

Chairman of the Bahrain Independent Commission of Inquiry to chair a UN commission to investigate Gaddafi's death - M. Cherif Bassiouni to Al-Hayat: The Bahraini opposition is uninterested in reconciliation... Iran is exploiting conditions in the region

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By Baria Alamuddin

Prof Dr. M. Cherif Bassiouni, Chairman of the Bahrain Independent Commission of Inquiry (BICI), has confirmed "that the Iranians are seeking to exploit conditions in the region to their advantage. Look at the map and you will see it in Iraq, Bahrain; the next step will be central Kuwait. From there, the advance towards all oil-rich regions will take place. If they control the oil, then they will no longer need an atomic bomb".

Bassiouni stressed that the torture his report mentioned had not taken place as a result of a policy adopted by the highest political authorities, and carried out through traditional channels; nor had it been the result of the personal attitudes of certain individuals. Instead, torture indicated patterns of behavior by the security services which have acted in a typical manner. They were not being innovative, but rather, this is the practical "nature of the beast".

Bassiouni said that the Bahraini crisis has an obvious sectarian-confessional overtone that is unrelated to politics in its true sense, stressing that there is a great deal of mistrust between Sunnis and Shiites in Bahrain.

He also expressed his regret over the attitudes of the Bahraini opposition political groups that have rejected the findings of the report: "The King has unequivocally accepted the report, and so has a large part of the people. Unfortunately, I did not see the same reaction by the opposition. The report represents a good opportunity for reconciliation, and this makes me feel that they are uninterested in reconciliation, or indeed in security and public safety. What matters to them is scoring political points. What they are doing is quintessentially a political gambit, along the lines of what we see in Lebanon."

Professor Bassiouni also expressed his frustration at the way some media outlets have misconstrued his statements, noting that "some media outlets distort what I say, each in line with the agenda that serves its own interests".

He said that the deployment of the Peninsula Shield Force is "one hundred percent legal". "They came to Bahrain in accordance with the security agreements signed between Gulf nations". He also said that these troops crossed 36 km into the Bahraini territories, were stationed in their barracks, and did not act or intervene. According to Bassiouni, no one had even seen their faces.

The Chairman of the BICI then confirmed that he will be travelling to Libya in a few days, and said that the UN fact-finding commission, which he chairs, will investigate into the circumstances of the death of the late Libyan leader Muammar Gaddafi. He also expressed doubt that Saif al-Islam would receive a fair trial in Libya, because of the lack of a legal system in place there that would permit it.

The Bahrain Independent Commission of Inquiry was established on 29th June 2011 in the Kingdom of Bahrain pursuant to Royal Order No. 28 by His Majesty, Hamad bin Isa Al Khalifa. The Commission was tasked with investigating and reporting on the events that took place in Bahrain from February 2011, and the consequences of those events.

The Commission was asked to determine whether the events of February and March 2011 and thereafter involved violations of international human rights law and norms, and to make the recommendations that it deems appropriate. In his speech during the submission of his report, Bassiouni said that the King's request was "an event of great legal and political importance. This occasion represents a unique precedent in the region, in light of the fact that the state took the initiative, shortly after the events, to establish an international commission of inquiry without waiting for regional or international pressures to be exercised."

Bassiouni also said that the King's request was "a unique historic and social event because, also for the first time, a government, which is still in power, agrees to open all its files, subject itself to criticism, and to facilitate the work of those who seek to evaluate its performance".

The report has found that the security authorities used force against protesters in a manner that was both unnecessary and disproportionate, and that detainees were deliberately tortured, while stating that the government and the opposition had joint responsibility in these incidents. The report stated that if the opposition had accepted the dialogue initiated by Crown Prince Salman bin Hamad Al Khalifa, then this would have helped enact constitutional and political reforms in Bahrain.

