

(Translated from Arabic)

In the name of God, the compassionate, the merciful

Permanent Mission of the Kingdom of Bahrain to the United Nations

Geneva/Vienna

Reply to urgent appeal No. UA BHR 1/2018 of 7 February 2018 concerning Messrs. Mohamed AbdulHasan Ahmed Kadhem, Fadhel Sayed Radhi and Sayed Alawi Husain Alawi Husain, in addition to three other individuals

1. Background to the case

This case dates back to 2016, when the anti-terrorism security forces received information that a terrorist cell of 18 individuals was planning to carry out a major terrorist attack. Following the investigations, it was discovered that the cell was financed by terrorists living in Iran and Iraq and that some of the suspects were members of terrorist organizations “such as Al-Ashtar Brigades and the Mukhtar Brigades”.

2. The charges

The Military Prosecutor preferred the following charges against the above-mentioned individuals:

Inciting murder, attempting to commit murder and disrupting public order for the purpose of causing harm to the Kingdom and, as a result, undermining the security, safety and stability of the Kingdom; establishing a terrorist cell, participating in the organization, funding and management of a terrorist cell, attempting to recruit trusted individuals to carry out the aims of the cell, organizing training exercises and targeting security personnel; deliberately damaging a police vehicle with the aim of preventing police officers from performing their duties and of obstructing their work; and placing fake objects on Sheikh Khalifa Bin Salman Road in order to incite terror among citizens, obstruct traffic and undermine public order and security.

3. The ruling

At its session on 21 February 2018, the Supreme Military Court of Appeals issued a ruling in response to the appeal lodged against the initial ruling issued by the Military Court on 25 December 2017. The Supreme Military Court of Appeals ruled to reject the appeal lodged by the Military Prosecutor against [REDACTED] (fugitive) and [REDACTED] (fugitive), on the grounds that the conviction had been issued in the absence of the parties and that they retained the right to appeal against it. The Court also ruled by consensus to reject the appeals lodged by Fadhel Sayed Abbas Hassan Radhi, Sayed Alawi Hussain Alawi Hussain and Mohamed AbdulHasan Ahmed AlMutaghawi. In doing so, the Court upheld the two rulings against which the appeals had been raised, the first of which laid down the death penalty for the crime of attempted murder and incitement to murder, and a term of imprisonment of 15 years for all the other crimes of which the offenders were charged, and the second of which stripped all the offenders of their nationality.

4. Safeguards for accused persons during trial

The Military High Court ensured that, during every stage of the trials, the accused were protected by all the necessary safeguards, first and foremost by rigorously adhering to the provisions of the 2002 Code of Criminal Procedure, which is applicable in civilian cases, starting from the moment that the arrest warrant was issued and continuing throughout the investigations, questioning and confessions, which were recorded on video (in order to ensure that the suspects were not subjected to pressure or coercion). The court hearings were held in public, and numerous legal and human rights organizations and media agencies, in addition to the families of the accused, were permitted to attend the hearings and to meet with the accused after the end of each session. Those visits and meetings were also recorded on video.

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The defendants had the right to appoint a defence lawyer; a lawyer was appointed to each defendant unable to nominate one himself. The defending parties were able to speak before the court and to refute the charges and present their defence as they saw fit.

As in civilian courts, the military courts conduct trials over three stages. On 25 December 2017, the Military High Court handed down its ruling, which was subsequently appealed. The Court of Appeals issued its decision on 21 February 2018. The defendants retain the right to appeal against that decision before the Military Court of Cassation. Death sentences must, by law, be reviewed by the Court of Cassation, even if the individuals charged do not lodge an appeal.

All members of the military judiciary are independent and their decisions are influenced only by law. They are appointed by royal order from the King, and not by the Commander-in-Chief.

A team from the National Institute for Human Rights attended all the sessions of the Military High Court as the court of first instance in case No. 1 Terrorism 2017, in order to verify that the guarantees of a fair trial had been provided in line with the standards set out in the International Covenant on Civil and Political Rights and other international and regional human rights instruments and with the guarantees provided for by the Bahraini Constitution, the Judicial Authority Act, the Code of Criminal Procedure and other related national legislation applicable to both the military and the civilian courts. Representatives from human rights institutions and associations, media representatives and the defendants' family members also attended the court session.

