a specialized agency with Fund support.

29. According to information the delegation received, responses to applications for work, some involving reacceptance into the civil service, were apparently starting to come in, case by case, sometimes even with retroactive payment of salary if the individual concerned had been definitively cleared though those, it seems were relatively exceptional cases. A modicum of transparency ought to be afforded by introducing appropriate transitional rules to ensure that there is no unevenness in the way applications are handled.

5. The role of civil society

30. Civil society organizations are subject to the highly restrictive Societies and Clubs Act of 1987, under the authority of the Ministry of the Interior, the Ministry of Labour and the Supreme Council of Youth and Sport. Although this repressive legislation remains in force, the Bahrain Human Rights Society, a non-governmental organization, finds the overall situation positive:

> "H.H. the Amir did not wait for a new law to be promulgated but has given the green light for the establishment of the Bahraini Workers' Union (BWU) and other associations reflecting the diversity of Bahraini society, which now has over ten authorized associations. H.H. the Amir has also granted permits to associations that could turn into political forums, such as the National Democratic Action Society (NDAS), the Hahoual Democratic Forum Society (HDFS) and the long-standing Social Reform Society (SRS)."

A bill to replace the restrictive 1987 Act is in preparation. It is to be hoped that it will pass and take effect as soon as possible, adding to the budding cooperation between the State and civil society.

C. Reforms in the administration of justice

31. Amongst the great changes taking place, the administration of justice lies at the heart of the current reforms, as the delegation was able to ascertain. Before describing these reforms, it is pertinent to review the constitutional principles that underpin the current system for the administration of justice.

32. The Constitution adopted in 1973 expressly calls for an independent judiciary and states that, in the administration of justice, judges should not be subject to any authority (art. 101). The law is nevertheless cited as the means of regulating access to justice, the organization and operation of the justice system, and the organization and operation of the law-enforcement authorities. Articles 102 and 103 proclaim the establishment of a Supreme Council of the Judiciary, a constitutional court and courts martial with jurisdiction restricted to members of the armed and security forces.

33. The Constitution stipulates that individual liberties, in particular those covered by the mandate of the Working Group, are guaranteed by the law and may be restricted only under the supervision of the judicial authorities. Article 19 states:

> "(a) Personal liberty is guaranteed in accordance with the law.
>
> "(b) No person shall be arrested, detained, searched or compelled to reside in a specific place, nor shall the residence of any person or his liberty of movement be restricted, except in accordance with the law and under the supervision of the judicial authorities.
>
> "(c) No detention or imprisonment shall be imposed in places other than those specified in the prison laws. In these places, health and social welfare shall be observed, and they shall be subject to the supervision of the judicial authorities.
>
> "(d) No person shall be subjected to physical or mental torture, enticement or degrading treatment, and the law shall provide the penalty for these acts. Any statement or confession shall be null and void if it is proved to have been made under duress or enticement or degrading treatment or threat thereof."

34. Article 20 sets forth other universal principles such as the presumption of innocence, the legal definition of crimes and penalties, non-retroactivity of laws imposing punishments, and the right to a fair hearing in which the accused is guaranteed the right to defence at all stages of the investigation and trial.

35. It must, however, be pointed out that the Constitution was partially suspended after the first elected National Assembly was dissolved in 1975, and the constitutional court was never established. Penal laws predating the adoption of the Constitution, and in some instances inconsistent with the principles that the Constitution sets forth, continued to apply, and the situation was made worse by the promulgation of the emergency legislation mentioned above (see chap. I).

36. The Working Group welcomes the scale of the changes that have come about in the areas covered by its mandate. Descriptions of the most important of these changes may be found in the six subsections below.

1. How the administration of justice is currently organized, and the impending reforms

37. The organization of the judicial system and the status of judges are governed by Legislative Decree No. 13 of 1971. Articles 7 and 8 of the Code of Criminal Procedure, as amended by Legislative Decree No. 8 of 1996, determine the hierarchy of the criminal courts and their respective jurisdictions. Pursuant to Legislative Decree No. 17 of 1976, minors aged under 15 are tried by a special body, the Juvenile Court. Military offences committed by members of the armed or security (police) forces come under the jurisdiction of the court martial established by the law of 1968 introducing the Code of Military Procedure, in the case of the former, and the Disciplinary Tribunal established by Legislative Decree No. 3 of 1982, in the case of the latter (see below, paras. 73 ff.)

2. Organization of the ordinary courts

38. Legislative Decree No. 13 states that the judiciary consists of two separate structures:

(a) The civil judiciary, which applies the standards of positive law and has jurisdiction over not only criminal but also civil, commercial, social and administrative cases and cases relating to the personal status of non-Muslims;

(b) The Shariah judiciary, comprising two sections – one Sunni, one Jaafari (two canons of Muslim law) – at each level of courts, with jurisdiction limited to cases relating to the personal status of Sunni and Shiite Muslims.

39. Since the abolition of the State Security Court, the hierarchy of courts with jurisdiction over criminal matters in which the defendants are civilians has been as follows:

(a) The Court of Cassation, ruling only on points of law, which has jurisdiction over the cases assigned to it by virtue of the law under which it was set up;

(b) The High Court of Appeal, which has jurisdiction over the decisions handed down in criminal cases by the High Court;

(c) The High Court, which tries criminal cases in first instance and handles appeals against judgements handed down by the Court of ordinary jurisdiction;

(d) The Court of ordinary jurisdiction, which tries minor offences and infractions in first instance.

3. Status of judges

40. The status of judges is currently regulated by articles 29 ff. of Legislative Decree No. 13 of 1971, as amended by Legislative Decrees No. 17 of 1977, No. 4 of 1999 and No. 19 of 2000 on the organization of the judiciary. These instruments stipulate that judges are chosen from among persons (Bahrainis and even foreigners) who satisfy the conditions prescribed by law. They are appointed by the Minister of Justice either directly to the High Court or to the lower courts. The appointments are not made on a competitive basis, nor even are judges subject to an aptitude test; the selection of candidates is at the discretion of the competent authorities. The removal of judges is subject to the same considerations.

