

# EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



To

Bahrain Independent Commission of Inquiry  
- Professor M. Cherif Bassiouni -

By email: [outreach@bici.org.bh](mailto:outreach@bici.org.bh)

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**Berlin, 07/09/2011**

**Re: Specific incidents of violence against peaceful protesters in the Kingdom of Bahrain and their widespread and systematic character.**

Dear Mr. Bassiouni:

Our organization, the European Center for Constitutional and Human Rights, has been following the situation in the Kingdom of Bahrain since the protests began in February. ECCHR is a non-governmental organization dedicated to protecting human rights through strategic litigation. We use international, regional, and national law to enforce human rights and to hold state and non-state actors accountable for egregious abuses. ECCHR board members such as Michael Ratner as well as General Secretary Wolfgang Kaleck possess long-standing experiences in international human rights litigation. ECCHR seeks justice for the mistreatment of our Bahraini clients, and to hold those who subjected them to physical violence, abduction and arbitrary detention responsible for their actions. The Royal Order No. 28 of the King of Bahrain from 29 June 2011 creating the Independent Commission to investigate the reported human rights abuses is a significant step for Bahrain and may help bring justice to those whose human rights were violated.

Article 1 of Royal Order establishes the Commission in order “to investigate and report on the events occurring in Bahrain in February/ March 2011, and any subsequent consequences arising out of the aforementioned events, and to make such recommendations as it may

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deem appropriate.” Based on this mandate from King Hamad Bin Isa al Khalifa, ECCHR would like to bring the two following cases to your attention. We believe that there are sufficient grounds to place these two cases in an overall pattern of crimes that might amount to crimes against humanity. We therefore also ask you to investigate who is responsible for such an alleged pattern of crimes according to the concept of superior responsibility.

### *Client Number 1*

On Friday 25 March 2011, in the village of Ma’ameer a group of security forces (exact number of members unknown to the client) intentionally fired birdshot pellets from a distance of about one meter at our client number 1, 22 years old. He was about to enter his family’s house where he lives to seek shelter after armed men in civilian clothes started shooting at protesters nearby. In that moment he was working at the garage of the house which is next door, and did not participate in the peaceful anti-government protests. Our client was then moved with his injuries inside the house, but the family was not able to bring him to the next hospital because of the instable security situation on the streets. When the pain became unbearable he was taken to a nearby hospital the next day. X-rays show that more than 100 pellets were lodged inside his pelvic area. We possess copies of the x-rays documenting this injury. Due to the extent of the damage and the urgent need for surgery, the patient was then required to check into another medical facility on 27 March. The doctors at this facility told him he required immediate surgery, and for this surgery they would need to request blood from the Salmaniya Medical Complex blood bank. This request required that they provide the patient’s personal information, such as his name, national identity number, and the nature of his injuries.

Approximately one-and-a-half hour after the request to Salmaniya Medical Complex, a local human rights activist as well as a Human Rights Watch staffer at the scene observed about ten members of the security forces, including two plainclothes agents and at least four riot police carrying weapons, entering the medical facility. One police officer said they were from the Isa Town police station. They entered our client’s room and forced him out of bed. They attempted to escort the patient out, but he was noticeably in pain and told them he was unable to walk. After the patient and doctors told the security forces that he was not able to walk, one of them responded sarcastically, “You can run away from the police but you can’t walk now?” He was then put into a wheelchair. When asked where they were taking the patient, the officers responded that they had orders to remove the patient to Salmaniya, but would not provide more information. The patient expressed his desire to remain at the hospital for surgery, and was backed by Human Rights Watch staff and medical personnel. Nevertheless he was put into an unmarked white sports utility vehicle and forcibly removed to the Bahraini Defense Force Hospital. He underwent surgery there; however, to date his family does not know about the circumstances and results of the surgery nor has there been any contact possible with the doctors regarding follow-up treatment and rehabilitation measures. Our client had to stay for three weeks in the Defense Force Hospital before he was moved to the Isa town police station for detention. At both places other inmates report about mistreatment of our client. Until today he is still imprisoned. He had to appear before a military court where he was sentenced to two years imprisonment for participating in anti-

governmental protests. After the judgement, he was transferred to the ‘Jaw’ prison in eastern Bahrain. An appeal was not permitted and he could not see a lawyer during the entire proceedings. His family was able to visit him twice in the period of almost five months. They describe injuries that look like burns of cigarettes above his neck that point to mistreatments against him in detention. He had to wear long-sleeve clothes during the visits and could not speak to his family without the presence of security guards.