5. The death penalty in the Kingdom of Bahrain

According to the Criminal Code, the death penalty may be applied only in the following extreme cases:

(a) Offences affecting external State security

- Undermining the independence of the Kingdom or any of its territories (art. 112).
- Participating in an armed insurrection; joining the armed forces of a hostile State at war with the Kingdom; intervening for the benefit of such a State; inciting members of the Bahraini armed forces to join the armed forces of such a State; mobilizing troops or funds for the benefit of such a State; or facilitating the entry of the enemy into Bahraini territory (arts. 113–116).
- Wilfully breaching a contract where contracted to provide goods or services to meet the needs of the armed forces, with the intention of weakening the defence of the State or jeopardizing the operations of the armed forces (art. 118).
- Communicating with a hostile State in order to assist it in its wartime operations or to conduct hostile manoeuvres against the Kingdom; disclosing or divulging defence secrets (arts. 121, 122 and 126).
- Wilfully sabotaging weapons or war supplies during wartime (art. 129).
- Committing any of the offences set out in this part of the Criminal Code with the intention of assisting the enemy or hindering Bahraini military operations during wartime (art. 142).

(b) Offences affecting internal State security

- Making an attempt on the life or freedom of the King (art. 147).
- Using an armed gang to attempt to overthrow the system of government. The death penalty applies only to the individuals responsible for forming or leading the gang and to any person who collaborates or communicates with the gang (art. 148).
- Assuming leadership of a gang with the intention of occupying a public or government building (art. 149).

- While acting as a commanding officer of the armed forces or the police, ordering a subordinate to oppose government orders (art. 151).
- Forming or leading a gang responsible for conducting a sectarian attack against the public or for using arms to resist arrest by security forces; forming or leading a gang with the intention of expropriating or plundering State-owned land (arts. 152 and 153).
- Wilfully causing damage to a public building where such an offence results in the death of a person (art. 155).

(c) Other offences

- Providing false reports or testimony where an individual is wrongly executed as a result of that report or testimony (art. 234).
- Wilfully conducting an act of arson where such action leads to the death of a person (art. 277).
- Using explosives during the occupation of a public building or during an attempt to overthrow the system of government (art. 279).
- Endangering a sea or air vehicle, or a means of public transport, or human lives by exposing them to bacteria or dangerous substances where such action leads to the death of a person (arts. 282–285).
- Wilfully committing premeditated murder, either through the use of poisonous or explosive material, or in connection with another offence, or if the victim is a relative of the accused, or if the victim is a public servant killed because of or during the performance of his or her duties (art. 333).
- Raping or assaulting another person where such action results in the death of the victim (art. 349).
- Kidnapping or restricting the freedom of a person or using force to commit a robbery where such actions result in the death of the victim (arts. 359–376).
- Wilfully damaging or violating the property of another person where such action results in the death of a person (art. 414).

6. Safeguards for offenders sentenced to death

(a) A death sentence may be handed down only where a unanimous decision has been reached by the members of the court, which must be reflected in the ruling (art. 260 of the Code of Criminal Procedure);

(b) In cases not involving the death penalty, if the accused has confessed to the offence, the court may decide to limit itself to the confession and not call witnesses. In cases involving the death penalty, however, the investigation must be completed even if the accused has confessed to the offence in court (art. 220 of the Code of Criminal Procedure);

(c) A death sentence may be carried out only after it has been approved by the King (art. 51 of the Criminal Code; art. 328 of the Code of Criminal Procedure);

(d) Death sentences must, by law, be reviewed by the Court of Cassation even if the offender does not appeal against the ruling. The Court must review every aspect of the ruling to verify its validity (arts. 40 and 41 of the Court of Cassation Act).

