Statement for the Appellant Witness: Marc Owen Jones

Statement: 1 Exhibits: MOJ/1 Date: 28/11/14

IN THE FIRST-TIER TRIBUNAL GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS)

EA.2014.0259

BETWEEN:

MARC OWEN JONES

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

WITNESS STATEMENT OF MARC OWEN JONES

- I, **MARC OWEN JONES**, of Redwood G, Ustinov College, Howlands Farm, South Road, Durham, DH1 3DE, will say as follows:
- I make this statement in support of my appeal against the decision of the Information Commissioner dated 18 September 2014 (FS50538474). The references in square brackets refer to the page number of the attached exhibits.
- 2. In particular, I address:
 - 1) In very brief terms, the general background as to the political context in Bahrain and the historical involvement of the UK.

- 2) Evidence relevant to whether disclosure of the requested information would or would likely be prejudicial to the UK's relations with Bahrain.
- 3) Evidence relevant to the assessment of whether the balance of public interest favours disclosure.

(1) POLITICAL AND HISTORICAL CONTEXT

- 3. I am a PhD Candidate at the School of Government and International Affairs at Durham University. I am studying Political Repression in Bahrain over the past decade, and have published a number of articles and papers related to this. I am particularly interested in examining the British role in this repression, and have conducted a substantial amount of archival research that has been used to strengthen my arguments. I also lead tutorials for undergraduates in Middle East Politics, and am the elected president of the University's Graduate Common Room.
- 4. The Al Khalifas invaded Bahrain from Zubara in Qatar in 1797-1798. In order to secure their domination of trade routes to India, the British conducted a series of treaties with tribal leaders along the Persian Coast in the 1800s. The first of these agreements was the General Maritime Treaty of 1820, and it recognised the Al Khalifa as the legitimate rulers of Bahrain. A subsequent agreement, the 'Perpetual Truce of Peace and Friendship', turned Bahrain into an informal protectorate of Britain in 1861. However, in exchange for control over Bahrain's foreign policy, Britain were now bound to protect the Bahraini government from external aggression.
- 5. Despite the so-called treaty of 'friendship', most British administrators were privately critical of the ruling family, with one official describing them [page 1] [s 'uneducated, vain, lazy, and inclined to oppress' [page 4]. Britain's relationship with the Al Khalifa regime grew progressively worse in the 1920s,

when the ruling family's oppression of the indigenous Shia Baharna increased. Persia, incensed by the maltreatment of their Shia co-religionists, threatened to go before the League of Nations to complain how British protection allowed the Al Khalifas to oppress with impunity. Examples of this oppression are documented here [page 5].

- 6. In an attempt to address this disquiet from Persia, at that time an important ally, Britain took increasing responsibility for Bahrain's internal security policy, and imposed a number of reforms including the creation of a police force. Britain also deposed the recalcitrant ruler of Bahrain, Sheikh Isa bin Ali Khalifa, and put Isa's weaker son Hamad on the throne. Hamad was given a force of mostly Baluchi troops to deter Isa and his allies from engaging in further acts of oppression against the Baharna. This force promised to be a more efficient security solution for the British, whose coercive methods prior to the 1920s revolved around the use of gunboats to intimidate belligerent tribal elements.
- 7. Although the police force, commanded by British officers, and Hamad bin Ali Khalifa's private army reduced the need for gunboat diplomacy, the British still periodically flexed their military muscles to put down dissent. This was particularly true after the 1950s, when Arab nationalism and rising anticolonial sentiment were threatening British hegemony in the Gulf. In 1956, British troops were deployed at least twice, once to restore order following riots that broke out over the bombing of Suez, and once again after people attacked British Foreign Secretary Selwyn Lloyd's motorcade. In 1965, a Royal Navy helicopter was even used to drop tear gas on protesters.
- 8. British officials have also admitted to using violent methods to extract confessions. Charles Belgrave, a British official who worked in Bahrain between 1926 and 1957, and whose multiple roles included financial advisor to the Ruler, commandant of the police, and judge, used torture on detainees

in a number of high profile cases, as did his British colleague Captain Parke. Methods included beatings, sleep deprivation, and on one occasion the placing of lighted pieces of paper between the toes of a detainee [page 12]. Officers like Belgrave also shielded the Al Khalifa from justice when they committed egregious acts. In 1954, when the Ruler's son, Mohammed bin Salman Al Khalifa, accompanied by a group of Bedouin, broke into a Baharna's house and beat up the resident, Charles Belgrave went round to persuade the victim not to make a complaint [page 14].