#### *Client Number 2*

On Friday 25 March 2011, in the village of Ma’ameer, while standing at the door of his house, our 19-year-old client number 2 was intentionally shot with a pellet gun from a distance of about two meters. The attack had not been foreseen and occurred all of a sudden. The instable conditions after the attack on the streets around the house prevented his immediate admission to the hospital, and he had to be treated at home. During the night he was taken to the Ibn Al-Nafees Hospital, where the doctors were able to examine him. The next day, on 26 March, he was taken to a health center and was treated superficially to stop the pain and bleeding. The two following days, doctors in different hospitals reviewed an x-ray and ct-scan that revealed bullets in the patient’s liver, right kidney, and lung. The radiology report records bullet fragments seen in the side of the chest, abdomen, and back, as well as a partially collapsed lung. These results led a specialist to immediately admit the patient to the intensive care unit. He was then transferred to the Salmaniya Medical Complex by an ambulance.

From there, he was transferred to the Alwasta police station on 7 April and detained. He did not have access to a lawyer in the first weeks of his detention, and the accusations against him remain unknown to his family. In June, he was released without any charges brought against him or any information about the reasons for his arrest.

#### *Witness Protection*

To protect our clients and their relatives from further abuses, we have omitted the names and did not enclose evidentiary material to this letter. However, we are willing to provide this information as necessary in order to facilitate the Commission’s work under certain conditions regarding witness protection. The incidents suffered by ECCHR’s clients are not the only ones reported around this time in the village of Ma’ameer. Rather, the peaceful protests planned for the “Day of Rage” on 25 March were faced with multiple incidents of violence and arrests. One of the more than 30 deaths reported during the past few months of protests occurred on the same day and in the same town as the above cases. Isa Mohammed Ali Abdulla, 71 years old, was killed at his home in Ma’ameer from tear gas inhalation used by police during the protests on 25 March. The name is not redacted as this death has been publicly reported by human rights organizations (FIDH, “*List of people killed and arrested in Bahrain since January 14<sup>th</sup> 2011*”; Human Rights Watch, “*Bahrain: Investigate deaths linked to crackdown*”, 29 March 2011).

We seek to address the human rights violations perpetrated against our clients and other peaceful protesters in Bahrain. On behalf of our clients we ask for investigations of their cases and prosecutions of those responsible in Bahrain. We believe that there are strong reasons to conclude that the two above-described incidents were part of a systematic as well as widespread attack against the civilian population in Bahrain in February and March and hence can be qualified as crimes against humanity. It is therefore of utmost importance to investigate not only the individual cases brought before the Commission, but also the conduct of the superiors who failed to prevent or punish promptly the continuous violent attacks, resulting in numerous deaths and hundreds of injured until today.

### *Crimes Against Humanity*

Numerous violations of international human rights occurred in Bahrain which in our opinion amount to crimes against humanity as defined under international law. Crimes against humanity require the fulfillment of special contextual elements, which raise the offences to the category of crimes under international law addressed to humanity as a whole. In this vein, the International Criminal Tribunal for the former Yugoslavia (ICTY) expressed:

Crimes against humanity are serious acts of violence which harm human beings by striking what is most essential to them: their life, liberty, physical welfare, health, and or dignity. [...] But crimes against humanity also transcend the individual because when the individual is assaulted, humanity comes under attack and is negated (*Prosecutor v. Erdemovic*, IT-96-22-T, Judgement of 29 November 1996, para. 28).