7. Constitutional amendments and the Military Courts Act

To combat the growing terror threat, amendments have been made to the Constitution in order to expand the jurisdiction of the military courts without the need to resort to declaring martial law and suspending the Constitution, as provided for in article 105 of the Constitution. This expanded jurisdiction extends to the trials of illegal militia groups and to persons accused of committing acts of armed violence against the State.

Following the change to the Constitution, an amendment was introduced to the Military Courts Act giving those courts authority to examine the offences listed in the amendment, when committed deliberately by a person not otherwise subject to the provisions of the Act,

either as principal offender or accomplice and either inside or outside the country. The point was raised that the wording of the amended law was overly broad. In fact, the text of the amendment, in particular article 17 ter, states as follows: "In an exception to the provisions of any other law, the Public Prosecutor may, with the approval of the military courts, refer before those courts any offences under the Act Protecting Society from Acts of Terrorism or any offence affecting external or internal State security under parts one and two of chapter I of the special section of the Criminal Code, and any other related offences." This provision, which regulates only the jurisdiction to examine those particular offences, is procedural not substantive in the sense that it is applied after a crime has taken place pursuant to the relevant articles in the Act Protecting Society from Acts of Terrorism or the Criminal Code. Firstly, an offence fulfilling the physical and moral conditions set forth in those laws must have taken place; then comes the role of the Public Prosecutor who — having gained the approval of the military courts to ensure that there is no adverse conflict of jurisdiction — may refer the offenders for trial before those courts. The issue, then, is one of redefining jurisdictions in order to try the perpetrators of certain offences and is unconnected to how those offences were committed. The offence is the same, irrespective of whether it is considered by the ordinary courts or the military courts. The amendment does not affect the definition of the offence and the basic jurisdiction for those offences remains with the ordinary courts unless the Public Prosecutor exceptionally decides to refer them to the military courts.

8. Summary

In this reply, we shall address the fundamental legal provisions governing the trial of the aforementioned individuals, the guarantees that were observed during the arrest, investigation and trial, including the constitutional and legislative guarantees, and the human rights obligations of the Kingdom.

Anti-terrorism legislation takes account of the threats facing the Kingdom and contains legal guarantees for any person to whom the legislation is applied.

We shall first review some of the domestic legal mechanisms and procedures that are employed by the authorities and entities responsible for processing criminal cases in Bahrain, in addition to the guarantees and protective measures afforded to suspects and accused persons and the steps taken to ensure that the right to a fair trial and the right to redress are upheld:

(a) The Office of the Public Prosecutor is the branch of the judiciary responsible for conducting investigations, bringing prosecutions, presenting cases in court, lodging appeals against judgments before the courts of appeal and cassation, where there is a legal argument for doing so, and enforcing sentences. It is also authorized to monitor prisons, receive complaints from detainees and respond to complaints in the manner set down by law.

(b) All arrested persons are informed immediately and as a matter of urgency of the reason for their arrest and the offence of which they are accused, in accordance with article 61 of the Code of Criminal Procedure. This ensures that their legal status is determined as soon as possible so as to allow them to prepare their defence and, where proven innocent, to be released promptly. Arrested persons must be presented to a public prosecutor within 24 hours of being arrested, unless the officer who arrested them has sufficient evidence that they have committed a terrorist offence. In accordance with the Act Protecting Society from Acts of Terrorism, suspected terrorists may be held for up to 28 days, provided that they are presented to a public prosecutor before the end of that period. All interviews with suspects are conducted in an appropriate facility and under conditions in which the suspects are allowed to speak freely, without being coerced in any way. No person in front of whom a suspect feels unable to speak is allowed to attend the interview. The right to freely make a statement obtains without prejudice to the right to remain silent or to refrain from answering questions during an interview or interrogation. The exercise of this right by suspects is not taken as evidence against them. Suspects may be detained only in detention centres established in accordance with the law on the management of prisons.

(c) Accused persons have the right to attend any examinations or hearings conducted in relation to the charge of which they are accused. If they choose not to attend or are prohibited from doing so as there is a need to allow the investigating authority to establish the facts in the case, or if the process is started urgently for fear that evidence may be lost, they still have

the right to be informed of what happened in their absence so that they can prepare their defence. They are entitled to have their lawyers attend any examinations or hearings with them. Their lawyers have the same guarantees as their clients with regard to the right to be informed of the content of the investigations and the right to submit petitions in relation thereto.

