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THE RIGHT TO REPARATIONS IN INTERNATIONAL HUMAN RIGHTS LAW AND THE CASE OF BAHRAIN

INTRODUCTION

The evolution of international law towards a system capable of promoting “global justice” has been accompanied by a growing consensus that States bear an obligation both to punish wrongdoers *and* to act on behalf of victims in the wake of widespread, systematic human rights abuses.¹ In fact, U.N. General Assembly Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, sets forth “existing,” complementary international legal obligations of States in this arena without introducing new obligations.² The right to a remedy is premised on three core rights: (1) the right to “equal and effective access to justice”; (2) “the right to adequate, effective and prompt reparation for the harm suffered”; and (3) “the right to truth.”³ Despite being a U.N. Member State since September 21, 1971,⁴ the Kingdom of Bahrain (“Bahrain”) is a nation with a disturbing legacy of unaddressed human rights abuses and impunity for perpetrators.⁵ Such incongruence raises fundamental questions with respect to the current international legal frame-

1. Richard Falk, *Reparations, International Law, and Global Justice: A New Frontier*, in THE HANDBOOK OF REPARATIONS 478, 478–79 (Pablo De Greiff ed., 2006). See also PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS 170 (2002).

2. G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006) [hereinafter 2006 Principles]. In addition to the 2006 Principles, the U.N. General Assembly previously addressed the rights of victims in adopting the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. However, the 1985 Declaration focuses on the rights of victims of domestic crimes whereas the 2006 Principles are essentially “an international bill of rights of victims.” M. Cherif Bassiouni, *International Recognition of Victim’s Rights*, 6 HUM. RTS. L. REV. 203 (2006).

3. Bassiouni, *supra* note 2, at 260.

4. See United Nations List of Member States, <http://www.un.org/members/list.shtml> (last visited Sept. 1, 2007).

5. REDRESS, REPARATIONS FOR TORTURE: A SURVEY OF LAW & PRACTICE: BAHRAIN COUNTRY REPORT S. 2.1 (May 2003) [hereinafter REDRESS, REPARATIONS FOR TORTURE]. See also HUMAN RIGHTS WATCH, ROUTINE ABUSE, ROUTINE DENIAL: CIVIL RIGHTS AND THE POLITICAL CRISIS IN BAHRAIN 10 (1997) [hereinafter HRW, ROUTINE ABUSE, ROUTINE DENIAL]; REDRESS, SUBMISSION OF THE REDRESS TRUST TO THE MEETING ON BAHRAIN—THE HOUSE OF LORDS 2 (Aug. 2004).

work and the complex moral, legal, and political challenges involved in any reparations process.⁶

Located off of the eastern coast of Saudi Arabia in the Persian Gulf, Bahrain sits in the center of the highly complicated and volatile Middle East region.⁷ With a population of approximately 718,000,⁸ Bahrain is the smallest of the six Persian Gulf States that make up the Gulf Cooperative Council (“GCC”).⁹ However, due in large part to its historical antecedents—the Sunni al-Khalifa tribe wrested control of the archipelago from indirect Persian rule in 1782, and subsequently sought to consolidate and maintain power—Bahrain is considered “the most complex and stratified of the Gulf states.”¹⁰ Today, members of the al-Khalifa family and their “Sunni tribal allies” exercise most of the political and economic power in Bahrain.¹¹ At the bottom of the “social and political hierarchy” are the al-Baharinah indigenous Shiite Arabs and all Persians regardless of sect.¹² Despite comprising approximately seventy percent of Bahrain’s population, Shiites continue to endure systematic discrimination.¹³

6. See OUT OF THE ASHES: REPARATION FOR VICTIMS OF GROSS AND SYSTEMATIC HUMAN RIGHTS VIOLATIONS 345, 481–82 (K. De Feyter, S. Parmentier, M. Bossuyt & P. Lemmens eds., 2005); DINA SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW (2d ed. 2005).

7. There have been three major wars in the Gulf States alone over the past twenty-five years: the Iran-Iraq War (1980–1988), the Persian Gulf War (1991), and Operation Iraqi Freedom (2003–present). KENNETH KATZMAN, CONG. RESEARCH SERV., RL 31533, THE PERSIAN GULF STATES: ISSUES FOR U.S. POLICY 1 (2006) [hereinafter CRS REPORT RL 31533].

8. C.I.A. World Factbook: Bahrain, <https://www.cia.gov/library/publications/the-world-factbook/geos/ba.html> (last visited Dec. 19, 2007). See also INTERNATIONAL CRISIS GROUP, BAHRAIN’S SECTARIAN CHALLENGE 7 (2005) [hereinafter ICG REPORT]. Non-Bahrainis comprise nearly 290,000 people, or forty percent of the population, and account for sixty-four percent of the workforce. *Id.*; CRS REPORT RL 31533, *supra* note 7.

9. The other five GCC states are Kuwait, Oman, Qatar, Saudi Arabia, and the UAE.

10. ICG Report, *supra* note 8, at 1; C.I.A. World Factbook: Bahrain, *supra* note 8.

11. ICG Report, *supra* note 8, at 5. According to the International Crisis Group, members of the royal family occupy at least 100 of the top 572 government posts, including 24 of 47 cabinet-level posts, 15 of the top 30 in the Ministry of the Interior, 6 of the top 12 in the Ministry of Justice, and 7 of the top 28 in the Ministry of Defense. *Id.* See also C.I.A. World Leaders: Bahrain, <https://www.cia.gov/library/publications/world-leaders-1/world-leaders-b/bahrain.html> (last visited Dec. 19, 2007). After the al-Khalifa family and their “Sunni tribal allies” are other descendants of Sunni Arab tribes and then *hawalah*, Iranian Sunni and Arab immigrants to Bahrain of over a century or more. ICG Report, *supra* note 8, at 1.

12. ICG Report, *supra* note 8, at 1.

13. *Id.* The ongoing government ban of the 2006 “Al-Bandar report” released by the Gulf Centre for Democratic Development does little to dispel this perception. The report details a conspiracy led and funded by known official organizations, most notably the

The story of Bahrain's past and present bears telling for three primary reasons. First, on a universal level, it is important to raise awareness of the experiences of victims¹⁴ of grave human rights violations and to promote accountability. Second, on a geopolitical level, the United States has a major stake in the stability of Bahrain¹⁵ and developments in the

Royal Court, to ensure the sustained political and economic dominance of the Sunni minority to the exclusion of Bahrain's Shiite majority. The report includes evidence of plans to fix elections, to undermine dissident groups, to disenfranchise Shiite populations, to restrict the operation of civic organizations, and to facilitate a change in the country's demographics through pro-Sunni immigration policies. International Freedom of Expression Exchange, *Authorities Reinforce Sweeping Media Ban, Internet Censorship on Controversial Report*, <http://canada.ifex.org/en/content/view/full/88028/> (last visited Dec. 19, 2007).

14. For purposes of this Note, the term "victim" should be understood consistent with the 2006 Principles and defined as

[p]ersons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate . . . the term "victim" also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

2006 Principles, *supra* note 2, para. 8.

15. CRS REPORT FOR CONGRESS 95-1013, *Bahrain: Reform, Security, and U.S. Policy* 3 (Apr. 23, 2007). In an effort to protect itself from its powerful neighbors, Bahrain cultivated a strategic alliance with the United States centered on defense issues. *Id.* The U.S. naval command has maintained a presence in Bahrain since 1938, and the Fifth Fleet is currently headquartered in Juffair, Bahrain. The headquarters is responsible for coordinating support missions by U.S. warships in the Iraq War, and conducting counter-terrorism and counter-narcotrafficking operations in the Arabian Sea. *Id.* at 4. After the terrorist attacks of September 11, 2001, the Bush administration took extensive measures to further strengthen the U.S.-Bahrain relationship. The two countries renewed a ten-year defense agreement in October 2001, which "provides U.S. access to Bahraini bases during a crisis, the pre-positioning of strategic material (mostly U.S. Air Force munitions), consultations with Bahrain if its security is threatened, and expanded exercises and U.S. training of Bahraini forces." *Id.* at 4. In March 2002, President Bush made Bahrain a major non-NATO ally, a status that allows for U.S. arms sales. *Id.* Moreover, the U.S. Congress identified access to Bahrain-based military installations and airspace as critical to U.S. military operations in Iraq, Afghanistan, and the Horn of Africa in addition to contingency operations or force projections in the Gulf and Southwest Asia. Human Rights Watch, *Bahrain: Events of 2006*, <http://hrw.org/englishwr2k7/docs/2007/01/11/bahrain14699.htm> (last visited Dec. 20, 2007). The Bush administration requested an estimated \$17.3 million in military aid for Bahrain in 2007. *Id.*

Persian Gulf region more generally.¹⁶ Third, on a historical level, a successful transitional justice experience in Bahrain could lend further support to the precedent established by the Equity and Reconciliation Commission (“IER”) in Morocco, and encourage other Gulf States, such as Saudi Arabia, to make similar efforts to resolve mass human rights violations.