According to the definition of crimes against humanity under customary international law and Article 7 of the Rome Statute of the International Criminal Court (Rome Statute), the relevant *contextual elements* for a crime against humanity are a *widespread* or *systematic attack directed against any civilian population*.

It is important to note that the requirement *widespread* and the requirement *systematic* are alternative. It is sufficient to satisfy one of them to confirm the existence of a crime against humanity; however, there are strong allegations that both criteria have been fulfilled in Bahrain.

The *widespread* element refers in particular to the number of victims and has been defined by the International Criminal Tribunal for Rwanda (ICTR) as a “massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims” (*Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement of 2 September 1998, para. 580). According to the International Law Commission, *widespread* means committed on a large scale against a multiplicity of victims (*Draft Code of Crimes Against the Peace and Security of Mankind*, UN Doc. A/51/10 (1996), at 9).

As to the situation in Bahrain, there are numerous reports by international and national non-governmental organizations that point to a widespread commission of single crimes (see Amnesty International Report 2011, “*State of Human Rights in the Middle East and North Africa January to Mid-April 2011*”, pages 16 and 17; Amnesty International, “*Bloodied but Unbowed - Unwarranted State Violence Against Bahraini Protesters*”, March 2011; Human Rights Watch, “*Bahrain's Human Rights Crisis*”, July 2011). According to the small number of Bahraini residents and even lower number of citizen (about 1.2 million residents and about

568.000 citizens according to the 2010 Bahraini census; see also International Crisis Group, *“The Bahrain Revolt”*, p. 1), there has been a significant number of killed, injured and detained persons over the last months. The number of demonstrators killed between February and August 2011 amounts to at least 39 (see Bahrain Center for Human Rights, *“List of people killed in Bahrain since 14th February 2011 - Extrajudicial Killings”*). Reports point to about 600 to 774 injured, and to between 800 and more than 1000 detained demonstrators (see Time Magazine, *“Bahrain's Violent Crackdown Hardens Opposition”*; CNN, *“Hundreds injured during clashes between rival groups in Bahrain”*; Washington Post, *“Applying pressure on Bahrain”*; Bahrain Center for Human Rights, *“More than 1000 detainees/ disappeared within weeks of the imposition of a state of “national safety”, including tens of women”*). The attacks took place in various cities (e.g. Hamad Town, Manama; see Amnesty International, *“Violent crackdown in Bahrain condemned”*; Reuters, *“Sunnis and Shi'ites clash in Bahrain”*) of the country and in a short period of time (see Wikipedia, *“Timeline of the 2011 Bahraini uprising”*). However, the incidents cannot be regarded as isolated, single occasions, but occurred almost on a daily basis wherever protests were held or large groups of people gathered (see the daily reports of local human rights groups such as the Bahrain Center for Human Rights and the Bahrain Youth Society for Human Rights). The attacks were carried out by the security forces of the King (see Al Jazeera, *“Bahrain protesters hold ground”*), by special units of the Ministry of Interior (see The New York Times, *“Bahrain's Promised Spending Fails to Quell Dissent”*), and there were also foreign troops involved in some incidents (troops from Saudi-Arabia and Pakistani mercenaries; see Al Jazeera, *“Saudi soldiers sent into Bahrain”* and *“Pakistani troops aid Bahrain's crackdown”*; The Guardian, *“Bahrain security forces accused of deliberately recruiting foreign nationals”*). We are aware of the low number of international precedents of crimes against humanity committed during internal strife as well as of the relatively low numbers of killed, injured and detained persons in comparison to other situations. However, especially regarding the conditions of the country - its small population, but large number of protesters - the continuing attacks strongly point to a widespread character. Thus, the attacks on protesters and demonstrations between 14 February and the end of March fulfill the criteria of ‘widespread’ as required under international law.