9. After leaving Kenya where he had a role in combating the Mau Mau insurgency, Ian Henderson became Bahrain's head of security in 1966, and retired in 2000. In 1971, following Bahrain's Independence. Deaths by torture appeared to increase. Between 1976 and 1986, eight people died in police custody. Amnesty International and the British Parliamentary Human Rights Group reported that at least six of those were believed to be as a result of torture [page 15]. In 1991, Amnesty International stated that: 'Torture and ill-treatment are commonly inflicted on detainees during the initial period of their detention' [page 30]. Torture continued during the 1990s Intifada. In 1995, Amnesty International wrote [page 46]:

'Over a ten-month period, several thousand people - including women and children - were arrested and many continue to be held without charge or trial. Among them were prisoners of conscience. At least 100 of them were subsequently charged, convicted and sentenced to terms of imprisonment, and in one case to death, following grossly unfair trials. Scores of detainees are believed to have been tortured under interrogation, and two have died in custody. Security forces and riot police were deployed in large numbers in the streets to quell demonstrators. A variety of weaponry, including live ammunition, was used for this purpose. To date, 10 civilians have been killed in circumstances suggesting that they may have been extrajudicially executed. At least

20 Bahraini nationals were forcibly exiled from the country or were denied entry after attempting to return.

 During the 1990s, British officials including Henderson still worked in the Bahrain security forces. In 1996 the Independent reported that [page 92];

"Interviews with former Bahraini prisoners living in Beirut, Damascus, Qatar and London provide consistent and compelling evidence that severe beatings and even sexual assaults have been carried out against prisoners under Henderson's responsibility for well over a decade".

- 11. The Metropolitan Police conducted an investigation into allegations of torture against Mr Henderson, although in February 2008 they concluded that there was no realistic prospect of conviction [page 95].
- 12. Despite the National Charter and political reforms of 2001, NGO Human Rights Watch claimed in a report entitled 'Torture Redux' that torture had 'repeatedly' been used since 2007 'for the apparent purpose of securing confessions from security suspects' [page 96].
- 13. On 14 February 2011, peaceful pro-democracy protests erupted in Bahrain. Following the government's brutal response, which involved extrajudicial killing, torture, and mass arrests, International pressure resulted in the Bahraini Government commissioning a team led by Cherif Bassiouni, a world-renowned legal expert, to investigate the events of 2011. The team compiled the Bahrain Independent Commission of Inquiry of report (BICI report), which was published in November 2011. Among other things, the team found that the National Security Agency and the Ministry of the Interior had followed 'a systematic practice of physical and psychological

mistreatment, which in many cases amounted to torture, with respect to a large number of detainees in their custody' [page 191]. The report made a number of recommendations of reform, most of which the Bahrain government claim to have implemented [page 192].

14. Two years after the release of the BICI report, Amnesty International still criticised the Bahrain government's human rights violations, despite the latter's insistence that they had implemented the BICI recommendations;

"The authorities continued to crack down on protests and dissent. The government made some reforms based on the recommendations of a major inquiry into human rights violations in 2011, but failed to implement some of the inquiry's main recommendations in relation to accountability. Scores of people remained in prison or were detained for opposing the government. including prisoners of conscience and people sentenced after unfair trials. Human rights defenders and other activists were harassed and imprisoned. The security forces continued to use excessive force against protesters, resulting in deaths, and allegedly tortured or otherwise ill-treated detainees. Only a few security officers were prosecuted for human rights violations committed in 2011, perpetuating a climate of impunity. One death sentence was imposed; there were no executions."