41. The supreme council of the judiciary called for in the 1973 Constitution to supervise the judicial branch has only just been established. Before 2000, judges were under the direct authority of the Minister of Justice, who was authorized to supervise them, take disciplinary measures against them and recommend their removal. It was Legislative Decree No. 19 of 2000, cited above, which gave effect to the new Constitutional provisions establishing the Higher Judicial Council. The Council is composed exclusively of legal officers serving ex officio: the chief justice of the Court of Cassation (presiding); the chief justice and two most senior judges of the High Court of Appeal, the chief justice of the Shariah Court of Appeal (Sunni branch), the chief justice of the Shariah Court of Appeal (Jaafari branch), and the chief justice of the High Court.

42. All the powers which were formerly vested in the Minister of Justice now lie with the Higher Judicial Council. It supervises the work of judges, manages their careers, and recommends appointments and promotions. It carries out inspections and takes disciplinary action against judges. Legislative Decree No. 19 draws a clear dividing line between the executive branch, represented by the Minister of Justice, and judges' work and career development.

43. The Working Group is of the view that this reform is a great step forward, showing how much things are changing in Bahrain. It welcomes this development and invites the authorities to speed up the introduction of mechanisms to give practical effect to the independence of the judiciary, the basic principles of which are enshrined in the National Charter.

44. The Working Group believes it should point out, however, that in the delegation's meetings with lawyers and representatives of civil society, reservations were voiced about the relative independence of the Higher Judicial Council. These informants believed that so long as appointment to the judiciary was not competitive but remained at the discretion of the authorities, the independence of judges was compromised, especially given that Council members were appointed ex officio from among the various chief justices who had close ties to the ruling political class and were thus insufficiently representative of the pluralistic nature of society.

45. During their meetings, the members of the delegation also learned that the presence of foreigners in the judiciary (Egyptians and Sudanese, for instance) was not always appreciated. Some professionals stated that recourse to foreign judges, which in the past could be justified by the dearth of Bahraini lawyers, was now resented, particularly by the Shi'ite majority; Shi'ite

activists claim that recourse to Sunni foreigners is calculated to exclude them from the national administration. Also on the subject of the independence of judges, the majority of informants highlight the weakness of the judiciary, the conservatism and the incompetence of many judges who have not been given adequate training. Accordingly, the Working Group believes that a significant effort needs to be made in this sphere.

46. At their meeting with the delegation, members of the committee working under the chairmanship of the Crown Prince to give effect to the National Charter affirmed their commitment to the independence of the judiciary and reported that, within the terms of their mandate, they had started to tidy up the legal provisions currently in force to bring them into line with the Charter. The necessary proposals and recommendations would gradually be forwarded to the authorities in order to expedite the introduction of mechanisms and institutions guaranteeing the practical application of the heralded reforms.

47. It was in this connection that the status of the judiciary and the various instruments regulating the exercise of citizens' rights and fundamental freedoms found their way onto the Committee's schedule. The schedule indicates that the Committee is sincere in its desire to ensure the independence of the judiciary and put effective supervisory mechanisms in place.

48. During the delegation's visit, H.H. the Amir announced the opening of a Law Faculty and the Committee introduced two anti-corruption bills, one on public contracts and the other on the control of public finances, at a televised news conference. Texts concerning the judiciary will be examined after the unemployment and advertising bills. The establishment of the Constitutional Court referred to in the Constitution is also on the agenda.

49. The Working Group welcomes these pertinent initiatives and encourages the Committee to pursue them. It stresses, however, that while nobody disputes that changes have taken place, reforms cannot progress beyond the theoretical stage unless attitudes change as well. The existence of an independent judiciary of course requires appropriate laws to be promulgated, but it is also important to ensure that the independence of judges is actually enshrined and respected in practice.

50. To this end, it is necessary to make judges more conscious of their new assignments, provide them with proper training, review the procedure for recruiting them and ensure that candidates are selected on the basis of objective and transparent criteria in conformity with the Basic Principles on the Independence of the Judiciary adopted by the United Nations in 1985.

4. Prosecuting and investigative bodies

51. The criminal justice system currently in place is based on the Anglo-Saxon model in which there is no judicial police operating under the authority of legal officers, no State prosecutor's office, no investigating judges such as exist in criminal systems based on Romano-Germanic law, and no judges responsible for the execution of sentences. Prosecution and investigative functions are carried out by police officers and officials under the authority of the Ministry of the Interior. The same officers are entrusted with executing judicial decisions and administering prisons. Only judicial bodies (courts and tribunals) are under the stewardship

of the Minister of Justice. The two systems remain completely independent from each other, pending the introduction of a new organizational model which appears to be based on the Romano-Germanic system.

(a) Organization of prosecuting bodies

52. Under current law, the police and Directorate of State Security form part of the Ministry of the Interior and perform all their functions – keeping the peace, crime prevention, searches, investigation and prosecution – under the authority and supervision of the Minister of the Interior, assisted by the Director-General of Security and public prosecutors who represent the Crown in the courts.

53. Legislative Decree No. 3 of 1982 on the status of the security services assimilates police officers to military personnel and categorizes certain actions when committed by police officers as military crimes under the jurisdiction of a special tribunal, the Disciplinary Tribunal, which is virtually a court martial (see para. 73).

54. The police monopoly on the entire preparatory phase of proceedings and the wide powers vested in the police under the present system of criminal justice have led to abuses which the justice system has either condoned or been powerless to prevent. The reforms are intended to make good these deficiencies and restrict the powers of the police by removing their power to prosecute; this power will henceforth be entrusted to judicial officers, under whose authority the police will operate. This reform, to be examined in greater detail, was well regarded by the members of the justice system and representatives of civil society whom the delegation met.

55. The delegation also learned that the services of the Ministry of the Interior are actively preparing for the change in their assignments. Modern methods are being introduced to enable police officers to work in accordance with the new Code of Criminal Procedure. Computerized instructions have been made available to police officers on maintaining and using a database, knowing their rights and acting within the law, especially when making arrests, conducting interrogations, and holding people in police custody or pre-trial detention.

56. The Working Group welcomes the changes now taking place within the police services which the delegation observed during its visits to the Criminal Investigation Department and police stations. It remains to be seen whether the justice system is also capable of meeting new challenges while ensuring respect for legal safeguards in practice. Not all the instruments currently in force are flawed, the problem lies rather in their practical application. The authorities say they are aware that the reforms will not take root immediately, yet they insist that there is a genuine willingness to build a State governed by the rule of law.