Professor M. Cherif Bassiouni is one of the foremost authorities on international criminal, human rights and humanitarian law. He obtained an LLB from the University of Cairo, a JD from Indiana University, an LLM from John Marshall Law School and an SJD from George Washington University. Until 2009, Professor Bassiouni was a Distinguished Research Professor at DePaul University College of Law, an institution where he spent thirty-five years. Professor Bassiouni is well-published, having authored a number of works including some of the leading textbooks in international criminal law. During his career, Professor Bassiouni has also held a number of United Nations positions. Notably, this included the position of Chair for the Drafting Committee at the Diplomatic Conference on the Establishment of an International Criminal Court. He also served as the Chair for the Drafting Committee on the 1985 United Nations Basic Principles of Justice for Victims of Crime and Abuse of Powers. Bassiouni has previous experience working on Commissions of Inquiry. Most recently, he chaired the United Nations Independent International Commission of Inquiry for Libya (2011). He was also involved in commissions investigating the human rights situation in Afghanistan between 2004 and 2006, and violations of international humanitarian law in the Former Yugoslavia in 1993. Bassiouni is also the recipient of the Egyptian Order of Military Valor (First Class), awarded to him by the late Egyptian President Gamal Abdel Nasser, for his work in the National Guard and for his efforts and those of his comrades in defeating a British unit near Port Said; he is the only living Egyptian veteran who holds this decoration.

Bassiouni has an interesting story that he shared with Al-Hayat, and it perhaps explains his passion for human rights issues and international justice.

During his work at the Egyptian President's Office under Nasser, an intelligence officer showed him a picture of a man with an iron collar around his head -a torture method. The image showed the man's scattered brains. When Bassiouni queried the officer about the image, the officer's answer was that the man "is a leader of the Muslim Brotherhood, involved in a plot to assassinate

the President". This angered Bassiouni greatly. On the following day, during a meeting with Vice President Kamal Hussein and the chief of military police, Bassiouni told the Egyptian Vice President about what he saw, and said that this was unacceptable. He then tendered his resignation. However, the chief of military police reacted by insulting him, which Bassiouni did not let pass. He was subsequently placed under house arrest and tightened security, and was barred from making contact with the outside world for 7 months. Afterwards, Bassiouni fled Egypt and did not return until decades later, at the invitation of President Anwar Sadat, and then President Hosni Mubarak. He received offers from both presidents to serve in subsequent Egyptian cabinets, but Bassiouni had more interest in law than he had in politics. This is not to mention the fact that he had been away from Egypt and the political cultural there for many years.

Before that, he had been jailed by the French authorities for his role in training Algerian freedom fighters during the Algerian War of Liberation.

The interview

Al-Hayat interviewed Mahmoud Cherif Bassiouni in Manama over more than two hours, and then followed up the interview over the phone to Milan:

* How do you feel a day after submitting the report to King Hamad, and five months after your laborious work? Are you satisfied with what you have achieved?

- Frankly, I am physically exhausted, and this is the overwhelming feeling I have right now. Especially so when, over the past two weeks, I had not slept for more than four or five hours each night. We had to finish the report, which fell in 500 pages and 12 chapters. The last details we worked on involved our decision to redact names, which the report was full of.

* The names of whom, the perpetrators or the victims?

- The names of those affected, like the physicians who are still before the courts. We do not want to damage the cases of the prosecution or the defense. In addition, there were the names of 14 senior officials, with whom we had twice met to inquire about their physical and psychological conditions. So we came out with certain impressions and also took their statements.

The main reason for redacting the names was purely legal. The commission must refrain from interfering in any way in the course of justice, because this is not our job.

In addition to this important issue, there was the question of Arabic translation. Apart from the obvious linguistic problem, there was the problem of formulation, as both the legal terminology and text mean that absolute accuracy is a must. There was also the issue of reviewing the legal and political interpretation of what had been said, and we found that there indeed is a problem in achieving balance in the meaning and the connotations of those words.

* To what extent was the report influenced by politics, and to what extent did politicians intervene?

- In fact, and this is something that is almost extraordinary in the Arab world, there was no influence what so ever, and none of the politicians intervened in our work. I say this because the Arab world is full of political influence, especially in a country like Lebanon (in reference to the Special Tribunal for Lebanon looking into the assassination of Prime Minister Rafik Hariri and his companions). At the same time, it has now become customary for us in the Arab world to invoke conspiracies. Everything must have a backdrop as such: A plot by Israel, America, the Iranians and God knows who else. These are the challenges- but thank God, frankly, there was no influence what so ever. We can say that this is a report that is one hundred percent legal.