Beginning shortly after Bahrain achieved independence in 1971 and continuing through the mid-1990s, the Bahraini government undertook a campaign of political repression that targeted opposition activists, leftists, unionists, and others perceived as threats to the State.¹⁷ Hundreds of Bahrainis and their families were forcibly exiled, and the use of torture was “endemic.”¹⁸ Under the leadership of King Hamad, who assumed power following the death of his father Amir ‘Isa in 1999, Bahrain has undergone a series of political reforms and has slowly begun to confront its past.¹⁹ In this vein, the King has expressed interest in pursuing national reconciliation and transitional justice to confront Bahrain’s legacy of human rights abuses.²⁰ In January 2006, the decision was made to provide monthly payments of \$660 (250 Bahraini dinars) to 250 families with either unemployed or elderly former exiles allowed back to the isl-

16. CRS REPORT RL 31533, *supra* note 7, at 26. Approximately fifty-seven percent of the world’s proven oil reserves (715 billion barrels) and about forty-five percent of the world’s proven natural gas reserves (2462 trillion cubic feet) are located in Iran, Iraq, and the GCC States. The United States imports about twenty percent of its net oil imports from the Gulf States. *Id.*

17. See HRW, ROUTINE ABUSE, ROUTINE DENIAL, *supra* note 5, at 11; REDRESS, REPARATIONS FOR TORTURE, *supra* note 5.

18. REDRESS, REPARATIONS FOR TORTURE, *supra* note 5. See also HRW, ROUTINE ABUSE, ROUTINE DENIAL, *supra* note 5, at 11; REDRESS, SUBMISSION OF THE REDRESS TRUST TO THE MEETING ON BAHRAIN—THE HOUSE OF LORDS, *supra* note 5.

19. Comm. Against Torture, *Consideration of Reports Submitted by State Parties Under Article 19 of the Convention (Continued)*, para. 33, U.N. Doc. CAT/C/SR.656 (May 24, 2005) [hereinafter CAT Comm. 1]. Government officials refer to the initiative as the “reform programme,” which is intended to “address long-festering domestic tensions, to establish a constitutional regime and to introduce political reforms.” The program includes the highly controversial amnesty laws Legislative Decree No. 10 of 2001 and Legislative Decree No. 56 of 2002. *Id.*

20. Comm. Against Torture, *Consideration of Reports Submitted by State Parties Under Article 19 of the Convention, Comments by the Government of Bahrain to the Conclusions and Recommendations of the Committee Against Torture*, U.N. Doc. CAT/C/BHR/CO/1/Add.1 (Feb. 8, 2007) [hereinafter CAT Bahrain Comments].

and as part of the reform program.²¹ However, there is only one known instance to date of government compensation to a victim of torture.²²

It is important to recognize the two different ways in which the term “reparations” is used.²³ Within the context of international law, the term connotes the array of measures available to redress the different harms that a victim may have suffered due to certain crimes.²⁴ Therefore, under international law, reparations may include restitution, compensation, rehabilitation, and satisfaction and guarantees of nonrecurrence.²⁵ Such measures, which include material and moral (or “symbolic”) undertakings by a society in individual or collective form, seek to restore the victim to the *status quo ante* by expressing a society’s “recognition, remorse and atonement for harms inflicted.”²⁶ Material reparations may include monetary compensation, service packages providing healthcare or counseling to promote rehabilitation, restoration of property rights, or a pension.²⁷ Moral, or symbolic, reparations focus on allowing the victim’s story to be told and promoting a sense of (nonlegal) justice, and may include official apologies, rehabilitation, and the creation of memorials or other acts of remembrance.²⁸ For reasons to be discussed later, symbolic reparations may prove more valuable in facilitating the healing sought through any material reparations process.²⁹

However, the term is often used in a more narrow sense to refer to “the design of programs (i.e., more or less coordinated sets of reparative measures) with massive coverage.”³⁰ Historically, most reparations pro-

21. U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2006: BAHRAIN (2007), available at <http://www.state.gov/p/nea/ci/81995.htm> (last visited Sept. 1, 2007) [hereinafter U.S. DEP’T OF STATE 2006: BAHRAIN].

22. REDRESS, REPARATIONS FOR TORTURE, *supra* note 5, at 14.

23. Pablo De Greiff, *Justice and Reparations*, in THE HANDBOOK OF REPARATIONS, *supra* note 1, at 451, 453.

24. *Id.*

25. *Id.*

26. Naomi Roht-Arriaza, *Reparations Decisions and Dilemmas*, 27 HASTINGS INT’L & COMP. L. REV. 157, 157–58 (2004).

27. HAYNER, *supra* note 1, at 182 (“[F]or those left destitute from the loss of a breadwinner in the family, or left emotionally or physically shattered, financial reparation, basic medical benefits, and other support services will be necessary in order to begin to repair the damage.”); De Greiff, *supra* note 23, at 453; Roht-Arriaza, *supra* note 26, at 157–58.

28. De Greiff, *supra* note 23, at 453.

29. Roht-Arriaza, *supra* note 26, at 180.

30. De Greiff, *supra* note 23, at 453. In analyzing the design of reparations programs, De Greiff believes emphasis should be placed on three goals: recognition, civic trust, and social solidarity. *Id.* at 451.

grams have incorporated elements of both connotations of the term.³¹ Such overlapping is logical given that settlement of court cases has often directly or indirectly resulted in the formation of “administrative compensation schemes.”³² This Note will address both contexts. Nevertheless, unless otherwise indicated, the term “reparations” will refer to the broader meaning as understood in international law.

This Note makes two central propositions. First, the existing international legal framework for reparations to victims of mass human rights violations is inadequate as evidenced by the current situation in Bahrain.³³ At least in the short term, legal recognition of a victim’s right to reparations without an effective enforcement mechanism at the international level ultimately perpetuates the cycle of victimization for those whom the pronouncement of such principles seeks to protect.³⁴ Not only must Bahraini victims of state abuse suffer the indignities of their mistreatment while being denied access to justice at the domestic level, but they are also reassured of their rights by an international legal framework incapable of guaranteeing them justice, thereby reinforcing their position of helplessness.³⁵ Nevertheless, at the supranational level, there is an

31. Roht-Arriaza, *supra* note 26, at 157, 165.

32. *Id.*

33. See Bassiouni, *supra* note 2, at 203, 260 (discussing a theory of victims’ rights and advocating “for a strengthening of current victims’ rights norms”). See also Roht-Arriaza, *supra* note 26, at 158 (“If reparations are so universally accepted as part of a state’s human rights obligations, why have so few states emerging from periods of conflict or mass atrocity put viable programs into place?”).

34. See Michael Reisman & Janet Koven Levit, *Reflections on the Problem of Individual Responsibility for Violations of Human Rights*, in *THE MODERN WORLD OF HUMAN RIGHTS: ESSAYS IN HONOUR OF THOMAS BUERGENTHAL* 419, 420–23 (Antonio A. Cançado Trindade ed., 1996). However, this says nothing about the potential positive implications of such a principle ripening into customary international law. See *The Paquete Habana*, 175 U.S. 677, 708 (1900) (relying on the customs and usages of civilized nations in concluding that “it is an established rule of international law . . . that coast fishing vessels . . . are exempt from capture as prize of war”).

35. Reisman & Levit, *supra* note 34, at 421. Reisman and Levit address a further indignity that victims must suffer as a result of the “normative gray gap” between the international human rights framework and national law:

[V]ictims of [gross and systematic human rights] violations actually suffer twice: first, in being the victims and second, in *their* obligation to participate, with all other citizens, in paying compensation When we say that the state is responsible and must compensate, we are really saying that the citizens of the State, including the victims, must pay to compensate for [human rights] violations.

emerging trend of enforcement for grave violations of international law, which represents a positive development for human rights and the rule of law.³⁶ Second, the implementation of a “comprehensive and coherent reparations program”³⁷ in Bahrain is ultimately in the best legal, moral, and political interests of the al-Khalifa regime and two of its closest allies, Saudi Arabia³⁸ and the United States.³⁹

This Note is divided into three main sections. Part I discusses Bahrain’s history of human rights abuses and major advances and setbacks in the nation’s ongoing transitional justice or “national reconciliation” process. Part II discusses the effectiveness of the existing international legal framework in guaranteeing victims of massive and systematic human rights abuses the right to a remedy and reparations. Part III explores what an administrative reparations scheme for Bahraini victims might look like in light of progress made.⁴⁰ It draws upon lessons learned from the Moroccan transitional justice experience, the first of its kind in the Middle East,⁴¹ and introduces some key political issues involved in financing any such reparations program. The Note concludes by examin-

Id. See also REDRESS, REPARATIONS FOR TORTURE, *supra* note 5, at 8 (“Given the absence of a regional human rights mechanism in the Middle East, the United Nations is the main body monitoring Bahrain’s compliance with its human rights obligations.”).

36. See Bassiouni, *supra* note 2, at 203 (outlining a wide movement towards the recognition of the rights of victims of crime, whether domestic or international, or gross violations of human rights); Reisman & Levit, *supra* note 34, at 419, 436 (discussing the crystallization of an international norm that now explicitly includes human rights violations among the international crimes for which individuals bear responsibility); Roht-Arriaza, *supra* note 26, at 157, 163.

37. See De Greiff, *supra* note 23, at 452, 467–71.

38. *Navigating Nebulous Waters: Prospects for Transitional Justice in Bahrain 5* (Aug. 1, 2007) (unpublished working paper, on file with the International Center for Transitional Justice, Middle East North Africa Unit) [hereinafter *Prospects for Transitional Justice in Bahrain*] (“At present, Saudi Arabia arguably wields more influence over Bahrain than any other country, both politically and economically. Moreover, as the political and spiritual center of Sunni Islam, Saudi Arabia has a vested interest in supporting the rule of the Sunni al-Khalifa against Iranian influence and any potential Shia uprising.”).

39. See CRS REPORT FOR CONGRESS 95-1013, *supra* note 15, at 3. See also C.I.A. World Factbook: Bahrain, *supra* note 8 (Bahrain is neighbor to the primary Middle Eastern petroleum sources and occupies a strategic location in the Persian Gulf through which much of the Western world’s petroleum must transit to reach open ocean).

40. See generally THE HANDBOOK OF REPARATIONS, *supra* note 1; *Prospects for Transitional Justice in Bahrain*, *supra* note 38, at 8–10, 27–31 (discussing the internal power dynamics of the regime, and relevant reforms and recent developments).