(b) Current procedures for arrest and detention

57. Under the system as it currently stands, the entire preparatory phase of criminal proceedings is in the hands of the police, who may proceed without judicial warrant to stop and question suspects, make arrests, carry out searches and investigations, start proceedings against suspects, prepare cases and conduct the prosecution at trial. Regarding infringements of liberty, however, the powers of the police are subject to judicial supervision. Because there is a 48-hour

non-renewable time limit on police custody (art. 25 of the Code of Criminal Procedure), anyone in police custody must be brought before a judge before this time limit expires (art. 79, para. 1). It is the judge who decides whether a person in custody should continue to be detained or be freed on bail or otherwise. Detainees may be remanded for up to seven days, but the court can extend this period - if the inquiry so warrants or in the interests of justice - right up to the trial (art. 79, para. 2). The decision to continue pre-trial detention may be challenged in the court which handed it down (art. 79, para. 3), and this remedy may be exercised monthly. In the case of crimes against State security, provision is made for indefinite detention - as we have emphasized - under article 79, paragraph 3, of the Criminal Code, which states: "In crimes prejudicing State security, whether from inside or outside the country, as provided in the Criminal Code detention for an indefinite period shall be authorized."

58. During its visits to police stations and the detention facilities of the Criminal Investigation Department, the delegation ascertained that the time limit for police custody was generally adhered to, and most of the persons questioned stated that they had been brought before a judge within the time frame prescribed by law.

59. However, some problems have been noted in connection with the extension of pre-trial detention. Nearly everybody questioned stated that every seven days they were taken before the court and their pre-trial detention was systematically extended unless they posted bail. In criminal cases, it seems that the judge sometimes extends pre-trial detention without setting eyes on the detainees, who do not even leave the courthouse holding cells to be brought before the court.

60. Because confessions to the police are not admissible as evidence (art. 128, para. 3), they are corroborated under a procedure whereby the police bring before the investigating judge (termed the "confessions judge" by detainees) accused persons who have confessed to the crime with which they have been charged so that they can repeat their confessions. This procedure, which permits the police to use confessions in court as evidence for the prosecution, is pernicious insofar as a lawyer is not always present at this stage of proceedings and the accused is in the hands of the police.

5. The Bar (and legal aid)

61. The legal profession is currently regulated by Legislative Decree No. 26 of 1980. The Working Group reports that this instrument does not conform to the Basic Principles on the Role of Lawyers adopted by the United Nations in 1990, especially principles 24 and 25 on professional associations of lawyers and principles 26-29 on disciplinary proceedings. The Bar does not exist as a professional organization. Candidates who satisfy the conditions established by the Legislative Decree must apply to be included on the roll of pupil barristers kept by the Minister of Justice, who may accept or refuse their applications on the advice of a commission made up of the chief justice of the High Court (who chairs the commission), the Minister of Justice, a High Court judge and a lawyer appointed by the Minister of Justice. This same commission is empowered to evaluate the ability of the pupil barrister and the Minister of Justice orders his registration on the Bar roll if the period of pupillage is validated.

62. Registration on the Bar roll is subject to payment of an annual fee; if the fee is not paid, the lawyer is struck off the roll by order of the Minister of Justice. Disciplinary proceedings are brought by the Minister before a commission comprising three judges and two lawyers appointed by the Minister. Lawyers' fees are paid by the client. Disputed cases are settled in the High Court.

63. Provision is made for legal aid, which is granted by a commission composed of lawyers. In cases where the law compels representation by counsel (criminal and juvenile cases), legal aid is granted by order of the Minister of Justice and the officially assigned counsel's fees are set by the court and defrayed by the Treasury.

64. Article 19 of the Legislative Decree states that, in carrying out their professional duties, lawyers are authorized to represent their clients before the courts. Under article 24, the police services and all bodies with quasi-judicial powers are obliged to facilitate counsel's work, permit counsel to represent clients during the preparation of the case and to give counsel access to the case file, on condition that the proceedings are not obstructed.

65. In practice, according to information from a number of past and present detainees and certain lawyers, legal representation is not permitted during police custody, despite there being no law against it. Generally speaking, it is only when a person is brought before a judge that the family hires a lawyer. For indigent persons, defence counsel is officially assigned only in criminal cases and only when a case comes to court: "Every person accused before any Criminal Court may of right be defended by a *wakil*" (Code of Criminal Procedure, art. 124). As all the preparatory proceedings are handled by the police, they take place - even in criminal cases - with no lawyer present and counsel is officially assigned to represent the accused only on the day of the trial. According to consistent reports from present and former detainees, the officially assigned counsel will often conduct a single interview with his client before defending him the same day.

66. This practice, which all too often reduces the right of defence to a mere formality, is incompatible with article 20 of the Constitution and relevant international standards. The right to a fair trial cannot be effective unless the right to legal representation is guaranteed throughout all stages of the procedure, particularly for persons deprived of their liberty, regardless of whether they have committed offences under ordinary law. Discussions that members of the Working Group have had with lawyers suggest that the fate of ordinary-law detainees and foreigners in administrative custody is not one of their priorities; they are more concerned with those formerly held in connection with security offences and the implementation of political reforms. Among the programmes of technical cooperation between the Office of the High Commissioner for Human Rights and Bahrain, therefore, it would be advisable to make provision for one to make lawyers more aware of the importance of their role in shaping a State governed by the rule of law, where the presumption of innocence and the right to a fair trial of all accused persons, however serious the charges against them, are respected.

67. The status of lawyers is now being discussed with a view to organizing the profession into a professional body, and a new Code of Criminal Procedure is in the process of being promulgated. It is important to ensure that the new Code embodies the relevant universal

principles, guaranteeing the right of all accused persons to avail themselves of a proper defence. It is equally important not to underestimate the financial implications for the remuneration of officially assigned lawyers implicit in this reform.

6. Juvenile justice

68. The administration of juvenile justice is currently regulated by Legislative Decree No. 17 of 1976, which establishes a Juvenile Court competent to hear cases involving minors up to the age of 15 who have committed an offence or are somehow at risk. These minors are not criminally responsible in the eyes of the law: "A person who is not more than 15 years of age at the time of committing an act constituting a crime shall not be held liable. In this case, he shall be subjected to the provisions of the juveniles' law" (Criminal Code, art. 32).