15. In addition to the criticisms directed at the Government of Bahrain's implementations of the BICI recommendations, it should be noted that the process of monitoring the implementations of these recommendations is questionable. Even the US State Department do not know whether those policemen prosecuted for crimes during the uprising are serving time in prison [page 259]. It is therefore questionable as to whether the FCO's insistence that they are assisting Bahrain's reforms is empirically quantifiable, or simply based on the word of the Bahraini authorities.

16. It is also worth noting that the Bahrain Government has acknowledged the need to reform in order to move forward. On 23 November 2011, King Hamad stated:

"That is the only way to achieve reconciliation, to heal the fractures in our society. In order to ensure that there is no return to unacceptable practices once the Commission has left Bahrain, we have decided to engage international organizations and eminent individuals to assist and advise our law enforcement agencies, and to improve their procedures" [page 260].

17. One of the reasons why I am pursuing this complaint and appeal is because I believe that transparency about events is key to healing these fractures and achieving reconciliation. This is especially the case with those that happened over 30 years ago and could potentially shed light on the problems inherent within Bahrain's security services (which the British are reportedly helping to reform).

(2) LIKELIHOOD OF PREJUDICE CAUSED BY DISCLOSURE

18. I will now comment on and exhibit evidence relating to (a) official comments by both the UK and Bahrain as to the strength of the bilateral relationship, (b) recent criticisms made by the UK of the Bahraini authorities, and (c) historical information of a similar nature to the requested information which has already been released and is publicly available.

Official comments on strength of the bilateral relationship

19. In my view, the evident strength in the relationship between the UK and Bahrain is such that disclosure would not impair relations.

- 20. In 2012, the Foreign and Commonwealth Office commented that the 'strong relationship also allows us to have a full and frank discussion on a range of issues including those where we have concerns' [page 264]. In 2013, Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office, Alistair Burt, following a visit in which he met with the Bahraini Prime Minister stated 'My visit [to Bahrain] underlined to me the strong relationship between the British people and Bahraini people and I see no reason why this relationship between our peoples should not become stronger in the years to come' [page 266].
- 21. In 2013, the British Ambassador to Bahrain, Iain Lindsay, echoed this sentiment, and said that despite the close friendship, Britain is not an 'uncritical friend':

"Britain has had a long-standing and close relationship with Bahrain, going back nearly 200 years. We are Bahrain's oldest and most trusted partners outside the region. Bahrain is of great strategic importance for the UK. Therefore Bahrain's stability is critical for our interests. Given, as I say above, that we believe that sustainable stability can only be achieved through continued reform and given the closeness of the relationship, not just with the government but across the spectrum of Bahraini society, it is natural that the UK should want to help Bahrain to reform. So, yes, the relationship is still close. But, as with all good friends, we are honest when we see things which we believe are wrong. So we are not an uncritical friend" [page 268].

22. The Bahrainis have also expounded on the strength of this relationship. King Hamad bin Isa Al Khalifa stated in 2013;

"I see the cooperation and friendship we have met here as symbolising the relationship between our two countries. The first Treaty of Friendship was signed in 1820, nearly 200 years ago, and it remained until replaced by a new one in 1971 on Britain's withdrawal from the Gulf – a unilateral decision of which my father said - "Why? - No one asked you to go"! In fact for all practical and strategic purposes the British presence has not changed and it remains such that we believe we shall never be without it. So I am happy to say that the relationship is as strong as ever perhaps even stronger. We have the closest cooperation across a wide range of activities and especially in the field of defence where we are each seeking to expand the British presence in our country to mutual advantage. To that end we signed a new Defence Cooperation Accord in October last year. At the same time there are some 9,000 permanent British residents in Bahrain making a major contribution to the prosperity of the kingdom as they have always done. Indeed I am proud to say that, by due legal process, we have granted Bahraini nationality to 240 British citizens as they themselves had requested and whose loyal service more than justified it" [page 271].