41. See generally International Center for Transitional Justice, *Morocco*, <http://www.ictj.org/en/where/region5/591.html> (last visited Dec. 19, 2007) [hereinafter ICTJ Morocco Overview].

ing the likely implications of Bahrain's current, limited course of action and what other nations seeking to confront similarly repressive pasts can learn from the Bahraini experience.

I. SYSTEMATIC HUMAN RIGHTS ABUSES AND THE BEGINNINGS OF TRANSITIONAL JUSTICE IN BAHRAIN

As a member of the international community of States, Bahrain is obligated to prevent the practice of torture within its sovereign territory and to remedy any such violations once they have occurred.⁴² The Draft Articles on State Responsibility for Internationally Wrongful Acts establish that a State commits an internationally wrongful act when (1) conduct consisting of an action or omission is attributable to the State under international law; and (2) such conduct constitutes a breach of an international obligation of the State.⁴³ There is thus widespread consensus that a State bears an international legal obligation to provide reparations where state agents are responsible for the violative act.⁴⁴ In fact, even in instances where the State's direct involvement cannot be proven, the State is still responsible if it was complicit in the violations or failed to exercise due diligence in investigating or prosecuting the violations.⁴⁵

The prohibition against torture is widely understood to have achieved *jus cogens* status.⁴⁶ Article 1 of the Convention Against Torture and Oth-

42. J. HERMAN BURGERS & HANS DANIELIUS, THE UNITED NATIONS CONVENTION AGAINST TORTURE: A HANDBOOK ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT 1 (1988) (“[T]he *Convention* is based upon recognition that [the prohibition against torture and other cruel, inhuman or degrading treatment or punishment] is already established under international law.”); Universal Declaration of Human Rights, arts. 5, 8, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

43. Draft Articles on Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, art. 2, UN Doc. A/Res/56/83 (Jan. 28, 2002).

44. *E.g.*, Roht-Arriaza, *supra* note 26, at 157, 163.

45. *Id.*

46. *See* Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 332, 344 (defining a *jus cogens* norm, or a “peremptory norm of general international law,” as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”). *See, e.g.*, *Siderman de Blake v. Republic of Arg.*, 965 F.2d 699, 714, 717 (9th Cir. 1992), *cert. denied* 507 U.S. 1017 (1993) (quoting the Vienna Convention on the Law of Treaties’ definition of *jus cogens* and stating that the prohibition against torture has “the force of a *jus cogens* norm”); *Al-Adsani v United Kingdom*, 34 Eur. Ct. H.R. 11, 30 (recognizing the prohibition of torture as a rule of *jus cogens*); BETH VAN SCHAACK & RONALD C. SLYE, INTERNATIONAL CRIMINAL LAW AND ITS ENFORCEMENT: CASES AND MATERIALS 496 (2007).

er Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) defines torture as

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁴⁷

Even though Bahrain did not accede to CAT until March 6, 1998,⁴⁸ and the provisions of the treaty cannot be applied *ex post facto*, the State still breached its obligation to prevent torture under customary international law.⁴⁹ Ironically, Article 19 of the 1973 Bahraini Constitution explicitly proscribed physical and mental torture and the use of confessions obtained under torture or degrading treatment.⁵⁰ Since ratifying CAT, Bahrain has the affirmative obligation to prevent torture by “tak[ing] effective legislative, administrative, judicial or other measures to *prevent* acts of torture under its jurisdiction.”⁵¹ This requires States Parties to criminalize the act of torture and complicity or participation in torture.⁵²

In 1973, only two years after Bahrain achieved its independence, Amir ‘Isa bin Salman al-Khalifa issued a decree officially making Bahrain an

47. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1(1), Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85, [hereinafter CAT]. There are 146 State Parties to CAT. United Nations Treaty Collection, *Convention Against Torture*, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=129&chapter=4&lang=en> [hereinafter UNTC CAT] (last visited Feb. 27, 2009). See also International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, S. Exec. Doc. E, 95-2, 999 U.N.T.S. 171 [hereinafter ICCPR]. There are 164 State Parties to the ICCPR. United Nations Treaty Collection, *International Covenant on Civil and Political Rights*, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=322&chapter=4&lang=en> [hereinafter UNTC ICCPR] (last visited Feb. 27, 2009); U.N. Human Rights Comm., General Comment No. 20, Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment of Punishment (Article 7), para. 5, U.N. Doc. A/47/40 (1992).

48. UNTC CAT, *supra* note 47.

49. See *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, para. 111 (July 21, 2000) (concluding that Article 1 of CAT “reflects customary international law”); BURGERS & DANIELIUS, *supra* note 42, at 1.

50. BHR. CONST. of 1973, art. 19(d). The prohibition is replicated in Article 19(d) of the 2002 Amended Constitution. BHR. CONST. of 2002, art. 19(d)

51. CAT, *supra* note 47, art. 2(1).

52. *Id.* art. 4(1).

Islamic State in which Islamic law, or *sharia*, is the main source of legislation.⁵³ Initial optimism within Bahraini civil society following the enactment of the new constitutional regime quickly dissipated after the issuance of the State Security Law of 1974.⁵⁴ The law provided the legal pretext for many of the human rights abuses perpetrated during the next two decades by empowering security forces to arrest and detain for up to three years any person who allegedly “perpetrated acts, delivered statements, exercised activities or [was] involved in contacts inside or outside the country, which are of a nature considered to be in violation of the internal or external security of the country.”⁵⁵

Following the Amir’s decision in 1976 to dissolve the National Assembly—Bahrain’s parliament—the government relied on the State Security Law and a policy of forced exile to silence opposition.⁵⁶ The repression intensified following the 1978–1979 Islamic Revolution in Iran.⁵⁷ The Revolution emboldened Bahrain’s Shiite majority to challenge the status quo rule of the Sunni elite.⁵⁸ Fearing Iranian support for opposition groups and the possibility of a coup, the Bahraini Government cracked down.⁵⁹ State security forces detained dozens of Shiite leaders on allegations of plotting to overthrow the royal family.⁶⁰ Detainees were allegedly tortured and held incommunicado for months before they were all found guilty by the State Security Court in 1982.⁶¹ Sentences ranged from seven years to life in prison.⁶²

Torture was most prevalent in Bahrain during the mid-1990s at the height of the popular uprising that called for democratic reform and a return to a constitutional system of governance.⁶³ The report by the U.N. Special Rapporteur on Torture to the Human Rights Commission in 1997 describes the prevailing approach towards the practice during this epoch:

[M]ost persons arrested for political reasons in Bahrain were held incommunicado, a condition of detention conducive to torture. The Security and Intelligence Service . . . and the Criminal Investigation Department . . . were alleged frequently to conduct interrogation of such

53. BHR. CONST. of 1973, art. 2.

54. HRW, ROUTINE ABUSE, ROUTINE DENIAL, *supra* note 5, at 11.

55. *Id.*

56. *Id.*

57. *Id.* at 12.

58. *Id.*

59. *Id.*

60. *Id.* at 11–12.

61. *Id.* at 12.

62. *Id.*

63. REDRESS, REPARATIONS FOR TORTURE, *supra* note 5, at 3–4.

detainees under torture . . . said to be undertaken with impunity, with no known cases of officials having been prosecuted for acts of torture or other ill-treatment

In addition to its use as a means to extract a ‘confession,’ torture was also reportedly administered to force detainees to sign statements pledging to renounce their political affiliation, to desist from future anti-government activity, to coerce the victim into reporting on the activities of others, to inflict punishment and to instill fear in political opponents. The methods of torture reported include: *falaqa* (beatings on the soles of the feet); severe beatings, sometimes with hose-pipes; suspension of the limbs in contorted positions accompanied by blows to the body; enforced prolonged standing; sleep deprivation; preventing victims from relieving themselves; immersion in water to the point of near drowning; burnings with cigarettes; piercing the skin with a drill; sexual assault, including the insertion of objects into the penis or anus; threats of execution or of harm to family members; and placing detainees suffering from sickle cell anemia (said to be prevalent in the country) in air-conditioned rooms in the winter, which can lead to injury to internal organs.⁶⁴

Ian Henderson, a citizen of the United Kingdom and the head of the State Intelligence Service from 1966 to 1998, is widely believed to be responsible for the routine use of torture during his tenure.⁶⁵ Although Henderson himself admits that “vigorous interrogation” techniques were used, he categorically denies engaging in torture or ordering his forces to do so.⁶⁶

In 1999, Amir Sheikh ‘Isa bin Salman al-Khalifa died and was succeeded by his son, Sheikh Hamad bin ‘Isa al-Khalifa. Recognizing that social peace was essential to securing foreign investment—the royal family’s major source of income—and its political survival, Sheikh Hamad launched a series of reforms.⁶⁷

64. Special Rapporteur on Torture, *Report of the Special Rapporteur, Mr. Nigel S. Rodley, Submitted Pursuant to Commission on Human Rights Resolution 1995/37 B*, U.N. Doc. E/CN.4/1997/7 (Jan. 10, 1997).

65. REDRESS, REPARATIONS FOR TORTURE, *supra* note 5, at 9; Human Rights Watch, *U.K. Should Open Files on Bahrain Torture: Role of U.K. National Seen as Pivotal*, Jan. 10, 2000, <http://www.hrw.org/en/news/2000/01/10/uk-should-open-files-bahrain-torture>. Other individuals alleged to have committed, or overseen, torture include Adel Flaifel, Khalid al-Wazzan, Abdulaziz Ateyatallah al-Khalifa, and Alistair Bain McNutt. HRW, ROUTINE ABUSE, ROUTINE DENIAL, *supra* note 5, at 23.

66. Neil Mackay, *Scots Security Boss Branded “Master Torturer” of Bahrain*, BIG ISSUE (SCOTLAND), Jan. 8, 1997.

67. *Prospects for Transitional Justice in Bahrain*, *supra* note 38, at 18.