69. This is consistent with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"). The rules really are applied in practice, as the Working Group's delegation was able to ascertain when it visited the juvenile rehabilitation centre run by the Ministry of the Interior in Isa Town. The Centre has the necessary personnel and facilities to provide appropriate care for girls and boys who are placed there by order of the Juvenile Court. Current procedure stipulates that a minor charged with an offence must be represented by a lawyer and that the only measures the court may apply are those intended to bring about his re-education or reabsorption into society. The Centre is run by women police officers assisted by women teachers, sociologists, psychologists and other specialized staff. The children attend school and then undergo vocational training. They play sports, participate in outside activities, receive visits and may be allowed to spend weekends with their families.

70. Juveniles between 15 and 18 years of age are criminally responsible and may be tried in the ordinary courts in the same way as adults. Article 70 of the Criminal Code stipulates that minority is a defence and an extenuating circumstance for juveniles aged between 15 and 18, and article 71 provides for reduced penalties: "If there is an extenuating justification for an offence punishable by a death sentence, the penalty shall be reduced to jail or imprisonment for one year. If the penalty for such offence is life or term imprisonment it shall be reduced to the punishment for a misdemeanour unless the law otherwise provides."

71. From this general formula, which is not specifically aimed at juveniles, it follows that whereas minors may not be sentenced to death, they can be sentenced to harsh penalties, especially for criminal offences. The courts have considerable latitude in the matter and nothing prevents them from imposing the same penalty on a minor as on his adult co-principals. For example, the delegation spoke to individuals serving heavy sentences for offences committed when they were only 16, and in some cases the court passed the same sentence on them as on their co-principals or accomplices.

72. The 1964 Penitentiary Code currently in force makes no specific provision for prisoners under the age of 18, except to say that persons under 16 years of age may not be chained up (art. 9). The prison authorities explained to the delegation that prisoners over the age of 16 were housed with adults; segregation of adults and juveniles was only applied in the case of under-16s, who are categorized as remand prisoners and treated as such. In this connection, the Working Group, while noting that conditions of detention in Bahraini prisons are satisfactory

overall, reminds the authorities that under international law anyone below 18 years of age is considered a minor, and that under the Beijing Rules minors aged 18, even when criminally liable, must be tried by a special court which seeks to safeguard their best interests and takes account of their age by applying specially developed standards. Their segregation from adults is a requirement of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

7. Administration of justice in the army and the police force

73. Under article 102 (b) of the Constitution, civilians are not subject to the jurisdiction of courts martial:

> "The jurisdiction of courts martial shall be restricted to military crimes committed by members of the armed and security forces and shall not extend to others except during the time of martial law within the limits determined by the law."

This rule has never been violated, as was confirmed by everyone the delegation spoke to. Since the dissolution of the State Security Court and the repeal of the emergency legislation, civilians may be tried only by courts of general jurisdiction applying the rules of ordinary law. Special courts have been established by law to try members of the security forces and the military who have committed military offences. For military personnel, this is the Court Martial established by a law of 1968, and for police officers, prison warders, and all members of the security services under the authority of the Ministry of the Interior, the Disciplinary Tribunal established under Legislative Decree No. 3 of 1982. The officers of these courts are drawn exclusively from military personnel or police officers.

74. Under police regulations, police officers are considered to be military personnel and the military offences listed in the Code of Military Procedure are applicable to them. Article 81 of Legislative Decree No. 3 categorizes as military offences those committed by members of the security services at their workplace or in barracks, when on duty, when in uniform, or in the course of an assignment connected with their duties. The same article specifies that where civilians are implicated in the commission of such offences, only civilian courts are competent to try civilians and police officers together. Where military personnel are involved, the proceedings are separated and only the civilians are sent for trial by the competent civilian court.

75. The judgements of these courts are not subject to review by the Court of Cassation, the only admissible remedy being an administrative appeal which the convicted person may address, as appropriate, to the Minister of the Interior or the Minister of Defence. The minister's powers are unlimited and discretionary. He may uphold the judgement, reduce the penalty, overturn the judgement without ordering a retrial, or refer the case back to the same court for trial by a different judge. Thus, someone convicted by the court for a serious offence may simply be pardoned by the minister, and the aggrieved party or his heirs and creditors can do nothing about it. The law does not say whether a ministerial pardon is a bar to a civil action, which would fall within the jurisdiction of the ordinary courts.

76. A visit to Jaw prison gave the delegation the opportunity to meet military personnel and police officers convicted by the courts who, following their dismissal from the forces, had been

transferred to a civilian prison to serve their sentences. Courts martial, it was told, are held in camera and the Disciplinary Tribunal (the police court) is presided over by the officer who conducts the case for the prosecution before the civilian courts.

77. The composition of these courts and the impossibility of appeal to an independent court mean that they do not conform to relevant international standards. The attention of the authorities has been drawn to the need to review these provisions and bring them into conformity with international norms. The delegation was informed that a review of the security services regulations was now on the agenda and there were plans to make police officers subject to the jurisdiction of the ordinary courts.

D. Reform of the administration of criminal justice

78. The Charter adopted by referendum committed the authorities to complete the establishment of the judicial institutions announced in the Constitution, and offered greater protection of liberties by specifying that arrest, police custody, detention and all other restrictions on individual liberties may be imposed only in accordance with the law and under judicial supervision. Accordingly, the Directorate for Legal Affairs began to draw up a draft code of criminal procedure which is now being finalized. The draft makes substantial changes, increasing judicial supervision of the police and circumscribing the role hitherto played by the services of the Ministry of the Interior. The reform reorganizes the administration of criminal justice and announces the establishment of a public prosecutor's office, a judicial police corps and a judge responsible for the execution of sentences. These concepts have been borrowed from the Egyptian Code of Criminal Procedure, based on the Romano-Germanic legal system.

1. Reorganization of prosecution and investigative bodies

79. This question has been dealt with in the draft code of criminal procedure referred to above: the proposed model looks towards the civil law system. The draft (a copy of which was given to the delegation by the authorities) announces the establishment of a public prosecutor's office under the authority of the Ministry of Justice, whose personnel will have the status of judicial officers. The public prosecutors will have a monopoly on public prosecutions and will oversee the new judicial police corps which will assist them in their inquiries, help them investigate cases and operate under their authority.