The *systematic* character of an attack refers to the organised nature of the acts of violence and the improbability of their random occurrence, which indicates that the attack was not spontaneous, but had rather been previously planned. The Special Rapporteur of the International Law Commission (ILC) stated in 1989 that:

On occasion, an inhuman act committed against a single person may also constitute a crime against humanity if it is part of a system, or is carried out according to a plan, or has a repetitive nature which leaves no doubt as to the intentions of the author (Seventh Report about the *Draft Code of Crimes against Peace and Security of Mankind* of the Special Rapporteur, Mr. D. Thiam, A/CN.4/419 & Corr. 1, para. 88).

Moreover, a 1996 ILC Draft Code explained the meaning of systematic as “committed according to a plan or politics preconceived” since the attack would be instigated or directed by a government or by any organization or group. As a consequence of the implementation of such a plan, repeated or continuous commission of inhumane acts could occur (see Report of the ILC on the work of its 48th session, 6 May – 26 July 1996, supplement no. 10 (A/51/10), p. 94). This definition is in keeping with the preceding work of the ILC and, in particular, that

of its 43rd session which created the offense of “systematic or mass violations of human rights” under Article 21 and which stated that the systematic characteristic related to a “constant practice or to a methodical plan to carry out [...] violations of human rights” (1991 ILC Report (A/46/10), art. 21 comm. (3)). Accordingly, the ILC interpreted the widespread or systematic requirement as either “pursuant to a preconceived plan or policy” (*systematic*) or “on a large scale against a multiplicity of victims” (*widespread*) (see Report of the ILC on the work of its 48th session, 6 May – 26 July 1996, supplement no. 10 (A/51/10), art. 18 comm. (5)). Hence, according to the ILC in 1996, the policy element is required for the *systematic*, but not for the *widespread* character.

The International Criminal Tribunal for the former Yugoslavia, for its part, defined *systematic* as follows:

203. The systematic character refers to four elements which for the purposes of this case may be expressed as follows:

- the existence of a political objective, a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word, that is, to destroy, persecute or weaken a community
- the perpetration of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another;
- the preparation and use of significant public or private resources, whether military

or other;

- the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan.

204. This plan, however, need not necessarily be declared expressly or even stated clearly and precisely. It may be surmised from the occurrence of a series of events, *inter alia*:

- the general historical circumstances and the overall political background against which the criminal acts are set;
- the establishment and implementation of autonomous political structures at any level of authority in a given territory;
- the general content of a political programme, as it appears in the writings and speeches of its authors;
- media propaganda;
- the establishment and implementation of autonomous military structures;
- the mobilization of armed forces;
- temporally and geographically repeated and co-ordinates military offensives;
- links between the military hierarchy and the political structure and its political programme;
- alterations to the “ethnic” composition of populations;
- discriminatory measures, whether administrative or other (banking restrictions, laissez-passer,...)
- the scale of the acts of violence perpetrated – in particular, murders and other physical acts of violence, rape, arbitrary imprisonment, deportations and expulsions or the destruction of non-military property, in particular, sacral sites.

(*Prosecutor v. Blaskic*, IT-95-14-T, 3 March 2000, paras. 203-4).

Under customary international law, the existence of a plan or policy to commit a crime against humanity is not required as an element of the crime. It might, however, play a role in proving the systematic character of an attack. The International Criminal Tribunal for the former Yugoslavia found that:

There was nothing in the Statute or in customary international law at the time of the alleged acts which required proof of the existence of a plan or policy to commit these crimes (*Kunarac et al.*, Appeals Chamber Judgement, para. 98.).

Rather, the criterion ‘systematic’ is qualitative in nature. It merely refers to the “organised nature of the acts of violence and the improbability of their random occurrence” (*Kunarac et al.*, Appeals Chamber Judgement, para. 98).

In 2002, the Assembly of States Parties to the Rome Statute of the International Criminal Court adopted an explanatory note on the elements of crimes. It clarified:

The acts need not constitute a military attack. It is understood that ‘policy to commit such attack’ requires that the State or organization actively promote or encourage such an attack against a civilian population (Elements of Crimes, Article 7, Introduction, para. 3).

A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action (Elements of Crimes, Article 7, Introduction, Fn. 6).