Prior to the adoption of a new constitution in February 2002, King Hamad issued two legislative decrees central to any discussion about justice and reparations for governmental abuses in Bahrain.⁶⁸ Legislative Decree No. 10 of 2001 established a “general amnesty . . . for crimes affecting national security . . . committed by citizens before the enactment of this Law.”⁶⁹ The Decree led to the release of all political detainees, both pretrial and posttrial, and hundreds of people forcibly exiled were allowed to return.⁷⁰

The initial positive effects of the amnesty were quickly overshadowed by Legislative Decree No. 56 of 2002, which clarifies the scope of Legislative Decree No. 10 and effectively grants immunity to security officers and state officials from prosecution for human rights abuses perpetrated prior to 2001.⁷¹ The key provision stipulates that no cases arising under Legislative Decree No. 10 shall be heard by any “judicial authority,” regardless of “the person filing it and irrespective of the capacity against whom it is filed, whether he is an ordinary citizen or a civilian or military public servant.”⁷²

II. THE RIGHT TO REPARATIONS IN INTERNATIONAL HUMAN RIGHTS LAW

Natural justice has long recognized that harms should be remedied.⁷³ In fact, some form of the right to redress can be found in “every organised society.”⁷⁴ The right to a remedy for victims of violations of international

68. Legislative Decree No. 10 of 2001 with Respect to General Amnesty for Crimes Affecting National Security; Legislative Decree No. 56 of 2002 with Respect to Interpreting Certain Provisions of Legislative Decree No. 10 of 2001 with Respect to General Amnesty for Crimes Affecting National Security [hereinafter Legislative Decree No. 56].

69. *Id.* The sole exception is in cases of crimes resulting in death. *Id.* art. 2.

70. U.N. Comm'n on Human Rights, *Civil and Political Rights, Including the Question of Torture and Detention: Report of the Working Group on Arbitrary Detention: Visit to Bahrain* 10, UN Doc. E/CN.4/2002/77/Add.2 (Mar. 5, 2002).

71. Legislative Decree No. 56, *supra* note 68; Comm. Against Torture, *Consideration of Reports Submitted by State Parties Under Article 19 of the Convention*, U.N. Doc. CAT/C/CR/34/BHR (June 21, 2005) [hereinafter CAT Comm. 2] (Expressing concern at the “blanket amnesty extended to all perpetrators of torture or other crimes by Decree No. 56 of 2002 and the lack of redress available to victims of torture”); REDRESS, REPARATIONS FOR TORTURE, *supra* note 5, at 14.

72. Legislative Decree No. 56, *supra* note 68, art. 1, para. 2.

73. Bassiouni, *supra* note 2, at 207; Roht-Arriaza, *supra* note 26, at 157.

74. Bassiouni, *supra* note 2, at 207. *See, e.g.,* Marbury v. Madison, 5 U.S. 137, 163 (1803) (“The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection.”).

human rights law is set forth in numerous international instruments.⁷⁵ Article 8 of the Universal Declaration of Human Rights (“UDHR”) extends the right to an “effective remedy” by the appropriate national tribunal for any violations of a person’s fundamental rights as protected by the constitution or by law.⁷⁶ Article 2 of the International Covenant on Civil and Political Rights (“ICCPR”) recognizes a “right to an effective remedy.”⁷⁷ Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) obligates States Parties to assure “effective protection and remedies” and access to “just and adequate reparation or satisfaction” for violations of the rights contained therein.⁷⁸ Lastly, Article 14 of CAT mandates a State Party to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”⁷⁹

The Permanent Court of International Justice (“PCIJ”) in the *Chorzow Factory (Jurisdiction) Case* decisively articulated the legal duty to compensate for a recognized harm.⁸⁰ For its part, the International Court of

75. 2006 Basic Principles, *supra* note 2, pmb1. In addition to human rights law, the right to a remedy is implicitly recognized in the context of international humanitarian law, including in (1) the Geneva Convention Relative to the Treatment of Prisoners of War; (2) the Geneva Convention Relative to the Protection of Civilian Persons in Time of War; and (3) Protocol I Additional to the Geneva Convention. Bassiouni, *supra* note 2, at 213–14.

76. Universal Declaration of Human Rights, *supra* note 42, art. 8.

77. ICCPR, *supra* note 47, art. 2. *See also id.* art. 9. Bahrain acceded to the ICCPR in 2006. UNTC ICCPR, *supra* note 47.

78. International Convention on the Elimination of All Forms of Racial Discrimination, *entered into force* Jan. 4, 1969, G.A. Res. 2106 A (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195. Bahrain acceded to the ICERD in 1990. United Nations Treaty Collection, *International Convention on the Elimination of All Forms of Racial Discrimination*, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=319&chapter=4&lang=en> (last visited Feb. 27, 2009).

79. CAT, *supra* note 47, art. 14(1). The 2006 Basic Principles also ground the right in Article 3 of the Hague Convention Respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV); Article 91 of the Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of June 8, 1977; Article 39 of the Convention on the Rights of the Child; and Articles 68 and 75 of the Rome Statute of the International Criminal Court. 2006 Basic Principles, *supra* note 2, pmb1. For a discussion of the extensive U.N. efforts preceding the introduction of the 2006 Basic Principles, see SHELTON, *supra* note 6.

80. Case Concerning the Factory at Chorzow, 1927 P.C.I.J. (Ser. A) No. 9, at 29 (“[I]t is a principle of international law . . . that any breach of engagement involves an obligation to make reparation.”). According to Richard Falk, the Advisory Opinion by the International Court of Justice concerning the Israeli security wall reaffirmed the validity of

Justice ("ICJ") applies the *Chorzow* approach of seeking to restore the situation to what "would have existed" had no breach occurred.⁸¹ Similarly, current jurisprudence in both the Inter-American and European human rights systems is clear that the underlying principle behind reparations is "full restitution" (*restitutio in integrum*) and the reestablishment of the *status quo ante*.⁸² While legally and normatively unequivocal, such reasoning illuminates the fundamental paradox inherent in any discussion of reparations: specifically, the fact that it is ultimately impossible to restore the victim of any grave violation of human rights to the *status quo ante*.⁸³

National courts are supposed to serve as the gateway for victims seeking reparations for grave violations of human rights and humanitarian law.⁸⁴ In fact, an individual lacks standing to even bring a claim before most international bodies until he or she has exhausted available domestic remedies.⁸⁵ Ideally, national courts should operate in conjunction with international criminal tribunals and treaty obligations as part of a "flexible strategy" to enforce an "international consensus" against impunity for those who commit international crimes.⁸⁶

However, experience has repeatedly proven the ineffectiveness of relying on national courts for such a purpose because the courts are "almost always. . . inoperative" during the conflict periods in which massive and systematic human right violations usually occur, and because "it takes quite some time for courts to assume an independent stance capable of

this legal obligation in its finding that Israel has owed a duty to provide reparations to Palestinians harmed by the building of the illegal wall on their territory. Falk, *supra* note 1, at 482–83.

81. SHELTON, *supra* note 6, at 92. *But see* Christian Tomuschat, *Reparations for Victims of Grave Human Rights Violations*, 10 TUL. J. INT'L & COMP. L. 157, 166 (arguing that neither the PJIC nor the ICJ "has ever said that states are under an obligation to compensate their own citizens in cases where they have suffered harm at the hands of public authorities").

82. De Greiff, *supra* note 23, at 455. *See, e.g.*, Velásquez-Rodríguez v. Honduras, Judgment of July 29, 1988, Inter-Am. Ct. H.R. (Ser. C) No. 4, para. 174 (1988) ("The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.").

83. Roht-Arriaza, *supra* at 26, at 157–58 ("What could replace lost health and serenity; the loss of a loved one or of a whole extended family; a whole generation of friends; the destruction of home and culture and community and peace?").

84. *Id.* at 165.

85. *Id.*

86. *See* Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), 2001 I.C.J. 63, 78 (Feb. 14) (Joint Separate Opinion of Judges Higgins, Kooijmans, and Buergenthal).

finding powerful forces (usually the government itself) liable for violations.”⁸⁷ In many cases, amnesty laws, relevant statutes of limitations, and procedural mechanisms block victims from pursuing civil claims or prohibit criminal prosecution.⁸⁸

As a result, many victims of grave human rights violations have had more success pursuing their claims in foreign courts.⁸⁹ Particularly in the wake of World War II, several countries have “statutorily institutionalized” the principle of universal jurisdiction to hold perpetrators of grave human rights violations accountable.⁹⁰ The universality principle recognizes that certain crimes are so reprehensible that they harm all people, and therefore any nation may act on behalf of the international community to prosecute and punish those responsible, regardless of where the crimes were committed.⁹¹ A national court may thus exercise universal jurisdiction only over those crimes regarded as serious violations of in-

87. Roht-Arriaza, *supra* note 26, at 165.

88. *Id.* The failure by States to ensure victims their right to reparation is particularly problematic where the substantive breach violated a *jus cogens* norm under customary international law, such as the prohibition against torture. Thus, while States may argue that the right to reparation for victims of torture is a secondary right that is derogable, at least one commentator has rejected such reasoning as untenable because it enables States to “in fact derogate from a peremptory norm by breaching it and not enforcing the respective consequences[,] an outcome [that] is conceptually incompatible with the very concept of *jus cogens*.” Alexander Orakhelashvili, *Peremptory Norms and Reparation for Internationally Wrongful Acts*, 3 BALTIC Y.B. INT’L L. 19, 28 (2003).