Let me elaborate on this, and this is something that no one knows about except you so far. When King Hamad bin Isa Al Khalifa sent for me to meet him in Geneva in mid-June - I was there for the Libya commission- the contact person told me that the King wanted me to be chair that commission, and that he had inquired about me and heard good things about me from everyone. I said that I wanted to know, who he inquired from exactly. The contact person said that the King had asked the United States, England and the UN, and Saudi Arabia and Egypt and other sides, and that everyone expressed their support for me. I said, well, praise be to God. Then I said rather candidly that I did not want to be involved in a process where there is political, financial or any other kind of interference. I asked him to give me two days to think about the offer. In that time, I wrote three pages, the first a list of personal guarantees for the commission, the second on facilitations needed for the job to be done, and the third page was about the red lines that must not be crossed.

I gave the contact person the three-page list, which I dubbed the "wish list", and then told him "If the King approves of it, then I want to meet him personally, look in his eyes, agree with him and then shake his hand".

A few days later, the contact person got in touch, and told me that the King has agreed. I went and met with the King. It was a cordial meeting, almost like a family get-together. It was very simple, and we talked for two or three hours, and got acquainted with one another. I told him that I wanted a budget for the commission that was lower than those given to any such commissions, and said that I will accept the same pay grade I have at the UN (USG), and this grade's salary of twenty-two thousand dollars per month. Bear it in mind that I am retired from university and that I work as a lawyer, and hence would lose five times that amount each month.

I asked the same thing for the other members of the commission, who would be paid a thousand dollars per day during their presence in Bahrain. They were coming here five to six days each month. The overall budget was one million and three hundred thousand dollars for a staff of 41, over a period of five months, and we did not ask for any additional funding all throughout our mandate.

* So, you did this as a public service? Or is it that you wanted to do something for the Arab nation?

- I, frankly, have a hope and ambition in life that one day, when I meet my maker and he asks me: "I gave you this and that, what did you do with it? You were born to a family and you were educated etc." I want to tell God that I did the best I could...Egypt is full of the statues of the Pharaohs, but was any of them able to take them with him to the afterlife?

* What do you think of the King's speech yesterday?

- I, sincerely and honestly, admire the King. He, besides being a politician, is a man of fine and honest emotions. I am also impressed by the Crown Prince, in particular. He has an obvious sense of spiritual clarity, like his grandfather, Rest in Peace. He is a sincere, loyal and humane man. I did not have the chance to meet the Prime Minister up close and personal. In truth, I believe that they will all try their best to institute reform.

Disappointment over the opposition's attitude

* How do you see the public reaction in Bahrain over the Commission's report?

- In fact, I feel disappointed because I did not see, especially on the part of the political groups in the opposition, any attempt to take advantage of this opportunity to take steps towards national reconciliation and restoring national harmony and accord. I had hoped for this report to be a foundation for reconciliation, and was pleased that the King has unequivocally accepted the report, and so has a large part of the people. Unfortunately, I did not see the same reaction by the opposition. The report represents a good opportunity for reconciliation, and this makes me feel that they are uninterested in reconciliation, or indeed in security and public safety. What matters to them is scoring political points. What they are doing is quintessentially a political gambit, along the lines of what we see in Lebanon.

* Some say, why didn't Professor Bassiouni speak of the mistakes of the political groups in the opposition in his report?

- The mandate I was given by the King did not cover acts by the opposition groups. However, there were some clear references made to some of their acts that undermined security, and targeted the Sunni community and the foreigners residing in Bahrain. The physicians' politicization of the Salmaniya Medical Complex was also alluded to, and how some took control of parts of the Salmaniya hospital. Then there is also their responsibility in thwarting Prince Salman's initiative for dialogue.

* But do you believe that Bahrain has the logistical and financial capacity to implement the important and detailed recommendations that the report has made?

- I believe that this is possible, for several reasons. First of all, the report generally addresses what I call internal changes and developments. For example, this means the independence of the judiciary, as well as the freedom of the prosecution and the need for a greater budget for both. Undoubtedly, the improvement of the professional performance of the police requires both time and effort. The same applies to the majority of the other recommendations.