80. Public prosecutors will also see to the execution of judicial decisions and supervise prisons and places of detention (which will still be run by the Ministry of the Interior). In order to do so they will have recourse to a judge for the execution of sentences, whose powers are clearly outlined in the draft. The new reform also makes provision for an investigating judge to whom criminal or difficult cases may optionally be referred for investigation. Given that injured parties may not bring actions for damages, the decision to refer a case to the investigating judge rests with the prosecutor alone: he is the real investigator and the lynchpin of the system. As the key body in the preparatory phase, the public prosecutor's office is invested with all powers. It may delegate its powers, order inquiries, make arrests, conduct searches and seizures, remand persons in pre-trial detention after formally charging them, and prepare case files.

81. The process of establishing the public prosecutor's office has already been set in motion by the Ministry of Justice, which has recruited legal scholars to fill prosecutor positions and sent the selected candidates off to be trained as judicial officers. It seems, however, that the selection process was not as transparent as it might have been, because candidates who met the criteria and held the desired qualifications were not given the opportunity to apply for these new posts.

82. According to members of the Committee responsible for giving effect to the National Charter, the rules governing public prosecutors are on their agenda. They are contemplating placing the public prosecutor's office outside the authority of the Minister of Justice, and making it a body of independent judicial officers subordinate to the Higher Judicial Council alone.

83. It is therefore necessary to await the completion of the current reforms in order to form a true assessment of the changes now taking place. However, it is already possible to say that the placement of the prosecuting authorities under judicial control is a real step forward compared with past practice, assuming of course that judicial officers get better training and the resources they need to do their job properly, supervise the security services effectively and ensure the strict application of the law.

2. Arrest, police custody and pre-trial detention under the new provisions

84. The Working Group was particularly interested in the draft code of criminal procedure, which is of direct relevance to its mandate. The draft offers solid guarantees on the subjects of arrest and detention which may be summarized as follows:

(a) Persons placed under arrest must immediately be informed of the charges against them; they must be allowed to communicate with their immediate families and secure the assistance of a lawyer from the outset. They must be brought before the public prosecutor within 48 hours; the prosecutor must question them within 24 hours and decide whether or not they should be released;

(b) Persons may be held in pre-trial detention by order of the public prosecutor's office for no longer than seven days; after that, permission to hold them in pre-trial detention must be obtained from the courts;

(c) In no case may pre-trial detention exceed six months; in criminal cases, the court which is competent to hear the merits of the case may exceptionally grant a 45-day extension;

(d) The chief justice of the High Court of Appeal, the chief justice of the High Court, the judge for the execution of sentences and public prosecutors may inspect prisons at any time to assure themselves that no one is being held arbitrarily; they can entertain and investigate complaints from detainees;

(e) Any person who learns of a case of arbitrary detention is required to bring the matter to the attention of the public prosecutor or the judge for the execution of sentences, who must immediately go to the place indicated, verify the information and, if necessary, order the release of the person arbitrarily detained. Those responsible for the arbitrary detention must be

prosecuted. Other guarantees enshrining universal standards are envisaged. They show that the legislative reforms set in motion by the authorities have - at least on paper - become a reality.

85. This belief is shared by many of the people whom the delegation met. But whereas no one took issue with the underlying principles, there was criticism of the methods adopted by the authorities, including their failure to involve civil society enough in drafting the proposals. For this reason, while welcoming the steps taken by the authorities, the Working Group stresses the need to involve civil society, those working alongside the legal system and everyone else concerned in drafting proposals so as to secure their backing for the venture and guarantee it every chance of success.

E. Organization and operation of the prison administration

86. The prison administration is part of the Ministry of the Interior and is managed by specially trained police officers. The 1964 Penitentiary Code lays down the rules governing penitentiaries and defines conditions of detention applicable to all persons deprived of their liberty. It should be noted that only persons given custodial sentences by the courts are held in prisons. Under the Bahraini system, remand prisoners are detained in police stations and foreigners are held in administrative detention at a special unit. However, women in police custody and pre-trial detention are housed in the women's prison.

1. Police custody and pre-trial detention at police stations

87. As it is the police that handle prosecutions and investigate cases, detainees in police custody and pre-trial detention are held at police stations. The conditions of detention at the police stations which the delegation visited meet international standards. With rare exceptions, the sources questioned by the delegation acknowledged that they had been informed of the grounds for their arrest with reasonable promptitude and had been allowed to communicate with their families.

88. On the other hand, a person being held in police custody is not allowed a lawyer. It is rare for counsel to be present during the investigation, and even in criminal cases counsel is not mandatory until the case comes to trial. One anomaly mentioned by a number of detainees is that interviews with lawyers are not confidential, taking place in the presence of a guard who refuses to leave the room and listens to what is said: this violates international standards. The Working Group urges the authorities to remedy this state of affairs, especially given that, under the planned reform, counsel will be permitted to be present as soon as a person is taken into police custody.

2. Serving of sentences in prisons

89. Male prisoners are divided into two categories. Those serving short-term sentences (less than 12 months) are housed at Manama prison. There were 53 inmates there on the day the delegation visited. Prisoners serving long-term sentences are housed at Jaw prison, where there were 253 inmates. All women deprived of their liberty are held at Isa Town prison, which housed 24 inmates on the day of the visit, of whom six had been convicted. Convicted prisoners

are segregated from the other categories of detainees (remand prisoners and foreigners being held pending expulsion).

90. The prisons are not overcrowded owing to the amnesty mentioned earlier, and as a result conditions of detention are on the whole satisfactory. On the day of the visit to "Dry Dock Camp", which used to house several hundred political prisoners, there were a mere four foreigners in administrative detention, all of whom were serving light sentences and awaiting expulsion from Bahrain. Prison visits and communication with family members and lawyers are permitted, and medical coverage is theoretically available. All the inmates are in prison pursuant to a decision by a court that they should be deprived of their liberty.