89. Roht-Arriaza, *supra* note 26, at 166.

90. Reisman & Levit, *supra* note 34, at 434. For a comprehensive survey of state practice at the national level in approximately 120 countries relevant to universal jurisdiction prosecutions, see AMNESTY INTERNATIONAL, UNIVERSAL JURISDICTION—THE DUTY OF STATES TO ENACT AND ENFORCE LEGISLATION (Sept. 2001). *See also* HUMAN RIGHTS WATCH, UNIVERSAL JURISDICTION IN EUROPE: THE STATE OF THE ART (June 2006).

91. *See, e.g.*, Rome Statute of the International Criminal Court, July 1, 2002, 2187 U.N.T.S. 90; Statute of the International Tribunal for Rwanda, U.N. Doc. S/RES/955 (1994); Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, U.N. Doc. S/RES/827 (May 25, 1993); Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal, Aug. 8, 1945, 82 U.N.T.S. 280. *See also* Demjanjuk v. Petrovsky, 776 F.2d 571, 582 (6th Cir. 1985) (“A state may exercise jurisdiction to define and punish certain offenses recognized by the community of nations as of universal concern.”); Filártiga v. Peña-Irala, 630 F.2d 876, 890 (2d Cir. 1980) (“In the modern age, humanitarian and practical considerations have combined to lead the nations of the world to recognize that respect for fundamental human rights is in their individual and collective interest.”); Regina v. Bow St. Magistrates, Ex p. Pinochet Ugarte (No. 3), [2000] 1 A.C. 147, 198 (“The *jus cogens* nature of the international crime of torture justifies states in taking universal jurisdiction over torture wherever committed.”).

ternational law.⁹² Offenses rising to this level include war crimes, genocide, hostage taking, and torture.⁹³

Perhaps the most effective mechanism to date has been through civil claims under the U.S. Alien Tort Claims Act (“ATCA”), also referred to as the Alien Tort Statute.⁹⁴ The ATCA provides that “the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”⁹⁵ Foreign nationals may thus seek relief for harm they have suffered “in violation of the law of nations” or a treaty to which the United States is a party.⁹⁶ States are immune to suit under ATCA, however, and therefore plaintiffs may only bring suit against violators “in their individual capacity.”⁹⁷ Beginning with the seminal *Filártiga v. Peña-Irala* decision in 1980, foreign nationals have won numerous multimillion dollar judgments or verdicts against individual perpetrators including torturers, ex-generals, heads of state, and war criminals.⁹⁸ However, U.S. courts may only exercise jurisdiction over a defendant where the court possesses *in personam* jurisdiction, and thus the defendant must be

92. See *Ex p. Pinochet Ugarte* (No. 3), 1 A.C. at 148, 198. See also *Arrest Warrant of 11 April 2000*, 2001 I.C.J. at 81 (finding universal jurisdiction appropriate for “those crimes regarded as the most heinous by the international community”).

93. *Arrest Warrant of 11 April 2000*, 2001 I.C.J. at 78.

94. Roht-Arriaza, *supra* note 26, at 157, 166.

95. Alien Tort Claims Act, 28 U.S.C. § 1350 (2009). In 1992, President George H.W. Bush signed into law the Torture Victim Protection Act of 1991 (“TVPA”). The TVPA reinforces the ATCA by authorizing both U.S. and non-U.S. victims of torture and extrajudicial killing to bring a cause of action in the federal courts against those responsible. Torture Victim Protection Act of 1991, 28 U.S.C. § 1350 (2009); Human Rights First, *The Alien Claims Act and the Torture Victim Protection Act: Important Tools in the Fight Against Impunity*, http://www.humanrightsfirst.org/international_justice/w_context/w_cont_12.htm (last visited Dec. 16, 2007).

96. Human Rights First, *supra* note 98 (“U.S. courts have interpreted violations of the ‘law of nations’ under the ATCA to include crimes against humanity, war crimes, genocide, torture, rape, and summary execution.”).

97. Bassiouni, *supra* note 2, at 235.

98. Roht-Arriaza, *supra* note 26, at 167 (noting that while large judgments under the ATCA are generally uncollectible, they serve other purposes such as “allow[ing] victims to publicly tell their stories, publiciz[ing] the violations at issue[.] . . . official[ly] recogni[zing] that the plaintiffs were wronged,” deterring perpetrators from traveling to certain countries or assuming high-ranking government positions, and catalyzing domestic action to address the violation); Human Rights First, *supra* note 99 (“[The] ATCA has been used effectively on behalf of victims of gross human rights abuses perpetrated by well-known political and military figures—such as Ferdinand Marcos, Radovan Karadzic, and two Salvadoran generals—as well as by lesser-known government officials in different parts of the world.”).

physically present in the United States.⁹⁹ Given this jurisdictional requirement, it seems unlikely—though not impossible—that Bahraini torture victims will have an opportunity to pursue claims under the ATCA.

Reparations in the context of transition from a period of authoritarianism to one of relative democracy is still a new concept within the field of international law. Thus, if international law is largely understood to “codif[y] behavioral trends in state practice and shifting political attitudes on the part of governments with the intention of stabilizing and clarifying expectations about the future,” then the fact that the current system remains largely ineffective in holding Member States responsible for denying victims of massive rights violations their right to reparations is more easily understood.¹⁰⁰ Nevertheless, as long as “trends of *national practice*” in similar circumstances and “wider global trends toward individual accountability for crimes against humanity” remain entirely subservient to “domestic discretion” (and inaction), the right to reparation will continue to carry little practical significance for victims.¹⁰¹ If this is the case, then perhaps Richard Falk will remain justified in “view[ing] reparations as primarily an expression of *moral* and *political* forces at work in different contexts.”¹⁰²

III. THE CURRENT BAHRAINI APPROACH

A. Bahrain’s Limited Progress

At present, the case of Bahrain serves as an example of a country whose “new” leadership is willing to renounce its oppressive past without taking conclusive action to address it.¹⁰³ While Bahrain has taken

99. *Filártiga v. Peña-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (“[D]eliberate torture perpetrated under the color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties. Thus, whenever an alleged torturer is found and served with process by an alien within [U.S.] borders, [the ATCA] provides federal jurisdiction.”). *See also* Bassiouni, *supra* note 2, at 234.

100. Falk, *supra* note 1, at 480.

101. *Id.*

102. *Id.* at 485.

103. *Id.* at 495. The phrase “new leadership” is used loosely here, as many government officials from the preceding era of repression remain in positions of power despite the passing of the Amir and his son Hamad’s succession to power. The long-standing position of the Prime Minister, the Amir’s brother and the most powerful man in Bahrain according to many accounts, is telling in this regard. The Prime Minister is generally considered to be opposed to any “dramatic” reform. A power struggle has thus emerged between the Prime Minister and the King’s son, Crown Prince Salman, who is head of the Economic Development Board and more reform minded. The King has seemingly re-

measures over the last decade to comply with its various treaty obligations, the government continues to obfuscate its unwillingness to ensure that victims of torture have access to redress or other compensation.¹⁰⁴ Bahrain's civil code specifies that "[e]very unlawful act that has caused damage to others makes an obligation upon the person who committed it to pay compensation."¹⁰⁵ However, the law also shields public officials from liability where they were acting in an official capacity or based upon superior orders.¹⁰⁶ Torture is also prohibited under multiple provisions of the penal code.¹⁰⁷ Official statements praising the national reconciliation process stand in stark contrast to the government's "failure to investigate promptly, impartially, and fully the numerous allegations of torture and ill-treatment and to prosecute alleged offenders," and its refusal to provide "complete and disaggregated information about the number of detainees who have suffered torture or ill-treatment, including any deaths in custody, the results of investigations into the causes, and whether any officials were found responsible."¹⁰⁸

Furthermore, the al-Khalifa regime seemingly remains averse towards viewing the situation as one of massive human rights violations, the scope of which might necessitate the use of nontraditional judicial mechanisms, such as a government-administered reparations program.¹⁰⁹ Rather, the regime has suggested that victims of torture or ill-treatment have failed to exhaust access to redress through the Bahraini legal sys-

mained above the fray thus far, though he has sided with his son on certain issues. CRS REPORT FOR CONGRESS 95-1013, *supra* note 15, at 1; *Prospects for Transitional Justice in Bahrain*, *supra* note 38, at 9-10. *See also* CRS REPORT RL 31533, *supra* note 7, at 21.

104. Human Rights Watch, *Bahrain: Events of 2006*, <http://hrw.org/englishwr2k7/docs/2007/01/11/bahrai14699.htm> (last visited Dec. 20, 2007). On September 2, 2007, Prime Minister Shaikh Khalifa bin Salman Al Khalifa cautioned that "democracy, openness and freedom of opinion should not be used as a pretext to violate the law, sow sectarian sedition, or falsify truths in international arenas, claiming internal liberties are curbed." Invoking a popular government refrain, the Prime Minister explained that "[p]latforms for expressing opinions are open 'to accommodate all stances and trends as long as they serve the national interests rather than personal designs' He also warned against what one Bahraini newspaper termed 'misusing the parliament to raise controversial issues.'" *Id.*

105. Decree Law No. 19/2001, art. 158.

106. *Id.* art. 169.