Consequently, the definition of crimes against humanity appears to have evolved so as to disallow the requirement of a state or group plan as a necessary element of crime, and to apparently merely require a course of action, guiding principle, or procedure associated with some entity apart from the individual perpetrator (see also M. McAuliffe deGuzman, “*The Road from Rome: The Developing Law of Crimes against Humanity*”, 22 HRQ (2000), p. 374).

Regarding the situation in Bahrain, there are a number of facts that point to the systematic commission of crimes against demonstrators (see, e.g., Physicians for Human Rights, “*DO NO HARM: A Call for Bahrain to End Systematic Attacks on Doctors and Patients*”, April 2011; Human Rights Watch, “*Targets of Retribution - Attacks against Medics, Injured Protesters, and Health Facilities*”, July 2011).

There was and still is a state policy to repress public protests against the King and the government. This policy intends to weaken the group of up to 100.000 protesters, which includes men and women as well as Sunni and Shiites (Reuters, “*Sunnis and Shi'ites clash in Bahrain*”).

The commission of the crimes includes several patterns. One of them is the direct attack against demonstrators with birdshots and other lethal ammunition (see Amnesty International, “*Violent crackdown in Bahrain condemned*”; Human Rights Watch, “*Bahrain: Investigate Deaths Linked to Crackdown*”), another pattern is the attack against injured protesters in hospitals (see UN News Centre, “*Bahrain: UN officials alarmed by security forces’ invasion of hospitals*”; Time Magazine, “*Crackdown: Why Bahrain's Military Has Taken Over a Hospital*”), their abduction from hospitals (see Physicians for Human Rights, “*Do No Harm: A Call for Bahrain to End Systematic Attacks on Doctors and Patients*”) as well as direct attacks against medical personnel (see The Telegraph, “*Bahrain hospital attack: 'Physical*”).

*abuse and humiliation of doctors'*"; see, e.g. the cases of Dr. Ghassan Dhaif, Dr. Ali El-Ekri, Dr. Abdul Khaliq al-Oraibi, Dr. Fareeda Aldalal and Bassem Dhaif).

According to the International Criminal Tribunal for the former Yugoslavia, a plan or policy does not necessarily need to be declared expressly or even stand clearly and precisely. However, it would indicate the existence of a systematic occurrence of attacks. Such indicators as the mobilization of armed forces (here: including the hiring of Pakistani mercenaries to repress protests), temporally and geographically repeated and coordinated attacks, public announcements by the King (see Al Jazeera, *"Bahrain doles out money to families"*; The Guardian, *"Three killed as Bahrain's king declares martial law"*; CNBC, *"Bahrain King says Forces Have Foiled Foreign Plot"*) and the state-owned media (see Al Jazeera, *"Shouting in the Dark"*), arbitrary imprisonments (see Bahrain Center for Human Rights, *"More than 1000 detainees/disappeared within weeks of the imposition of a state of 'national safety', including tens of women"*), large-scale firings from jobs (see Al Jazeera, *"Bahrain workers fired for supporting protests"*) and exclusion of students at universities (see Bahrain Center for Human Rights, *"Students: Expelled, detained, and prosecuted for expressing their views, as the country starts the National Dialogue"*; Reuters, *"In divided Bahrain, students pay price for protests"*) for participating in the protests, show a systematic plan or policy of the government. Concerning journalists as well as human rights activists, the pattern is strikingly evident (see Amnesty International, *"Violent crackdown in Bahrain condemned"*; Reuters, *"U.N. chief alarmed by Bahrain opposition sentences"*). Several journalists and activists have been unlawfully detained, held in custody for several days and, in some cases, beaten and threatened. Nazeeha Saeed (France 24 and Radio Monte Carlo Doualiya correspondent), for example, was maltreated at a police station in Rifa'a in May 2011 (see Reporters Without Borders, *"France 24 correspondent tortured for covering pro-democracy demonstrations"*), Toula Vlahou (CBS Radio News reporter) was attacked by the riot police in March 2011, apparently after the police had seen her filming the demonstrations (see CBS News, *"Bahrain clashes: 'Riot police showed no mercy'"*). Fatima Al-Khawaja, wife of activist Salah Al-Khawaja, was beaten, sexually assaulted and threatened with rape on 21 March, and Zahra'a Ali Attaya, activist and member of the Islamic work society AMAL, was tortured and threatened by security forces in May 2011 (see Bahrain Center for Human Rights, *"Violence Against Women in Bahrain"*).