91. The provisions of the Penitentiary Code are somewhat obsolete and no longer reflect the reality of conditions of detention in Bahrain. The authorities intend to promulgate a new code reflecting the new methods of dealing with offenders and in keeping with the guidelines contained in the booklet distributed to prison officers, a copy of which was passed to the delegation. This booklet reflects contemporary thinking on the rehabilitation and reabsorption of prisoners into society, and stresses that their dignity must be respected.

3. Imprisonment for insolvency

92. Imprisonment for debt is particularly common. Under Legislative Decree No. 5 amending article 170 of the Code of Criminal Procedure, anyone sentenced to pay a fine may be imprisoned for up to one year to compel performance. Moreover, the Code of Civil Procedure contains a provision stating that, against a daily payment of 45 dinars to the State, a creditor is entitled to have a recalcitrant debtor imprisoned for up to three months to compel him to pay is debt.

93. Imprisonment for contractual debt is a breach of international law (article 11 of the International Covenant on Civil and Political Rights) even if, as here, the Penitentiary Code specifies that this category of prisoners must be treated in the same way as remand prisoners and minors under 16. Article 170 of the Code of Criminal Procedure outlines a whole procedure for effecting this type of imprisonment, but according to sources questioned by the delegation, the duration of imprisonment to compel performance is specified in the judgement and the measure is applied immediately and systematically even if the convicted person is genuinely insolvent. The provisions on imprisonment to compel performance remain unaltered in the draft code of criminal procedure, except that the judgement is no longer enforced by the court handing down the decision but is handled by the judge responsible for the execution of sentences. Such detainees may be divided into three categories:

(a) Insolvent detainees unable to pay a fine imposed on them by a court;

(b) Detainees remaining in pre-trial detention because of inability to post bail;

(c) People detained in connection with private debts; many of these are foreigners who have fallen foul of the "free visa" regime - a kind of privatized public visa service.

4. Concerns regarding the situation of foreigners

94. A distinction must be drawn between those imprisoned for wrongdoing and those detained for breaches of the residence requirements. In its interviews with prisoners, the delegation found that there were a very large number of foreigners serving prison sentences; many of them spoke neither Arabic nor English, yet had been sentenced without a lawyer present. Some were in prison for offences their employers said they had committed, which in some cases appeared to relate to labour-law disputes; they could call their consulates, but in practice the consulates let things be and neither visited them nor offered assistance.

95. Things are not the same for foreigners in the country without proper papers, who are placed in administrative detention pending expulsion. A large number of foreigners live in Bahrain, and broadly speaking, the country has migration under control. It is almost impossible to enter the country without a work permit issued by a Bahraini "sponsor" who acts as a guarantor in the event of problems and will cover the costs of expulsion. The system works as follows: foreigners are generally recruited in their home countries (quite often through a travel agency) with the backing of a "sponsor" living in Bahrain who is theoretically supposed, after contacting the immigration services, to provide them with the papers they need to enter and work in the country, pay the immigration tax and provide them with a return ticket, particularly when they are being taken on on short-term appointments. The "sponsor" - whom the foreigners generally never meet - takes a monthly or yearly slice off their wages which can amount to as much as US$ 1,500 per year. Among the abuses to which this system gives rise - according to what the delegation gathered - are failure to hand over the temporary residence permit that accompanies the work permit, and handing over the papers but confiscating the foreigners' passports when they arrive at the airport. The insecurity of this system for many foreigners and the large amounts of money that it can earn for invisible "sponsors" encourage people to take advantage of foreign labour in a variety of petty forms of blackmail (while the unemployment rate for native Bahrainis is close to 30 per cent).

96. The authorities are well aware of the frequent abuses of the "free visa" system. They do not, however, appear to mount any investigations, even administrative ones, although articles 198 and 302 bis of the Criminal Code prescribe criminal penalties for "every person who employs forced labour to undertake any work or unjustifiably withholds all or some of their wages". The practice is commonplace and those interviewed maintain that the sponsors are never brought to justice. The consular services of the main countries concerned - doubtless overwhelmed by the proliferation of "free visas" - once again provide virtually no assistance for their imprisoned nationals.

97. This situation requires careful consideration - perhaps by the Shura Council's Human Rights Committee? - to ensure that there is better control over the way these foreigners' rights, particularly their economic and social rights, are treated.

III. VISIT TO PLACES OF DETENTION

A. Establishments visited

98. Given the relatively small size of the country (695 km^2), the Working Group was able to visit virtually all its penitentiary establishments.

99. As far as pre-trial detention is concerned, the Group visited the Criminal Investigation Department's detention unit, where individuals accused of serious crimes are held pending investigations; those charged with lesser offences are held for investigation purposes, as mentioned above, in district police stations, as the delegation saw when it went to visit the Manama and Al Muharraq district police headquarters. One of the detention units at Al Muharraq was being extensively renovated, with air conditioning being installed. The delegation also visited the men's prisons in Al Quala, Al Muharraq and Jaw (the central prison); the women's prison in Isa Town; the Isa Town rehabilitation centres for boys and girls; and the illegal aliens detention centre at Al Hidd. Lastly, it visited the Manama and Al Muharraq central police headquarters and Manama police station.

100. The delegation was happy to have the full cooperation of the Interior Ministry authorities and those responsible for the various places of detention throughout its visit. It was able to go where it wished in all the establishments it visited and had frank, open exchanges with the officials designated to assist it, who provided it with all the information and statistics it needed to accomplish its mission, including access to record office registers.

101. Thanks to instructions previously circulated by the authorities, all the fifty or so interviews the delegation had with detainees in the various categories took place exactly as required by the Working Group's methods of work (no prison staff present, free choice of which detainees to talk to and where to talk to them, unrestricted access to the entire premises and outbuildings, including administrative offices, and access to all registers).

B. Maintenance of the record office registers

102. The record office of every establishment produced, upon request, correctly kept registers comprising a daily table (sometimes a wall chart) indicating the daily movements and strength of the inmate population, and a general register detailing each detainee (identity, nationality, address, date and time of arrival, registration number, nature and date of offence, social status, authority ordering detention, signature of the duty officer upon the detainee's arrival and departure, together with the name of the authority ordering release). These registers are now kept on computer at the Criminal Investigations Department. The computerized system is supposed to extend progressively to encompass all the penitentiary establishments in Bahrain.