107. REDRESS, REPARATIONS FOR TORTURE, *supra* note 5, at 10.

108. CAT Comm. 2, *supra* note 71, paras. 6-7. Other subjects of concern included the "large number of allegations of torture . . . committed prior to 2001," the blanket amnesty extended to all alleged perpetrators of torture or other crimes by Decree No. 56 of 2002, the lack of redress available to victims of torture, and the inadequate availability in practice of civil compensation and rehabilitation for victims of torture prior to 2001. *Id.*

109. *See Id.*

tem.¹¹⁰ In reality, amnesty legislation has blocked attempts by torture victims to bring claims.¹¹¹ While the sheer magnitude of abuses in Bahrain does not reach levels witnessed in postconflict States such as Germany, Argentina, or Peru, the numbers are such that even an earnest attempt to address all of the cases through the national legal system would inherently challenge certain bedrock norms—in particular, the premise that “norm-breaking behavior is more or less exceptional.”¹¹²

Temporarily setting aside the fact that there is no evidence of victims receiving access to justice through the Bahraini civil system and no known instances of the State prosecuting perpetrators, a case-by-case approach raises other issues as well.¹¹³ According to De Greiff, the two biggest problems are that it serves to “disaggregate” both victims and the reparations process as a whole.¹¹⁴ Historically, victims do not all receive equal access to the courts, and disparities in damage awards inherently create a “hierarchy” of victims.¹¹⁵ Moreover, an individualized approach poses challenges from a publicity standpoint. Decisions pertaining to the disclosure of case-specific facts may make it difficult to provide consistent publication of information about awards.¹¹⁶ The task of effectively conveying to the public the “nature and magnitude” of reparations measures is compounded by this disaggregation.¹¹⁷ Finally, there is also the

110. CAT Comm. 1, *supra* note 19, para. 34. The Bahraini delegation before the Committee Against torture stated:

Nobody had filed a claim for civil compensation based on allegations of torture and nobody had brought a claim before the Constitutional Court alleging that Decree No. 56 of 2002 was unconstitutional. That proved the unsound nature and lack of credibility of claims for compensation that failed to exhaust domestic remedies. In effect, such claims merely damaged the interests of those who had suffered human rights violations.

Id.

111. Presentation by Carla Ferstman, Director of Redress, *Accountability for Human Rights Violations in Bahrain*, Aug. 23, 2006, at 2, available at http://www.redress.org/reports/Presentation%20on%20Bahrain%2023%20Aug%2006%20_final_.pdf (noting that “a number of claims have indeed been filed” and blocked).

112. De Greiff, *supra* note 23, at 454.

113. CAT Comm. 2, *supra* note 71, para. 6 (expressing concern at the “apparent failure to prosecute alleged offenders, and in particular the pattern of impunity for torture and other ill-treatment committed by law enforcement personnel in the past”); Presentation by Carla Ferstman, *supra* note 111, at 2 (addressing the inability of torture victims to bring claims as a result of the amnesty legislation).

114. De Greiff, *supra* note 23, at 458.

115. *Id.*

116. *Id.*

117. *Id.*

risk that the completion of legal proceedings may not be coordinated with other reparative efforts that may play an equally important role in providing full restitution to victims.¹¹⁸

B. Financing Massive Reparations and Questions of Political Economy

Transitional societies seeking to finance administrative reparations programs while consolidating democratic reforms typically face challenges resulting from the “political dimensions” of such an undertaking, and the omnipresent “scarcity of resources” dilemma.¹¹⁹ While Bahrain is certain to encounter a host of political, economic, and social obstacles in financing a massive reparations program, the country’s power structure and the conditions underlying its transition do present certain opportunities. Prominent among these is that, while the 1990s in Bahrain can aptly be characterized as a time of domestic upheaval and state repression, such circumstances differ considerably from those in a society simultaneously transitioning from war to peace, such as the case in El Salvador or Guatemala.¹²⁰

As a “relatively well-off” country with “a limited and easily identifiable set of victims,” Bahrain also fits the more traditional profile for governments that have implemented administrative reparations programs to address massive human rights violations.¹²¹ Noteworthy in this regard is that, similar to the experiences of nations such as Argentina and Chile, governmental abuses in Bahrain were committed “against a largely unarmed opposition,” absent conditions of armed conflict.¹²²

118. *Id.*

119. Alexander Segovia, *Financing Reparations Programs: Reflections from International Experience*, in *THE HANDBOOK OF REPARATIONS*, *supra* note 1, at 650, 652–53. The “political dimension” encompasses the negotiations among key stakeholders necessary to mobilize and allocate financial resources. *Id.* at 653.

120. Roht-Arriaza, *supra* note 26, at 174–75; Segovia, *supra* note 122, at 653.

121. Roht-Arriaza, *supra* note 26, at 169. According to the U.N. Development Programme’s 2008 Human Development Index (“HDI”) Rankings, Bahrain ranks 32nd out of 179 countries, making it a “high human development” country ahead of most of its Gulf neighbors and most developing countries. U.N. Development Programme’s 2008 Human Development Index Rankings, <http://hdr.undp.org/en/statistics/> (last visited Feb. 16, 2009). The HDI provides a composite measure of three dimensions of human development: living a long and healthy life (measured by life expectancy), being educated (measured by adult literacy and enrollment at the primary, secondary, and tertiary level), and having a decent standard of living (measured by purchasing power parity income).

122. Roht-Arriaza, *supra* note 26, at 169.

Although Bahrain enjoys relative economic prosperity,¹²³ any program of reparations will require the government to reallocate its current spending priorities and/or seek additional financial support.¹²⁴ This is likely to remain a major political challenge without any significant changes to Bahrain's internal power dynamics¹²⁵ and in light of difficulties to date establishing consensus amongst national parties on the scope of any potential compensation payments by the government.¹²⁶ However, the recent implementation of a controversial one percent income tax on all public and private sector employees to help fund a national unemployment insurance plan indicates that the government has the ability to mobilize the necessary resources where the political will exists.¹²⁷ Ultimately, any progress on this front will require "the support of the Crown Prince and those loyal to him as this block was instrumental in advancing the key reforms of 2000, and national reconciliation is a critical precondition to the Crown Prince's larger political agenda of modernizing Bahrain."¹²⁸

Reparations, by their very nature, require the State to acknowledge its wrongful conduct by recognizing and compensating the victims.¹²⁹ The Bahraini government has proved tremendously reluctant to acknowledge and accept responsibility.¹³⁰ Instead, it has offered only blanket condemnation¹³¹ for the "situation" combined with limited progress.¹³² Such re-

123. C.I.A. World Factbook: Bahrain, *supra* note 8. "Facing declining oil reserves, Bahrain has turned to petroleum processing and refining and has transformed itself into an international banking center." In 2007, Bahrain had an estimated real growth rate (GDP) of 6.7%. *Id.*

124. Segovia, *supra* note 119, at 655.

125. *See supra* note 103.

126. *MPs Deadlocked over Riots Relief*, GULF DAILY NEWS, Apr. 11, 2007. Members of parliament were unable to reach agreement on a proposal to compensate victims of political unrest during the 1990s. Potential beneficiaries discussed included victims of abuse as well as property owners who suffered damages. *Id.*

127. Carnegie Endowment for Int'l Peace Arab Reform Bulletin: July/Aug. 2007, *Bahrain: First Gulf Income Tax; Press Law; Truth and Reconciliation Committee*, <http://www.carnegieendowment.org/arb/?fa=showIssue&backIssue=7/1/2007> (last visited Feb. 16, 2009). The income tax is the first of its kind for an Arab Gulf State. Under the law, both citizens and noncitizens are required to contribute, though only citizens will receive benefits. *Id.*

128. *Prospects for Transitional Justice in Bahrain*, *supra* note 38, at 39.

129. Segovia, *supra* note 119, at 655.

130. *See* CAT Comm. 2, *supra* note 71.

131. *See, e.g.*, CAT Bahrain Comments, *supra* note 20, para. A(3) (The national reconciliation process "put an end to internal strife and brought the country out of the political and social crisis which had beset it, closing a chapter on the past and helping to create a climate conducive to the enjoyment of public freedoms.").

luctance is undoubtedly tied to the fact that “programs of reparation are part of a more general human rights agenda, which involves the defense of traditionally marginalized social groups.”¹³³ Sectarian tension in Bahrain continues to simmer because the ruling Sunni elite have systematically marginalized Bahrain’s Shiite majority.¹³⁴ Therefore, any program of reparations in Bahrain is inextricably tied to the access and exercise of power.¹³⁵ This connection helps to explain the reticence exhibited by the Bahraini elite in earnestly addressing the past—particularly the Prime Minister—and why the ruling regime has taken only carefully calculated measures designed to ease pressure without producing any fundamental changes to the Bahraini power structure and its hold on power.¹³⁶

Hypothetically speaking, would nations with a strong interest in the stability of Bahrain—such as the United States or Saudi Arabia—ever contribute financially to a program of reparations in Bahrain?¹³⁷ Historically, foreign governments have made only limited financial contributions in support of such programs.¹³⁸ One explanation for this trend is that foreign States view financing reparations as a responsibility belonging to the State in transition.¹³⁹ Another explanation is that given the political nature of reparations programs, foreign governments are hesitant to get involved in a situation that could result in conflict with a govern-

132. On November 11, 2007, the cabinet announced the creation of a National Human Rights Authority. The body will be responsible for setting relevant policies, addressing human rights violations, and communicating with international organizations and nongovernmental organizations. Arab Reform Bulletin, Vol. 5, Issue 9: Nov. 2007, *Bahrain: Human Rights Authority; Journalists on Trial; Marriage Age Set*, Carnegie Endowment for Int’l Peace, <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=19783&prog=zgp&proj=zdl,zme>.

133. Segovia, *supra* note 119, at 655.

134. See ICG REPORT, *supra* note 8. According to a 2006 assessment by the Economist, while Bahrain has a per capita income of close to \$20,000, a third of the native Bahraini workforce earns less than \$600 a month—suggesting a significant disparity in the distribution of wealth within the country’s native population. *Playing by Unfair Rules; Bahrain*, ECONOMIST, Nov. 25, 2006.

135. See generally Segovia, *supra* note 119, at 655.

136. CRS REPORT RL 31533, *supra* note 7, at 20. While promising, Bahrain’s political reforms are consistent with efforts ongoing in the other Gulf states, none of which “aim to fundamentally restructure power in any of these states.” *Id.* at summary.