- 23. The former Middle East Minister Hugh Robertson (Mid East Minister) joined forces with the Bahraini Foreign Minister, Sheikh Khalid bin Ahmed bin Mohammed Al Khalifa, to highlight the strength of the relationship. They stated that the 'the Joint Working Group is a demonstration of the strong relationship between the UK and Bahrain. Today's meeting was an opportunity to discuss a wide range of areas of co-operation' [page 273].
- 24. In 2012, a Bahraini citizen known as FF applied for Judicial Review in the UK of a decision by the DPP that Prince Nasser, the son of King Hamad of Bahrain, had state immunity and so should not be prosecuted in relation to

allegations that he had personally tortured detained prisoners during the 2011 pro-democracy uprising. On 7 October 2014, there was a widely publicised case in the Divisional Court in London in which the DPP conceded that the Prince was not immune from prosecution and the court granted a declaration that he did not have immunity. This was publicised throughout the international media, online, on television, in print media and Arab media publications. According to Tom Hickman, FF's barrister, the High Court's decision "clears the way for an investigation of the prince" and "for consent for an arrest warrant to be sought" [page 275]. The State of Bahrain had been offered an opportunity to intervene in the proceedings, as had Prince Nasser. The State, via their solicitors, wrote to the court do say that they did not propose to intervene. At the time of the media publicity in October 2014, lawyers for the State of Bahrain wrote to a number of media outlets, such as the BBC and Middle East Monitor, to ask that statements be made on behalf of the State and that amendments be made to the reporting of the case. There appeared to be a public relations exercise on behalf of the State with Prince Nasser very publicly meeting with the UK Ambassador just two days after the Judge's decision [page 276]. The report of the meeting between Prince Nasser and the UK Ambassador to Bahrain, Iain Lindsay, in the local state news publication said that the two reaffirmed Bahrain's strong relationship. The same publication reported on a visit within days for Prince Nasser to inspect Royal Navy ships and in November 2014, the Prince made a public visit to the UK. All of this highlights the robustness of this relationship.

Britain's criticism of Bahrain

25. The strength of this relationship, which allows for 'frank discussions', has been demonstrated by Britain's willingness to criticise the Bahraini authorities on certain issues. In 2012, Alistair Burt criticised the harsh sentencing of Bahraini activists.

'I am very disappointed at the Bahraini civilian court's decision to uphold all the sentences of 13 political activists in Bahrain. While the UK welcomed Bahrain's decision to review these cases in a civilian court, as recommended by the Bahrain Independent Commission of Inquiry (BICI), we remain concerned about the strength of the convictions. Reports at the time these individuals were sentenced, which were acknowledged by the BICI, suggested that some had been abused in detention, denied access to legal counsel and were coerced into confessing. I urge the Bahraini Government to ensure the human rights and freedoms of its citizens are fully upheld at all times. We are aware that the defendants can now appeal to the Cassation Court. We expect this process to be conducted thoroughly and with urgency, whilst ensuring due legal process is followed. We will continue to monitor the appeal process very closely' [page 277].

26. Foreign Secretary, William Hague has expressed similar concerns. In 2011 he stated 'members of all sides of the House will have concerns about events in Bahrain, including the use of military-led courts to try civilian defendants including doctors and nurses' [page 278]. In February 2011 Mr Hague stated that Britain is 'deeply concerned' about the 'unacceptable violence' in Bahrain [page 283]. Following the trials of medics in Bahrain, Mr Hague stated;

"I am deeply concerned, that after the briefest of hearings, a Bahraini Special Tribunal has sentenced a group of medics to between 5 and 15 years in prison, upheld life sentences against Bahraini opposition leaders and passed one sentence of the death penalty. These sentences appear disproportionate to the charges brought. These are worrying developments that could undermine the Bahraini Government's moves towards dialogue and the reform needed for long-term stability in Bahrain" [page 285].