* Do you expect that there will be resignations in the Bahraini government or its agencies?

- We did not interfere in this sovereign issue. We believe that it is best to leave such domestic choices to be made by the King and the cabinet. Resignations or dismissals must be the result of internal dynamics, not outside intervention.

Restoring lost confidence

* Do you believe that the crisis in Bahrain is sectarian and confessional, political, or is it unrest over everyday life issues? If so, what is the solution?

- Undoubtedly, there is a sectarian factor. Some people feel like outsiders and guests in their own country, and complain of the lack of representation in the various institutions of the state.

* Do you mean to say that there is a lack of trust between the various segments of the Bahraini people?

- Trust is indeed missing. Building trust is very important, and requires time and planning, and sound foundations that benefit from international expertise. It is irrelevant what some tell me, that Sunni families make frequent visits to Shiite families or vice versa. Such social calls do not build trust.

It is unfortunate that in Bahrain, residential areas happen to be segregated along Shiite-Sunni lines, with the exception of the central region. A young Shiite man may grow up, for example, with only other Shiites around, and the same goes for the schools. They know little about their Sunni compatriots, and know only what the imam of the mosque tells them.

This must change, and this is what should happen in many places as well, in the United States, Britain and elsewhere.

* There is some controversy regarding what you said in your statements about torture in prisons. Is such torture systematic? Is it a state policy or what is it exactly?

- Let me highlight three different things. Torture may come as a result of a policy, adopted at the highest level of authority, and implemented through the traditional channels. It may be the result of practice, and this practice may be systematic, a part of the regime's culture but without explicit orders. Then it may be personal and individual. In Bahrain, torture is the result of patterns of behavior by the security services. Policemen are not innovative, but rather, this is the pattern of behavior seen throughout military and police work. This is the "nature of the beast".

* Is this systematic behavior, especially in the Kingdom of Bahrain, or is it part of the culture of how security services operate in the Arab world?

- Of course, this is not particular to the Kingdom of Bahrain. It is almost the norm in Arab prisons. However, the methodology of military and police work is a universal trend, albeit with some differences in how this is implemented and in its nature.

* We heard that you are extremely frustrated by how media outlets have misconstrued your statements to the press?

- Yes, this is true. Some media outlets distort what I say, each in line with the agenda that serves its own interests. For example, an American journalist asked me about the person who had run over a soldier with his car, about why he was sentenced to death. My answer was that he was given the death penalty, because this is the sentence provided by the Bahraini Code of Criminal Procedure for his crime. But on the following day, the news story carried by Bahraini newspapers said that Bassiouni supports the death penalty. This is inaccurate and incorrect, for I neither support nor reject it. I just simply answered a question regarding the source of the death sentence and my answer was that it was in the Penal Code.

I did not name any individuals or officials. What I said was all in the report, and it was in response to a question about the responsibility for the torture. I spoke about two bases for establishing responsibility: The first involves giving orders to carry out these acts, and the other involves responsibility through negligence, and of course establishing this relies on the investigation. If the investigation finds that they could have prevented this from happening but did not, this means that they are negligent. I did not give any names

* Some pundits considered the move by a Gulf monarch, King Hamad bin Isa Al Khalifa, in proposing the establishment of a GCC human rights court, a courageous and pioneering idea. Did he discuss this with you? Will such a court be established in Bahrain?

- I was the Chairman of the Drafting Committee for the Arab Convention on Human Rights, and I had proposed this idea to the Arab League in 1989. But countries like Saudi Arabia objected to it at the time, because they deemed it incompatible with the tenets of Islam. After it was revised, it was ratified in 2005 at the Summit in Tunisia. I was present there and ready for discussing it, but it was not discussed in the end. Since then, nothing has happened, and the project remains on the shelf, although some Arab countries are indeed willing to establish a human rights court akin to its European counterpart.

* Do you expect it to be headquartered in Bahrain? Did you discuss this issue with the King?

- I did not discuss it with the King, but I think he is in favor of it.

* You chaired the Commission with other jurists working with you, jurists who have their opinions just like you have yours. Are their things in this report that you do not agree with one hundred percent, or that you would otherwise like to modify?