137. This question does not imply that either the United States or Saudi Arabia bear any legal responsibility under international law for the practice of torture in Bahrain. This is an entirely different inquiry requiring analysis under the rules on state responsibility and the attribution of wrongful conduct to a State. Heidy Rombouts, Pietro Sardaro & Stef Vendeginste, in *OUT OF THE ASHES: REPARATION FOR VICTIMS OF GROSS AND SYSTEMATIC HUMAN RIGHTS VIOLATIONS*, *supra* note 6, at 345, 482.

138. Segovia, *supra* note 119, at 659.

139. *Id.*

ment or an influential sector of a country such as the military.¹⁴⁰ It thus seems highly unlikely that the United States would be willing to contribute to any such effort. Saudi Arabia is also unlikely to contribute financially, particularly given its own shameful human rights record¹⁴¹ and recent internal civil unrest.¹⁴²

C. The Moroccan Transitional Justice Experience

A large-scale reparations program is not an unprecedented measure for a State in the Middle East and North Africa (“MENA”) region. Since 1990, Morocco has implemented various transitional justice mechanisms in an effort to confront its repressive past, specifically the gross human rights abuses committed by the State in the decades following Moroccan independence in 1956.¹⁴³ While Morocco’s experience is certainly unique and should not be understood as mapping directly to other MENA States, it offers critical insights about “both the promise and limits of truth-telling and reparations” and is beneficial to any discussion of transitional justice in Bahrain.¹⁴⁴

140. *Id.*

141. Human Rights Watch, *Overview of Human Rights Developments: Saudi Arabia 2006*, <http://hrw.org/englishwr2k7/docs/2007/01/11/saudia14717.htm> (last visited Dec. 19, 2007) (“Overall human rights conditions remain poor in Saudi Arabia Saudi law does not protect many basic rights and the government places strict limits on freedom of association, assembly, and expression. Arbitrary detention, mistreatment and torture of detainees, restrictions on freedom of movement, and lack of official accountability remain serious concerns.”).

142. The U.S. war in Iraq and the corresponding empowerment of Iraqi Shiites and high levels of sectarian violence that resulted have produced “acute fears of potential Shiite unrest” in Saudi Arabia. CRS REPORT RL 31533, *supra* note 7, at 5.

143. ICTJ Morocco Overview, *supra* note 41. Victims of government repression included leftists, Islamists, Saharawi independence activists, unionists, military dissidents, intellectuals, and others considered to be threats to the State. INT’L CTR FOR TRANSITIONAL JUSTICE, WORKSHOP ON THE GOALS AND CHALLENGES OF REPARATIONS AS A TRANSITIONAL JUSTICE MEASURE IN IRAQ 44 (2007) [hereinafter ICTJ WORKSHOP] (on file with the International Center for Transitional Justice, Middle East North Africa Unit).

144. ICTJ WORKSHOP, *supra* note 143, at 44. For a discussion on the uniqueness of the Moroccan experience, see King Mohamed VI, The Speech of His Majesty the King Mohamed VI Announcing the Formation of the Commission for Equity and Reconciliation (Jan. 7, 2004), available at http://www.ier.ma/article.php3?id_article=1297 (“Reflecting on the different international experiences in this particular field, one must acknowledge that Morocco, acting with wisdom and courage, has managed to come up with a model of its own.”). See also MOROCCAN EQUITY AND RECONCILIATION COMM’N, SUMMARY OF THE FINDINGS OF THE FINAL REPORT 12 (Dec. 2005) (In examining “the issue of reparations through the experiences of truth commission that were formed across the world . . . the Commission concluded that there is no one model that can be adopted.”); *An Interview with Hanny Megally*, ALL AFRICA, Aug. 4, 2006 (“Each country has its own specificity as

Morocco's initial transitional justice efforts began in 1990, under the late King Hassan II, who presided over the most intense era of repression commonly known as the "years of lead" and lasting from the 1960s until the early 1990s.¹⁴⁵ To quell mounting criticism, the King established the Human Rights Advisory Council (*Conseil Consultatif des Droits de l'Homme*) ("CCDH"), and the government released hundreds of political dissidents throughout the early part of the decade while taking limited measures to reform its incommunicado detention policies.¹⁴⁶ Despite making formal reservations to each, Morocco ratified CAT, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child in 1993.¹⁴⁷

Similar to Bahrain, the death of King Hassan in 1999 and the succession to the throne of his more reform-minded son, Mohammed VI, presented a new opportunity to confront many of the unresolved issues tied to governmental abuses.¹⁴⁸ King Mohammed VI ordered the formation of an independent Indemnity Commission ("IC") within the CCDH in order to compensate Moroccans "who suffered moral or physical prejudice as a result of enforced disappearance or arbitrary detention."¹⁴⁹ Over the course of four years, the IC decided more than 5000 cases and awarded a

to how it will go about addressing a legacy of past abuses."); Habib Toumi, *Bahrain 'Must' Have Its Own Justice System*, GULF NEWS, Apr. 26, 2007 (quoting Joe Stork, Director of Human Rights Watch Middle East and North Africa Division, in discussing transitional justice generally in Bahrain: "[t]he process has to be home-grown because every country has its own realities and Bahrainis have to work together to build their own").

145. ICTJ Morocco Overview, *supra* note 41.

146. *Id.* According to Human Rights Watch: "[i]n the late 1980's Hassan II began releasing batches of political prisoners In 1991, Hassan II freed about 270 persons whom the security services had 'disappeared' as long as nineteen years earlier. In 1994, the King amnestied more than 400 political prisoners. Opposition figures returned to Morocco after years of exile" HUMAN RIGHTS WATCH, MOROCCO'S TRUTH COMMISSION: HONORING PAST VICTIMS DURING AN UNCERTAIN PRESENT 6-7 (Nov. 2005) [hereinafter HRW MOROCCO].

147. HRW MOROCCO, *supra* note 146, at 7.

148. Susan Slyomovics, *No Buying off the Past: Moroccan Indemnities and the Opposition*, 229 MIDDLE EAST REPORT 34 (Winter 2003). *See generally* Heidi Rombouts, Pietro Sardaro & Stef Vendeginste, *supra* note 137, at 345, 481-82. "Regime succession" is a typical precursor to reparations for gross and systematic human rights violations, and it is a well established principle of international law that "neither a change of government nor a major regime change accompanied by a political transition and a constitutional reform of the state" disengages the State's liability for human rights violations committed by a previous regime. *Id.*

149. Susan Slyomovics, *A Truth Commission for Morocco*, MIDDLE EAST REP. 218 (Spring 2001).

total of approximately \$100 million in reparations.¹⁵⁰ However, the IC was criticized on “legal, moral and emotional” grounds.¹⁵¹ While the indemnity scheme acknowledged “implicitly, rather than explicitly, an official policy of illegal state practices,” compensation did little to meet the demands of victims seeking truth and justice, particularly those calling for the punishment of perpetrators.¹⁵² Moreover, the IC was derided for its lack of transparency, for the complicity of its administrators in past governmental human rights violations, and for its limited mandate, which precluded the body from resolving thousands of cases.¹⁵³

In 2004, King Mohammed VI took another major step by establishing the Commission for Equity and Reconciliation (*Instance Équité et Réconciliation*) (“IER”).¹⁵⁴ He declared the IER to be “equivalent to a Truth, Justice and Reconciliation Commission.”¹⁵⁵ The scope of the IER’s mandate was much broader than that of the IC, extending to “gross human rights violations that occurred between 1956 and the end of 1999.”¹⁵⁶ As a result, the IER had broad authority to assess, research, investigate, arbitrate, and make recommendations on claims not only for forced disappearance and arbitrary detention, but also for torture, sexual abuse, and deprivation of the right to life due to unrestrained use of state force and forced exile.¹⁵⁷ The IER was also responsible for continuing

150. ICTJ Morocco Overview, *supra* note 41.

151. Slyomovics, *supra* note 148, at 35.

152. *Id.* As Houria Esslami, sister of political activist and doctor Mohamed Esslami who was “disappeared” in 1997, explained:

[I]ndemnification should be the last stage of this dossier. In the first place, it is necessary to acknowledge all the disappeared, free those still living, speak the truth about the reasons for their disappearance and incriminate those responsible. It is only at that moment that one can speak about indemnification . . .

Id.

153. *Id.* The fact that the Commission did not have access to the extensive files of the security services and the Interior Ministry proved particularly damaging. ICTJ Morocco Overview, *supra* note 41.

154. Commission for Equity and Reconciliation, Mandate and Tasks, http://www.ier.ma/article.php3?id_article=1305 (last visited Dec. 19, 2007). The Commission’s mandate was from January 2004 to November 2005. The Commission was made up of a president and sixteen members, all appointed by the King upon recommendations by the CCDH. Nine of the members, including its president, were from the CCDH. Many of its members including its now-deceased president, Driss Benzekri, were former prisoners and torture survivors. ICTJ WORKSHOP, *supra* note 143, at 47.