<u>Examples of Sensitive release of Historic Information potentially damaging to British Bahraini Bilateral Relations</u>

- 27. There is a substantial amount of sensitive information already available in the public realm regarding wrongdoing by the Bahraini state. Much of this information concerns the British relationship with the Al Khalifa family, with some of it concerning Britain's knowledge of egregious acts carried out by the ruling family. Much of this information is also from the 70s and 80s and given its gravity, it is hard to believe that it is of a different quality to the requested document.
- 28. Recently, for example, I revealed that British diplomats withheld a Bahraini state secret from a British MP who wrote to ask for information on the torture and killing of a Bahraini citizen in 1976. The secret was that the Bahrain Defence Force ("BDF") had tortured and killed Bahraini citizen Sayed Al Owainati in interrogation. When MP Stan Newens wrote to Anthony Crossland, the then Foreign Secretary, British officials sought to obscure what happened to Sayed Al Owainati [page 286]. Diplomat J P Nason wrote on 7 February 1977 that he did not wish to give Newens a 'locus standi' in the FCO's reply [page 287]. The eventual reply on 23 February 1977 [page 288] came from Frank Judd, the then Minister of State for the FCO, and simply stated that he could not confirm the report about Al-Owainati's torture and death. ITM Lucas of the Middle East Department was also concerned that revealing the information would compromise their source [page 289]. The circumstances are set out in more detail in a blog that I authored [page 290]. This sensitive information was made available to the public in 2007 [page 296]. No diplomatic response seemed necessary, even though the information incriminated the BDF and was from the same years as the information requested in my case. The BDF has always been commanded by the current King, so this act can be seen as an embarrassing revelation.

- 29. The British have also revealed from the same decade their views on the draconian measures taken by the Al Khalifa family. In another instance, lan Henderson revealed to British diplomats that the Bahraini authorities acting on behalf of Sheikh Hamad or the Prime Minister were illegally deporting Bahraini passport holders [page 297]. This document is publicly available in the National Archives, and I tweeted it, and so it has been made available to the wider public. While this is embarrassing, it does not appeared to have impacted negatively upon relations. This information is from 1982.
- 30. In 1977, a British diplomat related a story about the current Prime Minister who, during the trial of those accused of killing Abdullah al-Madani, reportedly said that 'he would put the judges themselves on trial' [page 298]. There is also publicly available information from the Foreign and Commonwealth Office demonstrating the Prime Minister's hardline policies to the country's Shia's population. In 1980, Kevin Passmore of the Middle East Department in the FCO, wrote [page 305];

Christopher Wilton, 1 sec in Bahrain at present home leave, told me on 1 December that the Bahrain authorities had decided to move against the Shia. Ashura (18/19 November) passed off peacefully. Encouraged by this, the Prime Minister, Sheikh Khalifah, had felt confident enough to order widespread arrests of Shia. Before Ashura some 200 had been arrested; now the total was 850, all of whom were to be detained without trial for an indefinite period. Ian Henderson, the Head of the Bahrain Security Service (who was Mr Wilton's informant) had advised the Bahrainis strongly against this course of action, saying that it was likely to lead to more Shia 'martyrs' and would probably have the opposite effect from that desired. Sheikh Khalifa, however, had felt

that the time had come to show the Shia that the Bahrain Government were 'True Arabs'.

31. With regards to Human Rights violations in the 1970s and 80s [page 15], former Ambassador Roger Tomkys reported_in 1982 that the most brutal among the torturers were Bahrainis, and that the "encouragement they get from some members of the Al Khalifas is to be more rather than less tough in their methods" [page 306]. While these examples pertain to the era in question, much historical information has come to light recently that could be seen as prejudicial. These will not be elaborated on, although this quotation from 1923 mirrors the sentiment of many British officials to the Al Khalifa regime, all of which could be viewed as embarrassing [page 4]:

Selman bin Hamad has all the worst qualities of the Al Khalifa family. He is totally uneducated, vain, lazy, and inclined to oppress and tyrannize over anyone who is powerless to resist. Selman is absolutely unfit to succeed his father as ruler.

32. The above are just some examples from a similar era to the documented requested. They clearly show that the Foreign and Commonwealth Office have released sensitive, embarrassing information that concerns both the Al Khalifa themselves and the role of the British.