IV. POSITIVE DEVELOPMENTS REGARDING THE STATUS OF WOMEN

103. In view of Commission on Human Rights resolution 2001/51, "Integrating the human rights of women throughout the United Nations system", the Working Group delegation raised this topic in its interviews with the authorities and arranged to meet representatives of Bahraini women's associations so that it could learn what specific problems women faced and how

extensively they were involved in the reforms. It also brought the matter up when it visited the women's prison and the rehabilitation centre for girls, and at a meeting with women who had previously been detained under the emergency legislation. These very useful meetings revealed the kind of problems women encounter and how much progress has been made, and showed the resolve of the Bahraini authorities, which are a long way ahead of their neighbours in the advancement of women.

104. The first steps to promote the rights of Bahraini women date back to the beginning of the century: women received the right to vote in 1920, and their right to education was given tangible form in 1927 with the opening of the first school for girls. When the country held its first elections, in 1953, women took part. The women's movement in Bahrain is the oldest in the entire Gulf region, and still, today, the most active. The 1973 Constitution affirmed the equal rights of all citizens: "Citizens shall have the right to participate in the public affairs of the State and enjoy political rights, beginning with the right to vote, in accordance with this Constitution and the conditions and procedures set forth in the law" (art. 1(e)).

105. Matters began to deteriorate in 1973: in passing the Elections Act, the first elected National Assembly challenged women's right to vote on the grounds that the article 1 of the Constitution referred to male, not female, citizens. Women face discrimination in other areas of public life in violation of constitutional principles. Such discrimination is the result of the dichotomy in the legal systems in force in most Islamic Arab countries: while their Constitutions proclaim equality between the sexes, when it comes to putting that equality into practice they are still influenced by Muslim law and the mores of a patriarchal society.

106. In family law, the dichotomy is glaring. The women whom the delegation met denounced the conservatism of the Shariah court judges who, in the absence of a family code, have extensive discretionary powers which they often exercise to women's detriment. When domestic violence occurs, medical certificates and clear traces of violence are not taken into consideration: the judges demand eye-witnesses. In the event of divorce, the husband keeps the house; when a woman sues for divorce the proceedings are costly, uncertain and may drag on for years. Bahraini women married to *bidouns* (expatriates) cannot transmit their nationality to their children.

107. Given this mind-set, women are of course excluded from positions of authority and certain areas of public life: to this day there are no female judicial officers, although there is no law banning them from the profession. The delegation did, however, meet some highly qualified female Bahraini legal scholars, practising as lawyers, university lecturers or militant human rights activists in the women's movement.

108. The women's movement, which first emerged in 1969, is especially active. Contacts with women's associations gave the delegation the opportunity to meet some women of admirable fortitude who had been involved in the events Bahrain had undergone: they had been imprisoned, some had been tortured, but they were continuing to do battle to change social mores vis-à-vis women.

109. When H.H. the Amir launched the reform process, women were not forgotten. Learning from past experience, the drafters of the National Charter went back to article 1 (e) of the Constitution, specifying that it applied to "citizens, both men and women". This restored women's right to vote and allowed them to take part in the 2000 referendum on the National Charter: they voted en masse, and accounted for 49 per cent of all the votes cast.

110. Appointments of women to political and managerial posts, which used to be rare events, are picking up as the reforms proceed. Women have been appointed to the Shura Council for the first time, and a woman has been appointed ambassador to Paris. The Government has embarked on the ratification of the Convention on the Elimination of All Forms of Discrimination against Women, and a Supreme Council for Women has been instituted. Discussions are under way on a family code, and the wife of H.H. the Amir is taking an interest in the advancement of women and participating in activities designed to pursue that goal Another positive development is the proposal to abolish the rule that a husband must give his assent before a passport can be issued to his wife.

111. The Working Group welcomes these encouraging signs, encourages the authorities to pursue their efforts and invites them to ratify the Convention on the Elimination of All Forms of Discrimination against Women, thus helping to close a loophole that the Working Group found in Part Three of the 1973 Constitution, "Public Rights and Duties", the first paragraph of which states that "…citizens shall be equal … before the law, without discrimination as to race, origin, language, religion or belief" but omits to mention equality between the sexes (see article 2, paragraph 1, of the Universal Declaration of Human Rights).

V. CONCLUSIONS

112. The Working Group considers this visit to Bahrain to be one of the most successful it has undertaken, as regards both the letter and the spirit of its mandate. That it was so successful is largely due to five factors.

1. The exceptional spirit of cooperation displayed by the authorities both before and during the visit. While preparations were being made, the Working Group was kept constantly informed of how the transition process was progressing, and was consulted on some of the planned reforms during meetings its Vice-Chairman had with the authorities in 1999 in Geneva and Paris.

2. As the visit proceeded the national and local authorities, who had been given appropriate instructions, were always forthcoming and scrupulously respected the delegation's methods of work; the delegation was given complete freedom of access to all places of detention, including the record offices and administrative services, and freedom to choose which of the detainees it met it would interview in complete confidentiality.

3. Another contributing factor was the sense of responsibility shown by the non-governmental organizations which, leaving aside their diversity, greatly facilitated the delegation's task by presenting themselves all together at the Bahrein Human Rights

Society. This point is all the more telling since the Working Group recommends that civil society should be called upon to play an ever greater role in the process of transition launched by the Amir.

4. This being the Working Group's first visit to a Muslim-law country, the presence of a member from the region, Mrs. Zerrougui, who knew Islam and Arabic, made it easier to appreciate and take account of local circumstances; this made it possible to forge bonds of great trust with women detainees and with women's non-governmental organizations.

5. Lastly - in a development unprecedented in the Working Group's history - the release of all the prisoners, including those on whose circumstances the Group had commented, set the seal on a successful visit.

The Working Group wishes to indicate once again its deep satisfaction at the decisive scale and scope of the reforms that have been undertaken and the accompanying acts of clemency.

VI. RECOMMENDATIONS

Recommendation 1

113. *Incarceration for insolvency*: the Working Group has noticed that people are extremely often detained for failure to post bond or pay a fine. The Government should see to it that account is taken of insolvent debtors' good faith and fair allowance is made for the small incomes of the less well-off. As regards imprisonment for contractual debt, the Government should arrange to have the laws permitting incarceration for failure to pay civil debts repealed. The Working Group points out in this connection that article 11 of the International Covenant on Civil and Political Rights prohibits such incarceration.