In addition, another pattern of systematically committed crimes concerns violence directed at women in particular. There are numerous reports about female victims being harassed, unlawfully arrested, beaten, threatened with rape or sexually assaulted (see Al Jazeera, *"Schoolgirls 'beaten' in Bahrain raids"*; Bahrain Center for Human Rights, *"Violence Against Women in Bahrain"*). There has been a clear policy to abuse powers so as to degrade and intimidate women and threaten them with sexual violence. For instance, Ayat al-Qurmezi was arrested for allegedly inciting racial hatred and violence against the King. In custody, she was beaten, electrocuted and threatened with sexual violence (see The Telegraph, *"Bahraini woman poet tells of torture while in custody"*). A 16-year-old schoolgirl (name not revealed) was held in custody, beaten and threatened with rape (Al Jazeera, *"Schoolgirls 'beaten' in Bahrain raids"*). Hence, in the commission of the crimes there are common patterns to repress the protests against the government. These patterns make the crimes systematic which go beyond single acts committed by individual perpetrators.

The afore-mentioned facts strengthen the conclusion of the systematic character of the attack. The commission of the attacks by security forces points to a policy behind the crimes; thus the requirements of this contextual element are fulfilled.

Hence, the multiple commission of acts in a very similar manner and directed against specific groups leads to the conclusion that the contextual element of crimes against humanity, the ‘systematic’ character of the attacks, is fulfilled. In summary, both elements *widespread* and *systematic* are fulfilled, although it is already sufficient to satisfy only one of them to consider the attacks as crimes against humanity.

The requirement of *attack directed against any civilian population* has been included in all codifications of crimes against humanity (see IMT Charter art. 6(c); Control Council Law No. 10, art. II(1) (c); ICTY Statute, art. 5; ICTR Statute, art. 3) until the development of Article 7 (2) (a) of the Rome Statute. However, it has to be noted that the ‘policy’ requirement in Article 7 of the Rome Statute is stricter than the above-explained understanding under customary international law (see also G. Werle, “*Principles of International Criminal Law*”, para. 666). The term *population* should be regarded as a clarification on the scale of the crime, which is committed against a large number of victims (see McAuliffe deGuzman, *supra*, 335 at 364; Article 7 (2) (a) of the Rome Statute of 17 July 1998; A/CON.183/9: “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack”).

The demonstrators are civilians since their protests are peaceful and there is no protracted armed violence occurring between two or more organized groups, which could qualify the situation as an armed conflict. Moreover, violence is conducted unilaterally against the group of peaceful protesters. The composition of the group of protesters does not influence this requirement, since no specific group distinction is necessary. The protesters are a protected group by this element of the crime. Furthermore, the size of the group, more than 100.000 (see CBS News, “*100,000 protesters gather in Bahrain capital*”; New York Times, “*Protests in Bahrain Become Test of Wills*”), amounts – especially regarding the total population of Bahrain of only about 1.2 million – to a civilian population rather than only individual civilians.

Moreover, a nexus to an armed conflict is not required under international law. A crime against humanity can also be committed during times of peace or civil strife.

In conclusion, there are a number of facts that show the fulfillment of the contextual elements of crimes against humanity. Attacks against the protesters and thus the civilian population must be characterized as widespread as well as systematic, even if already the satisfaction of one of the two latter requirements is sufficient under international law.

The commission of a crime against humanity requires not only the fulfillment of the contextual elements, but also of *material elements*. Analyzing the two cases brought to the attention of the Commission, these elements are fulfilled for a number of crimes.

