

RELEASE IN PART B6

From: Sullivan, Jacob J <SullivanJJ@state.gov>
Sent: Saturday, November 19, 2011 3:48 PM
To: H
Subject: Fw: Bahrain COI--PROTECT

Fyi

----- Original Message -----

From: Koh, Harold Hongju
Sent: Saturday, November 19, 2011 01:36 PM
To: Burns, William J; Sullivan, Jacob J; Sherman, Wendy R; Zeya, Uzra S; Feltman, Jeffrey D; Schwartz, Jonathan B; Posner, Michael H; Orentlicher, Diane F
Subject: Fw: Bahrain COI--PROTECT

----- Original Message -----

From: Harold Koh [mailto:
Sent: Saturday, November 19, 2011 01:33 PM
To: Koh, Harold Hongju
Subject: Bahrain COI--PROTECT

B6

I just got off the phone with a very distinguished member of the Bahrain Commission of Inquiry, which consists of Chair Cherif Bassiouni, Nigel Rodley, Mahnoush Arsanjani, Phillippe Kirsch and BadriaAl-Awadhi. The member was calling to give me a confidential heads up about the COI's forthcoming report, which will issue this Wed. in Bahrain (terms of reference and website for the coi at the bottom of the email). Last editing sessions were concluded today in London. Mike Posner has been in touch with this member as well, and can add details. This member agreed to send me reports as the rollout proceeds, and any warning if this starts to go off track. They don't want "another Goldstone," i.e. public relations firestorm. The highlights are as follows.

1. Timing

Report will be rolled out at ceremony in manama on wed. presented to king, and presented to public at same time. There will be no press conference. Members fear that Chair Cherif doesn't know how to control his thoughts in speaking to press--he is promising that he will speak based solely on intro to report, which says GOI are genuinely independent, transparent, and have proceeded to do the work without interference from GOB. But will not draw substantive conclusions.

There will be a press release as well

2. Content of Report:

Report is now basically adopted, but for typos, formatting etc. All in about 300-400 pages with annexes. Member was worried about one or two parts of it before last editing sessions (just concluded today) but feels collective editing process has fixed the real problems with it. "Not every part is perfect," but it is a respectable product and every commissioner will now sign.

Elements are:

a. Intro: repeating basic terms of reference also on website (see bottom of this email) b. Historical Background leading up to events c. Basic international and natl law background d. Long narrative chapter since Feb-end of March that tries to capture both sides' narratives e. Chapter about events at the medical complex f. Chapter on killings, torture, arrests, arbitrary detentions, dismissals from employments g. Chapter on misbehavior by opposition, Shiites attacking Sunnis,

events at Bahrain university h. Conclusions and recommendations are virtually all directed to GOB, who commissioned the coi. Report will draw a few basic conclusions, including re:

i. need to promote accountability for past and reform structures for the future so that justice is done to victims ii. Breaking a "Cyclical problem:" GOB tends to take no holds bar approach when there is unrest, but then when things are calm they liberalize; they need a concerted effort internally, and supported by allies, igos, and ngos to prevent them from going back to these counterproductive old habits. In particular they need Training of Security personnel iii. Significantly, no talk of report of crimes against humanity, not described as an attack against the civilian population but says that there should be proper domestic investigation of prosecutions, as states are required to do under intl human rights law

3. Followup: Commission goes out of business as soon as report issues. The COI members hope Cherif won't be overly expansive with the press about issues outside the scope, but "Cherif is Cherif." So, any followup will have to come from Friends of Bahrain and internal authorities. Most important thing is for Friends of Bahrain to read, to be comfortable w/ it, try to get behind it. This member requests:

a. for GOB: hard to tell re king--but crown prince apparently wants to move forward on a political development basis, not a "security basis."

King/Crown prince need something to reassert control over the hardliners. Report gives road map not to a political solution but accepting COI conclusions as recommendations and acting on them seriously would help a lot in terms of confidence building and helping to ease incredible tension in that country to promote long term political development. Commissioners' hope is that King/Crown Prince really do want report as a way to insert control over hardliners including the hardliners like PM who are senior to the crown prince in the royal family. If this report can help isolate the hardliners, that would be great.

b. Likeminded allies: e.g. Brits. FM Hague has been similarly briefed and plans to work with us to try to support implementation of COI conclusions.

c. Regional allies

--Jordan: they should encourage same message.

--Hardest nut to crack: majority in Bahrain fear that real allies of hardliners are Saudis--so try to get Saudis on the right side of the intra family dispute

d. UN: we should ask them to embrace coi report. UNHCHR was initially mistrustful of the report, but HC Navi Pillay finally faced them down, and coi hopes they can now get behind it

Best
Harold

COI Mandate from website: <http://www.bici.org.bh/>

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 has been tasked with investigating and reporting on the events that took place in Bahrain from February 2011, and the consequences of those events. The Commission has been 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. The Commission has been asked to provide a complete narrative of the events and the context for these events; to describe any acts of violence that occurred, as well as the actors involved in such acts; and to investigate instances of alleged police brutality and violence by protestors and demonstrators against others. The Commission has been asked to explore the circumstances and appropriateness of arrests and detentions; to examine allegations of disappearances and torture; to probe allegations of media harassment and other pressure tactics used against participants in demonstrations and public protests; to discuss the alleged unlawful demolition of religious structures; and to describe the alleged involvement of foreign forces and actors.

Although Commissions of Inquiry are often created by external mandate, the Bahraini Commission of Inquiry is the product of internal decision-making and has benefited from a consultation process with various bodies, including the United Nations High Commissioner for Human Rights. The terms of reference set out in the Royal Order (please see "Royal Order No. 28 of 2011" on the BICI website) contain a number of features that will contribute to the Commission's integrity and independence, including the following:

the Commission is wholly independent from the Bahraini government and will be responsible for hiring its own staff and administering its own budget; the Commission has been afforded full access to government agencies, officials and files; the Commission has been granted the government's cooperation in giving the Commission access to all places and people that the Commission deems appropriate; the Commission has the ability to meet with witnesses in secret and to adopt protective measures for witnesses; the Commission has the authority to decide on all matters concerning the scope of its work and its methods of operation; the Government has undertaken to ensure that no person will be punished, penalized, harassed or embarrassed in any way; the Commission has been granted the ability to make any recommendations that it sees fit; and the Commission's final report will be made public in its entirety.