- When a group of people of a certain level of intellect, knowledge and expertise are present together, it is normal for them to have different views. Everyone must listen to different views, unless they are motivated by personal or political consideration, or otherwise by self-interest. Collective experience comprises different views, and the leader of the group must have the ability to be both accommodating and conciliatory. Without a doubt, every member has his own character and style, and hence, finding consensus among them was, to a large extent, difficult.

* The Bahraini Minister of Justice told me that the Bahraini government could not, for security and strategic reasons, disclose to you certain information and documents that prove that Iran had been involved in the Bahraini crisis. Is it for this reason that you did not find legal evidence to substantiate such involvement? This is while bearing in mind that many Arab observers speak of Iranian meddling in Iraq, Syria, Lebanon, Palestine and Bahrain. What do you have to say about this?

- Certainly, this is possible. Every state possesses classified information that it cannot disclose, because it would otherwise be revealing its sources. But let's tackle the issue from a different angle. We live in a world full of different strategic interests of different countries. The U.S., England, France, Saudi Arabia, Iran and other nations all have interests. Naturally, the countries that have conflicting strategic, political or economic interests will attempt to exploit conditions to their advantage.

* Of course, but in the Arab world, there is rejection of Iranian meddling, and also meddling by the U.S., Britain and other countries. But many believe that Iranian meddling has become brazen?

- Of course, without a doubt, this is an established fact. Iran is exploiting conditions in Bahrain and the region to its advantage.

In this vein, we in the report have used two key words: Namely "that there is no doubt that Iran has a propagandist and media role in the Bahraini crisis". The Iranians are seeking to exploit conditions in the region to their advantage. Look at the map and you will see it in Iraq, Bahrain; the next step will be central Kuwait. From there, the advance towards all oil-rich regions will take place. If they control the oil, then they will no longer need an atomic bomb. However, there is a difference between this Iranian role in the region and the U.S. intervention in Nicaragua under late President Ronald Reagan. In Nicaragua, Reagan imposed a blockade on its territorial waters and trained people to go there. The Iranians have not resorted to this kind of intervention yet.

Some speak of secret information that shows the Iranians are channeling money into Bahrain to finance some parties. I believe, and I speak here for myself, that there is an important point that has not been raised in Bahrain and that no one has yet spoken of, namely that the Shiite community pays out the so-called khums [tithe]. Khums may reach 2 percent of an individual's income, and it is much larger than zakat [alms].

As far as I know, Bahrain is the only country in the world where individuals can pay donations as such without any governmental oversight. No one knows where this money goes, and there are no laws that ask where it is all going.

Here we must ask the following question: Is the khums being given to charities? Or is it being channeled to Shiite political parties? What I want to say here is that the Shiite parties in existence do not need to wait for money to come from Iran.

* The report mentioned that, according to your investigations, there was no evidence that the Peninsula Shield Force committed any human rights violations?

- There is no evidence to suggest that these troops have intervened anywhere. * But some have described them as an invasion force.

- Invasion? This is not true. They crossed 36 km into the Bahraini territories, were stationed in their barracks, and did not act or intervene. No one had even seen their faces.

* In your opinion, and according to international law, is their deployment and presence legal?

- Of course, there is a security agreement among the Gulf States; any state can request that the Shield Force be deployed. It is one hundred percent legal.

* Do you believe that Saif al-Islam Gaddafi will receive a fair trial?

- I think that this is difficult; at present there is no legal system capable of ensuring this.

* What do you think of the international justice system, and courts like the ICC and the Hariri Tribunal and so forth?

- This system is going through a transitional phase and real political hurdles that may take decades to resolve.

But I also believe that the future of international justice does not depend on these international courts. Rather, it lies with local and national courts, which enforce international standards of criminal justice. For me, the best trial for Saif al-Islam and El-Senussi is one that would take place in Libya, but under international standards of criminal justice.

* But can we speak of an ideal legal system anywhere in the world?

- No, that does not exist. We, since the emergence of the human race, are still going through experiences and are still learning. But undoubtedly, there are legal systems that are better than others, and some are very good indeed.