The case of client number 1 fulfills the following five specific elements of a crime against humanity: forcible transfer (see, e.g., Article 7 (1) (d) of the Rome Statute), imprisonment or other severe deprivation of physical liberty (see, e.g., Article 7 (1) (e) of the

Rome Statute), torture (see, e.g., Article 7 (1) (f) of the Rome Statute), persecution (see, e.g., Article 7 (1) (h) of the Rome Statute), and other inhumane acts (see, e.g., Article 7 (1) (k) of the Rome Statute).

The case of client number 2 fulfills the following four specific elements of a crime against humanity: forcible transfer (see, e.g., Article 7 (1) (d) of the Rome Statute), imprisonment or other severe deprivation of physical liberty (see, e.g., Article 7 (1) (e) of the Rome Statute), persecution (see, e.g., Article 7 (1) (h) of the Rome Statute), and other inhumane acts (see, e.g., Article 7 (1) (k) of the Rome Statute).

In both cases, the victims were forcibly removed by security forces from the respective hospital. These acts meet the requirements of Article 7 (1) (d) of the Rome Statute (crime against humanity of deportation or forcible transfer of population) which requires that the perpetrator forcibly transferred, without grounds permitted under international law, one or more persons to another location, by expulsion or other coercive acts (Elements of Crimes, ICC). Forcible transfer means the transfer of one or more persons within the state's territory (Werle, *“Principles of International Criminal Law”*, para. 698; *Prosecutor v. Krstić*, ICTY (Trial Chamber), Judgement of 2 August 2011, para. 521) taking place without grounds permitted under international law (Article 7 (2) (d) Rome Statute). Article 7 (1) (d) of the Rome Statute requires “involuntariness” (Werle, *“Principles of International Criminal Law”*, para. 699) as given in both above-mentioned cases.

Client number 1 is currently still detained, while client number 2 was detained for about three months without due process of law. Both cases fulfill the elements of the crime against humanity of imprisonment or other severe deprivation of physical liberty (Article 7 (1) (e) Rome Statute). This crime requires that the perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty (Elements of Crimes, ICC). Imprisonment refers to cases in which a person is, literally, “imprisoned” in an enclosed space and thus prevented from moving to another place (Werle, *“Principles of International Criminal Law”*, para. 705) and should be understood as arbitrary imprisonment without due process of law (*Prosecutor vs. Kordić and Čerkez*, ICTY (Trial Chamber), Judgement of 26 February 2001, para. 302).

In both cases, the victims were also deprived of their right to physical and mental inviolability, their right not to be subjected to arbitrary arrest, detention or exile, and their right to personal freedom; these acts fulfill Article 7 (1) (h) of the Rome Statute (crime against humanity of persecution) as it requires that the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights (Elements of Crimes, ICC). These fundamental rights include in particular the right to life, the right to physical and mental inviolability, the right to personal freedom, or right not to be subjected to arbitrary arrest, detention or exile (Werle, *“Principles of International Criminal Law”*, para. 739; *Prosecutor v. Blaškić*, ICTY (Trial Chamber), Judgement of 3 March 2000, para. 220).

It is not necessary that the acts were aimed at a whole group since Article 7 (1) (h) of the Rome Statute encompasses also acts aimed at individuals as representatives of a group (Werle, *“Principles of International Criminal Law”*, para. 738). The decisive aspect is always the objectively discriminatory, rights-affecting character of the violation (Werle, *“Principles*

of *International Criminal Law*”, para. 740). The victims in both cases were deprived of their fundamental human rights after participating in the peaceful protests in Bahrain.

Article 7 (1) (k) of the Rome Statute (crime against humanity of other inhumane acts) requires that the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act (Elements of Crimes, ICC). The requirements of this crime against humanity were fulfilled in both cases, firstly, through the injuries inflicted on the victims by the security forces firing pellets at them from a short distance, and, in the case of client number 1 also by forcibly removing him from hospital despite his urgent need for medical treatment.