(3) The public interest in disclosure

33. In my view, given the extent of British influence in Bahraini politics in the 1970s, understanding the security situation enlightened the public as to our Government's knowledge and role. It therefore serves the public interest for the withheld information to be disclosed. While the IC claims Bahrain is a 'third party state', British influence in the Bahrain police force should not be underestimated. It was the British who established the Bahraini police. Even

after independence in 1971, the head of police and special branch were both British. These were Jim Bell and Ian Henderson respectively [page 307]. In 1982, there were 17 British personnel in both the intelligence and police sectors [page 310]. In 2011, Former Assistant Metropolitan Police Commissioner, John Yates, became an advisor to the Bahrain police.

34. Given that the withheld information refers to the security apparatus, or indeed the security situation, it is clearly within the British remit, with regards to both their historical and contemporary role. While there may be a significant public interest in maintaining strong relations between the UK and Bahrain, the withheld information is necessary in imbuing the public with the information they need to promote good decision-making by public bodies - including the Foreign and Commonwealth Office. This is especially true considering much of Britain's assistance to Bahrain has been in the form of security. With this in mind, this response by the IC is especially problematic;

The UK provides extensive technical and diplomatic assistance to the Kingdom of Bahrain's reform programme, which follows the civil unrest there in 2011. The Commissioner considers that there is a strong public interest in ensuring stability in the Gulf region. Providing ongoing support for a programme of this kind requires a relationship of trust and confidence to be maintained.

35. Maintaining a relationship of confidence and trust between two governments should not be contingent on the release of information over 30 years old. Public confidence in Bahrain's sincerity to reform is hardly likely to be bolstered if the Bahrain government refuses British assistance on reform efforts on the basis of the release of a limited amount of information from 1977. It is my opinion that the IC nor the FCO should be using the future life chances of Bahrainis, which are dependent on reform, to hold to ransom information that will contribute to 'transparency and accountability' of Bahraini

public bodies in which British citizens are heavily involved. There is also a danger that this argument being used to shield the ruling family in Bahrain from justifiable criticism. Again, while it is not the purpose of the FOIA to gather information about third party states, the British have played, and continue to play, a salient role in ensuring the survival of the Al Khalifa regime, who have long been accused of egregious acts against Bahraini citizens. These acts have occurred over the past decades.

36. The BICI report on human rights violations has not been implemented and a number of the NGO reports exhibited to this statement confirm this. As further evidence of the Bahrain government's approach to human rights in that the Prime Minister was filmed in 2013 telling an accused torturer that he was 'above the law' [page 312]. It would therefore be disingenuous to argue that Britain's concern for the implementation of reforms rests on the trust between the two countries. On the contrary, it appears to be Britain's support for the ruling regime that has allowed the continuation of misrule conducive to the violation of human rights. Indeed, at the time abuses by the Bahrain police were occurring in the 1970s and 1980s, the British were actively supporting continued Al Khalifa dominance, one that they would facilitate by encouraging Ian Henderson (A Brit) to stay in the security services. P F M Wogan of the Middle East Department writes in 1982 [page 314]

Our interest lies in maintaining Al Khalifa control; we could best achieve this by encouraging Henderson to stay on since Bahraini control of Special Branch could easily provoke civil unrest.

37. Shedding light on the state of a British led force, who were known to the British to have committed abuses, would allow the British public to make better informed decisions about the extent of their role. Even now, it is unclear how much effect British reform is having. In early November 2014, only 3 years after the release of the BICI report, Hasan Al-Sheikh was reportedly beaten to death by policemen. It is therefore in the public interest to know more about the Bahraini security services, which were created, oftled, and frequently trained by the British.

Statement of truth:

I believe that the facts stated in this witness statement are true.

Signed:

(MARC OWEN JONES)

Dated:

28/11/2014

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EA.2014.0259

BETWEEN:

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Appellant

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EXHIBIT "MOJ/1"

This is the Exhibit marked "MOJ/1" referred to in the witness statement of MARC OWEN JONES dated 28 November 2014.

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