155. MOROCCAN EQUITY AND RECONCILIATION COMM’N, *supra* note 144, at 1.

156. *Id.*

157. *Id.*

the work of the IC by compensating victims and their heirs.¹⁵⁸ While the IER was only granted “non-judiciary powers” of investigation, “public authorities were obliged to cooperate because of [the Commission’s] royal support.”¹⁵⁹ The IER was also prohibited from identifying individual perpetrators and could thus only identify institutions responsible for abuses.¹⁶⁰

During the course of its activities, the Commission considered more than 22,000 applications and held “victim-centered, public hearings” televised throughout country.¹⁶¹ The IER released its final report in December 2005.¹⁶² The report details the responsibility of both State and nonstate actors for gross violations committed, and offers suggestions and recommendations for providing victims with the necessary “moral and medical rehabilitation and social reinsertion.”¹⁶³ Given the extent of suffering endured by certain communities and regions, the Commission focused extensively on communal reparations as well. The Commission thus urged the “adoption of socio-economic and cultural development projects” tailored to those cities and regions, and “specifically recommended the conversion of former illegal detention centers.”¹⁶⁴ The report also outlines specific measures that the Moroccan government and civil society can undertake to guarantee nonrepetition in the future.¹⁶⁵ Finally, the report addresses the need for official acknowledgement of wrongdoing by recommending that the Prime Minister apologize publicly for past abuses.¹⁶⁶

The IER reparations program ultimately covered approximately 16,000 individuals.¹⁶⁷ About \$85 million in reparations was distributed to beneficiaries.¹⁶⁸ These beneficiaries received compensation checks, which

158. Commission for Equity and Reconciliation, *supra* note 157. As part of its task to unveil the truth, the Commission is responsible for “[r]edressing damages to the victims and/or their inheritors through material compensation, rehabilitation, social integration, and all other adequate means of reparations.” *Id.*

159. ICTJ Morocco Overview, *supra* note 41.

160. ICTJ WORKSHOP, *supra* note 143, at 45.

161. ICTJ Morocco Overview, *supra* note 41. The IER held seven public hearings, which were widely attended and at times included the King’s senior advisers, government officials, opposition party leaders, diplomats, international press, and civil society representatives. ICTJ WORKSHOP, *supra* note 143, at 47.

162. ICTJ WORKSHOP, *supra* note 143, at 44.

163. ICTJ Morocco Overview, *supra* note 41; ICTJ WORKSHOP, *supra* note 143, at 44; MOROCCAN EQUITY AND RECONCILIATION COMM’N, *supra* note 144, at 1.

164. MOROCCAN EQUITY AND RECONCILIATION COMM’N, *supra* note 144, at 2.

165. ICTJ Morocco Overview, *supra* note 41.

166. *Id.*

167. *Id.*

168. *Id.*

included a letter of apology from the State.¹⁶⁹ Minimum payouts to victims were set at 15,000 dirham (approximately \$200 in 2006).¹⁷⁰ In addition, all victims were eligible to receive health care.¹⁷¹ The Moroccan government funded the bulk of the reparations program with some assistance from the European Union.¹⁷²

Due to the restriction against identifying individual perpetrators, the IER has been criticized for maintaining impunity.¹⁷³ The subsequent failure to prosecute or recommend the prosecution of individuals has reinforced the belief “some victims may feel that reparations without accountability is only limited justice.”¹⁷⁴

The IER was also criticized for not doing more to publicize its work and ensure victims adequate notification of the application deadline.¹⁷⁵ This is partially attributable to the large size of Morocco and the many remote communities disconnected from the national media.¹⁷⁶ Any reparations program in Bahrain should draw from the Moroccan experience by undertaking a comprehensive public information strategy aimed at making Bahraini victims aware of available compensation and the relevant deadlines. This should not be difficult given Bahrain’s “highly developed” communications infrastructure and the small size of the country.¹⁷⁷

169. ICTJ WORKSHOP, *supra* note 143, at 48. The one-page letter acknowledged and apologized for government human rights violations. The package also included a ruling on the victim’s individual case, detailing “the specific violations to which the victim was subjected and the amount allocated as compensation.” *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* at 49. For many victims,

moral and legal measures of reparations are fundamental, while monetary compensation is controversial and problematic. . . . [V]ictims ask for official and societal acknowledgement that they were wronged, restoration of their good name, [and] knowledge of who and how it was done. . . . [C]ompensation was never enough, or even the most important thing. They especially note the hollowness of material reparations when there has been no pronounced reluctance to prosecute those responsible.

Roht-Arriaza, *supra* note 26, at 180 (discussing the findings of the comparative study by the Chilean human rights organization *Corporación de Promoción y Defensa de los Derechos del Pueblo*).

174. ICTJ WORKSHOP, *supra* note 143, at 49.

175. *Id.* The IER received 8000 applications after the one-month deadline. *Id.*

176. *Id.*

177. C.I.A. World Factbook: Bahrain, *supra* note 8. Bahrain has a “highly developed” communications infrastructure and a total land area of 665 sq km (compared to Morocco’s 446,300 sq km). *Id.* Bahrain is also one of the most urbanized countries in the world,

CONCLUSION

Both the story of victim's rights under international law and the story of Bahrain's transitional justice experience are far from written. Efforts to close the gap between the rhetoric of human rights and the enforcement of such rights must remain a top priority. The inability of Bahraini torture victims to access justice at either the regional or international level underscores this need. The U.N. General Assembly's adoption of the 2006 Basic Principles marks an important step in the evolution of human rights law towards a more "victimcentric" framework,¹⁷⁸ but the doctrine must be translated into action in order to protect "the inherent dignity . . . of all members of the human family" on which "freedom, justice and peace in the world" is based.¹⁷⁹

In Bahrain, recent human rights developments serve as a reminder that there are many obstacles to overcome in guaranteeing respect for essential human rights at the domestic level.¹⁸⁰ Nevertheless, there are also positive signs that some degree of justice may be forthcoming for Bahraini victims of state abuse. In June 2007, eleven Bahraini human rights organizations and opposition groups took the unprecedented step of forming a reconciliation pressure group to lobby the government for the creation of a truth and reconciliation committee ("TRC") to address human rights abuses committed by the government from the 1970s to the 1990s.¹⁸¹ However, there has been no indication that the TRC will become official through government support or participation, or by grant-

as its small population of 708,000 is heavily concentrated in the country's two major cities, Manama and al-Muharraq, and in main towns such as Jidd Hafs, Sitra, al-Rifaa, and Madinat. HRW, ROUTINE ABUSE, ROUTINE DENIAL, *supra* note 5, at 9.

178. Bassiouni, *supra* note 2, at 204.

179. Universal Declaration of Human Rights, *supra* note 42, prmb1.

180. See Bahrain Center for Human Rights, *BCHR: Arbitrary Detention and Unfair Trials in Bahrain During 2006*, <http://www.bahrainrights.org/en/node/1626> (last visited Dec. 4, 2007) ("The year 2006 has witnessed an extreme decline in public freedoms in Bahrain, especially in regards to freedom of expression and opinion and the freedom of assembly."); International Freedom of Expression eXchange, *Bahrain: Twenty-Six IFEX Members Slam Government's Latest Attack on Free Expression*, <http://canada.ifex.org/en/content/view/full/88152/> (last visited Dec. 19, 2007) (calling upon the Bahraini authorities to "halt their attacks upon freedom of expression, to abolish abusive laws, and to respect their commitment to international charters and covenants, in particular Article 19 of the ICCPR.").

181. Carnegie Endowment for Int'l Peace Arab Reform Bulletin: July/Aug. 2007, *supra* note 127. Suggestions for the TRC's potential mandate included truth-finding and compensation payments to those who sustained injuries or were subjected to torture, deportation, or arbitrary arrest. Members also called for punishment of those allegedly responsible for torture in direct contravention of Decree 56, which pardoned all political prisoners and perpetrators responsible for human rights violations. *Id.*

ing TRC investigators access to files or personnel.¹⁸² Still, a follow-up coalition meeting was held in September 2007 and included the participation of representatives from the International Center for Transitional Justice.¹⁸³ While the TRC's launch date was set for December 10, 2007, the anniversary of the UDHR,¹⁸⁴ no announcement has been made at the time of writing.

Bahrain appears to be at a crossroads. For the Al-Khalifa regime, prolonged inaction without officially confronting and remedying past abuses risks igniting wide-scale civil unrest comparable to levels witnessed in the 1990s, or worse.¹⁸⁵ Such a risk is compounded by the growing influence of Shiite Iran in regional affairs, and regional destabilization caused by the ongoing sectarian violence in nearby Iraq.¹⁸⁶ Widespread civil unrest in Bahrain would also be detrimental to the United States and Saudi Arabia, which depend on the ruling regime and the stability of the island kingdom in pursuing their respective geopolitical and economic interests.¹⁸⁷ On the other hand, official measures of reparation would build

182. *Prospects for Transitional Justice in Bahrain*, *supra* note 38, at 2. The government remains steadfast in its position that the 2002 pardon remains valid, and that the pardon includes all parties. As such, explained Social Development Minister Fatima al-Balooshi, "[T]he law does not allow for review of cases that fall within the timeframe of the pardon . . ." *DPA: Bahraini NGO's, Opposition Launch Truth and Reconciliation Panel*, DEUTSCHE PRESS-AGENTUR, June 27, 2007.

183. Carnegie Endowment for Int'l Peace Arab Reform Bulletin: Oct. 2007, *Bahrain: NDI Returns; Cabinet Change; Anti-Corruption Efforts*, <http://www.carnegieendowment.org/arb/?fa=showIssue&backIssue=10/1/2007> (last visited Feb. 16, 2009).

184. *Id.*

185. For coverage of escalated clashes between state Security forces and protesters, see Michael Slackman, *Sectarian Tension Takes Volatile Form in Bahrain*, N.Y. TIMES, Mar. 27, 2009; *Bahrain: Shi'ite Riots Orchestrated*, MIDDLE EAST NEWSLINE, June 12, 2007; Human Rights Watch, *Bahrain: Jailed Protesters Show Signs of Severe Abuse*, June 1, 2007, http://hrw.org.english/docs/2007/06/01/bahrail6051_txt.htm; *Three Policemen Injured in Third Day of Bahrain Violence*, KHALEEJ TIMES, May 22, 2007.

186. See CRS REPORT RL 31533, *supra* note 7.

187. See CRS REPORT FOR CONGRESS 95-1013, *supra* note 15; *Prospects for Transitional Justice in Bahrain*, *supra* note 38.

upon the encouraging precedent established in Morocco while demonstrating that political survival and respect for human rights are not mutually exclusive in the Middle East of tomorrow.

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