

(Translated from Arabic)

**Permanent Mission of the Kingdom of Bahrain to the United Nations
Geneva/Vienna**

Explanatory note

In addition to our earlier reply, dated 7 February 2019, we wish to state as follows:

1. Sayed Alawi Husain Alawi and Sayed Fadhel Sayed Abbas

Background to the case

This case dates back to 2016, when antiterrorism security forces received information that a terrorist cell of 18 individuals was planning to carry out a major attack. Following inquiries, 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 Ashtar Brigades and the Mukhtar Brigades".

Charges against them:

- Sayed Fadhel Sayed Abbas was apprehended on 29 September 2016 and Sayed Alawi Husain Alawi on 24 October 2016. They were both arrested pursuant to article 27 of the Act on the Protection of Society from Acts of Terrorism under which law enforcement officials have the power to arrest, for a period of not more than 28 days, persons against whom evidence exists to show that they have committed terrorist offences.
- Sayed Fadhel Sayed Abbas was brought into the Office of the Public Prosecutor on 25 October 2016 and questioned on the same day, while Sayed Alawi Husain Alawi was brought into the Office and questioned on 21 November 2016. In both cases the Public Prosecutor ordered that they be detained pending investigation.
- The case was referred to the jurisdiction of the military courts.
- The Military Prosecutor preferred the following charges against the two individuals: incitement to murder; attempted murder; disrupting public order for the purpose of harming Bahrain by undermining the country's security, safety and stability; establishing a terrorist cell and participating in its organization, funding and management; 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.

The ruling

At its session on 21 February 2018, the Supreme Military Court of Appeal 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 Appeal ruled to reject the appeal lodged by the Military Prosecutor against [REDACTED] and [REDACTED] 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 AbdulHussain 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 with which the offenders were charged, and the second of which stripped all the offenders of their nationality.



At its session on 25 April 2018, the Military Court of Cassation issued its definitive ruling in the case of the terrorist cell accused of attempted murder and the commission of other terrorist offences. The Court ruled to reject the appeal presented by the parties who had been sentenced to death, to a term of imprisonment of 15 years and to the loss of Bahraini nationality. The ruling was delivered in the presence of the families and relatives of the accused, their defence team, legal organizations, representatives of human rights institutions and the media.

It should be noted that legal safeguards are fully guaranteed before military courts, in accordance with the 2002 Code of Criminal Procedure. The ruling was issued by the Military Court of Cassation, and it is therefore final and definitive. Nonetheless, under article 84 of the Military Judiciary Act promulgated by Legislative Decree No. 34 of 2002, death sentences cannot be carried out unless they have been ratified by His Majesty the King and Supreme Commander, may God protect him.

His Majesty ratified the ruling issued by the Military Court of Cassation on 25 April 2018 in case No. 1/Terrorism/2017 and commuted the death penalty against the convicted parties to a sentence of life imprisonment, in accordance with article 41 of the Constitution of Bahrain and article 84 of the Military Judiciary Act promulgated by Legislative Decree No. 34 of 2002.

Safeguards for accused persons during the 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, this meant rigorous adherence 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. The defendants had the right to appoint a defence lawyer and lawyers were appointed for those unable to do so for themselves. The defending parties were able to speak before the court, to refute the charges and to present their defence as they saw fit.

It should be noted that trials in military courts follow the same course as those in civilian courts, and once the parties concerned had been convicted by the Military High Court on 25 December 2017, their case was appealed and the appeal ruling announced on 21 February 2018. The defendants then had the right to challenge the appeal ruling before the Military Court of Cassation. In addition, death sentences are automatically challenged before the Court of Cassation even if the condemned person does not 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 – which was the court of first instance in case No. 1/Terrorism/2017 – in order to verify that the safeguards of a fair trial had been duly 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 military and civilian courts. Representatives from human rights institutions and associations, the media and the defendants' own families also attended the court session.

Procedures in relation to complaints by the defendants

- On 15 January 2017, the special investigation unit received a complaint that the arrest of Sayed Fadhel Sayed Abbas had been effected without a legal basis. Inquiries revealed that the party concerned was involved in a criminal case and that

he had been arrested on 29 June 2016 under an arrest warrant issued against him on the grounds that evidence existed to show that he had committed terrorist offences. He was questioned by the Office of the Public Prosecutor and did not claim to have suffered torture or ill-treatment. The unit decided to archive the complaint on the grounds that the proceedings against him had been carried out in accordance with the law.

- On 4 December 2016, the special investigation unit received a complaint from the sister of Sayed Alawi in which she claimed that her brother had been arrested without being shown a judicial warrant. Inquiries revealed that the party concerned was involved in a criminal case and that he had been arrested on 24 October 2016 under an arrest warrant issued against him on the grounds that sufficient evidence existed to show that he had committed terrorist offences. He was questioned by the Office of the Public Prosecutor when he denied the charges against him but did not claim to have suffered torture or ill-treatment. The unit decided to archive the complaint on the grounds that the proceedings against him had been carried out in accordance with the law.
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