Regarding client number 1, he was mistreated during his detention in the Bahrain Security Forces Hospital as well as the Isa Town police station. His mistreatment fulfills the requirement of torture as crime against humanity (Article 7 (1) (f) Rome Statute). The burning of cigarettes on the skin inflicts severe physical pain. At the time of the act, our client was under custody of the perpetrator. Other similar acts of mistreatment have been reported, such as beatings.

### *Individual Criminal Responsibility*

According to international law, those responsible for international crimes must be held accountable for their actions. The commission of a crime under international law includes special modes of individual criminal responsibility under international law. When a crime against humanity has been committed, not only the single direct perpetrator and his or her direct commanders, who ordered the crime, have to face prosecution, but also those who stand behind the crime at the end of the chain of command and oversee the direct perpetrators. The special character of the crimes as crimes against international law, especially their widespread or systematic commission, requires investigations and prosecutions of the superiors and commanders of these widespread or systematic attacks. For this end, the concept of superior responsibility exists in international criminal law. Article 28 of the Rome Statute defines the concept of superior responsibility, which attributes individual criminal responsibility to those who could prevent or prosecute crimes against humanity through their authority and control, and reads as follows:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Hence, superior responsibility requires the fulfillment of four elements. A superior-subordinate relationship must exist, the superior needs to have knowledge about the commission of a crime under international law or negligently failed to know about it, the superior must fail to take necessary and reasonable measures to prevent or repress the commission of the crime, and the crime has to be committed as a result of the failure to exercise control over subordinates (see Werle, *“Principles of International Criminal Law”*, para. 373).

The doctrine of superior responsibility might hold the superiors in charge of the Bahraini Military and Security Forces responsible for the human rights violations perpetrated by their subordinates. If these superiors knew or should have known of the criminal activity and failed to take reasonable measures to prevent or repress the criminal act or punish the perpetrator, they are criminally liable for the human rights violations.

King Hamad bin Isa Al Khalifa is the supreme commander of the Bahrain Defense Force, Bahrain’s army. The Security Police is under the control of the Ministry of the Interior.

Both the Security Police and the Bahrain Defense Force have been involved in the violent suppression of protests (see UN Secretary-General, Office of the Spokesman, *“Ban Ki-Moon Discusses Unrest in Arab World in Meeting With Central American Leaders”*; Amnesty International, *“Evidence of Bahraini security forces’ brutality revealed”*; BBC, *“Bahrain unrest: UN rights chief criticises crackdown”*; The Guardian, *“Bahrain security forces accused of deliberately recruiting foreign nationals”*).

There is a strong superior-subordinate relationship. The abuses have been widely publicized by human rights groups for months without attempts from the leadership to prevent and punish these human rights violations. Although the Bahraini judicial system has been capable to arrest and sentence large numbers of protesters, among them our client number 1, it failed to open effective investigations in crimes allegedly committed by state and foreign security forces against the protesters. Thus, the leadership in charge of the Bahrain Defense Force and Security Police must be investigated for the crimes committed against peaceful protesters during the past few months.

ECCHR is willing to support the Commission in order to achieve this goal. We possess evidentiary materials, including testimonies, electronic footage, pictures and death certificates, and are collecting additional evidence, which is currently being examined and analyzed by ECCHR in order to initiate further legal action.

ECCHR is deeply concerned about the situation in Bahrain, particularly the failure to investigate violence against protesters thus far. We strongly recommend including independent international entities in any further step towards accountability for the serious human rights violations occurring in Bahrain since August 2010. International involvement is

essential to guarantee effective investigation and prosecution at all levels of the Bahraini security force's command as well as Gulf Cooperation Council (GCC) troops' involvement. We urge the Commission to seriously investigate the alleged crimes with a special focus on the conduct of those with command or authority and control over the security forces. Numerous indications about the widespread as well as systematic character of the attacks have to be taken into account by the Commission to strengthen its credibility as independent international experts' body. Any recommendation must address the particularity of crimes against international law, its approach to accountability of superiors as well as the variety of *fora* for prosecutions.

We look forward to working with the Commission during this investigative process and remain at your disposal.

Sincerely,