Recommendation 2

114. *The "free visa" scheme*: the Working Group realizes that holding employers responsible for the entry and exit of workers allows the authorities to control the flow of migrants; it is, nonetheless, concerned at the scale of migration and the resulting insecure status of foreigners. This situation merits close consideration, and might be assigned for that purpose to the Shura Council's Human Rights Committee with a view to better safeguards that foreigners' rights, including their economic and social rights, are respected. The Group also recommends the Government to give effect to articles 198 and 302 bis of the Criminal Code, bringing to justice those "sponsors" who all too often break the rules and abuse the scheme.

Recommendation 3

115. *Courts martial*: remedies against decisions handed down by courts martial should be brought into line with international standards. The Working Group recommends the Government to review the legislation governing courts martial and bring it into line with universal standards, in part by allowing appeals to the Court of Cassation against the decisions that courts martial hand down.

Recommendation 4

116. *Protection of minors aged 15 and over*: the legal rules applying to minors aged between 15 and 18 should be brought into line with international standards. The Working Group recommends the Government to extend the jurisdiction of the Juvenile Court to cover minors aged between 15 and 18 and allow the Court to apply the criminal penalties laid down for offenders in that age category where appropriate. Current law should also be amended to require that minors in this category are assisted by counsel at all stages of the proceedings, to allow for rehabilitative measures appropriate to their age and needs, and to have them held separately from adults in prisons.

Recommendation 5

117. *Appointment of women to positions of responsibility and admission of women to the ranks of judicial officers*: the law has never banned women from public office, but as in most countries they are under-represented or not represented at managerial level. By appointing women to managerial posts they have never held in the past, H.H. the Amir has ushered in a new era for the women of his country. The Working Group is delighted, and in the spirit of article 25 of the Universal Declaration of Human Rights invites the Government to take another bold step - which will, incidentally, facilitate the forthcoming ratification of the Convention on the Elimination of All Forms of Discrimination against Women – by allowing women to become judicial officers. Bahrain has highly qualified female legal scholars: the Working Group's delegation was privileged to interview some of them. Allowing women into the ranks of their judicial officers has helped many countries to make their justice systems more human and bring them closer to the people they have dealings with; in Bahrain, it could make for better understanding of the problems that women face, and make it easier to deal with them.

Recommendation 6

118. *Violence against women*: the Working Group also recommends, as part of the reforms now in progress, effective legal provision to prevent and punish violence against women, especially domestic violence, which often goes unpunished because the way it is required to be proved takes no account of women's insecure social status.

Recommendation 7

119. *Civil society*: to bolster the encouraging cooperation that has begun between the Government and civil society, the Working Group recommends assigning high priority to the passage of the bill now in preparation to replace the particularly restrictive Societies and Clubs Act of 1987, thereby providing legal underpinnings for the permits – in fact, no more than agreements to tolerate – recently issued to a number of societies and clubs. Similarly, priority should be given to the passage of the bill on journalism and publication, replacing the current, highly restrictive Press and Publication Act of 1978.

Recommendation 8

120. *Consular assistance*: the Working Group points out that under international law on consular relations, any incarcerated foreigner ought to be receive assistance from the local consular services of his country of origin. The Group therefore recommends the Bahraini authorities to take steps to facilitate contact between detainees and the appropriate consular services, and to encourage the countries most directly concerned to provide the best possible response to requests for consular assistance.

Appendix

BAHRAIN VISIT – PROGRAMME

Friday, 19 October 2001

Evening: Delegation arrives

Saturday, 20 October 2001

Morning: Meeting with senior officials from the Department of International Affairs, Ministry of Foreign Affairs

Meeting with senior officials from the Department of Legal Affairs, Ministry of Cabinet Affairs

Afternoon: Meeting with representatives of UNDP (Mr. Khaled Alloush, Resident Coordinator; Mr. Mohamed Al-Sharif, Programme Manager; Mr. Mahid al-Madhoob, Chief of Operations), UNICEF, UNIDO (Mr. Hashim Suliman Hussein), UNEP (Mr. A. Basel al-Youssif, West Asia Regional Office), the United Nations Information Centre and WFP

Evening: Meeting with representatives of the Bahrain Bar Association

Sunday, 21 October 2001

Morning: Meeting with senior officials from the Ministry of the Interior, including the governor of the capital, H. E. Mr. Shaikh Abdul Aziz bin Attiyatullah Al Khalifa, Mr. David Jump, Mr. Ali Mohamed Al Hawari, Cdr Tariq H. Al Hassan, Cdr Abdulla F. Al Dossary, Lt Abdulla K. Al Muraikhi and Lt Abdulla K. Khalifa

Visit to the men's prison at Al-Quala (Manama)

Visit to the Illegal Aliens Detention Centre at Al Hidd

Afternoon: Visit to Manama Police Headquarters

Visit to Manama Police Station

Meeting with the Shura Council's Human Rights Committee

Evening: Meeting with representatives of the Bahrain Human Rights Society

Monday, 22 October 2001

Morning: Visit to the central men's prison at Jaw

Visit to the Isa Town women's prison (Mrs. Zerrougui)

Afternoon: Visit to the Isa Town Rehabilitation Centre for Boys (Mr. Joinet) and the Isa Town Rehabilitation Centre for Girls (Mrs. Zerrougui)

Evening: Meeting with former detainees

Tuesday, 23 October 2001

Morning: Visit to the men's prison at Al Muharraq

Visit to Al Muharraq Police Headquarters

Afternoon: Meeting with senior officials from the Criminal Investigation Department, Ministry of the Interior

Visit to the Criminal Investigation Department Detention Centre

Evening: Meeting with women's organizations: Awal Women Society; Bahreïn Secretariat Association; International Ladies Group; Young Ladies Association; Young Ladies Society

Wednesday, 24 October 2001

Morning: Meeting with H. E. Shaikh Mohd bin Khalifa al-Khalifa, Interior Minister

Meeting with H. E. Shaikh Mohamed bin Mubarak al-Khalifa, Foreign Minister

Meeting with four members of the Committee established to give effect to the National Charter

Evening: Delegation departs