(d) Accused persons are not prohibited from contacting any person of their choosing to help them to deal with their personal business. In addition, their family members are permitted to visit them in their place of detention. Accused persons may grant power of attorney, issue authorizations and correspond with third parties in accordance with the Reform and Rehabilitation Foundation Act and its implementing regulations, on the provision that when they perform such actions they do not interfere with the collection of evidence or with the conduct of the investigation. Accused persons have the right to carry out lawful activities, including management of their assets, unless their assets were used in the offence or are subject to investigation. They also have the right to complete any studies and take examinations and to exercise all other civil rights unrelated to the offence or the investigation. The civil rights of suspects and accused persons are therefore protected fully during investigations and trials.

(e) The Family and Child Prosecution Department is responsible for investigating all juvenile cases. All interviews with juveniles are conducted in the presence of a social worker. Juveniles are never placed in pretrial detention and may be arrested only where an arrest warrant has been issued by a juvenile court, unless the court orders them to be placed under parental supervision. Juveniles cannot be punished; they may, however, be reprimanded, placed under parental supervision, enrolled in a vocational training course at an organization chosen by the Minister of Social Development, charged with certain obligations, placed on judicial probation, placed in a governmental or private social welfare institution or committed to a specialist hospital. A juvenile court can choose to apply any of these measures as it sees fit, taking into account the severity of the offence and the threat to society.

(f) The judiciary respects the principle of due process, which is the foundation of justice and good governance. Consequently, the task of the Office of the Public Prosecutor and the courts during criminal proceedings is not limited merely to the collection of evidence; these institutions are also responsible for assessing the evidence in accordance with the Constitution and the law. No charges may be brought by the Public Prosecutor, nor may judgments be issued, on the basis of evidence that is not proven to be sound. If the evidence was obtained by methods that are proven to be unsound and if it is found to be false, it must be disregarded when a decision is taken on the culpability of the accused. In this connection, article 253 of the Code of Criminal Procedure reads: "Judges shall reach each decision based on the opinion that they form in full freedom. They shall not base their judgment on any evidence that was not presented to them at the hearing. If a defendant or witness is proven to have been coerced into giving a statement through the use of force or the threat thereof, the testimony shall be disregarded." In addition, article 255 of the Code provides that: "If the charge cannot be proved or the offence is not punishable by law, the court shall acquit the defendant and, if he or she is in detention, shall order his or her release [...]."

(g) Bahrain has taken steps to ensure that the crime of torture is covered adequately in its national legislation. Article 208 of the Criminal Code was amended to bring the definition of torture that it contains fully into line with the one set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This definition includes the material and legal elements of torture set forth in the Convention. Torture is therefore now defined in the Criminal Code 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 a 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, including for the purpose of revenge. The crime of torture is not subject to a statute of limitations. Amendments have, furthermore, been made to the Criminal Code to provide for the introduction of a comprehensive system for the protection of witnesses, victims, experts and all other persons who provide information in legal proceedings. Forms of protection include changes of identity, relocation, the non-disclosure of any information about the identity or

place of residence of the person in question, the use of modern technology to record or broadcast the statements of victims and witnesses live, and the non-disclosure of witnesses' names unless disclosure is ordered by the court once all possible threats have been neutralized.

(h) Bahraini law provides access to remedies to all persons who have suffered a violation of the rights and freedoms afforded to them by Bahraini law and the International Covenant on Civil and Political Rights, even where the violation was committed by a public official during the course of duty. In addition to the judiciary, there are a number of other organizations and institutions in Bahrain that are responsible for protecting those rights:

Special Investigation Unit

In the light of the findings of the Bahrain Independent Commission of Inquiry, which conducted special investigations into cases of torture and other cruel, inhuman or degrading treatment or punishment, the Government has stepped up its efforts to tackle these kinds of cases within the framework of the law. It has various practical and legal tools and mechanisms to investigate them independently and in keeping with international standards. The Special Investigation Unit was set up to investigate and process allegations of torture and ill-treatment, to determine whether or not governmental officials bear criminal responsibility in a case and to refer the matter to the relevant authority for the imposition of sanctions if its investigators find that disciplinary action is warranted. The Unit operates independently and in line with international standards, in particular those set forth in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). It receives practical and technical support and expert advice when needed in order to help it conduct effective investigations. It has four specialized divisions: forensic medicine and psychological support, information and administration, the criminal investigation department, and communications and information. The Unit is managed by a public attorney, assisted by a number of experienced investigators. It initiates investigations in response to reports and complaints that are received from complainants or from governmental or non-governmental organizations or that come to its attention through the media, the Internet and social media.

Office of the Ombudsman

Established by Decree No. 27 of 2012, the Office of the Ombudsman is responsible for investigating complaints against staff of any part of the Ministry of the Interior and for inspecting prisons, detention centres and juvenile welfare centres.

Independent Prisoners and Detainees' Rights Commission

Established by Decree No. 61 of 2013, the Commission is responsible for monitoring conditions in prisons, detention centres, juvenile welfare centres and all other places, such as hospitals and mental health centres, in which a person may be held, in order to ensure that inmates are not subjected to ill-treatment. The Commission is comprised of judges and staff of the Office of the Public Prosecutor, as well as representatives of civil society organizations.

The **National Human Rights Institution of Bahrain**, established by Act No. 26 of 2014, is a legal entity that enjoys both financial and administrative independence. It is responsible for promoting and protecting human rights and raising awareness of these rights and the values attached to them. In the **Ministry of the Interior**, these issues are dealt with by the Internal Audit and Investigations Department, the Legal Affairs Department, the Inspectorate General, the Crime Prevention Department and the Military Tribunals Department, while the Complaints Department operates a hotline (80008008).

Depending on their special area of concern, all these departments receive reports and complaints and make decisions as to whether or not disciplinary or criminal proceedings need to be brought. There are various easy ways to contact them and communicate with them and they operate as part of an integrated framework designed for the exchange of information and notifications. Furthermore, citizens in Bahrain can easily exercise their right to have recourse to law and gain access to legal assistance. They also enjoy guarantees ensuring the independence of the judiciary.

The Government strives to ensure that international standards concerning the rights of prisoners are met, in particular the right of those under arrest to have access to doctors,

lawyers and members of their family. These rights are enforceable under Bahraini law, and numerous steps have been taken to ensure that they are protected fully in practice. On 8 December 2011, for example, the Minister of the Interior signed a memorandum of understanding with the International Committee of the Red Cross (ICRC) authorizing it to conduct inspections of prisons and detention centres. ICRC has visited every prison and detention centre in Bahrain and provides advice and assistance in those areas where it has particular expertise. In parallel to making efforts to ensure effective protection of the rights of suspects in detention, the Government has introduced wide-ranging reforms to allow independent organizations to inspect detention centres without forewarning. Inspections may be carried out by the judiciary, ICRC, the Office of the Ombudsman, the Prisoners and Detainees' Rights Commission, the National Human Rights Institution and certain non-governmental organizations.

(i) In Bahrain, ensuring access to health care for persons deprived of their liberty is a matter of priority. For example, articles 28 to 35 of part IV of Act No. 18 of 2014 on reform and rehabilitation centres are devoted to the subject of health and social care. In addition, article 33 of Ministerial Decree No. 131 of 2015, promulgating the implementing regulations for Act No. 18 of 2014, reads: "The doctor at the centre (a facility for persons, male or female, who are placed in pretrial detention) shall regularly examine all prisoners and all persons being held in pretrial detention and shall provide all necessary treatment. The doctor may recommend that certain individuals be transferred to a public or private hospital."

Where the necessary treatment cannot be provided at the centre, the centre may transfer the patient, with the approval of the doctor, to a public or private hospital. Decisions on these matters are based solely on the medical reports provided by the treating physician; the administrative authorities are not involved in making such decisions.

