

(Translated from Arabic)

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

Geneva, 19 August 2020

1/5-252 (he)

Explanatory note concerning [REDACTED]

We reference to letter AL BHR 3/2020 of 29 June 2020 from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary Detention, we would like to clarify the following:

Details of the case of [REDACTED]

On 29 March 2019, a group of people gathered and set fire to tyres, planted dummy explosives and threw Molotov cocktails at public security officers. One of the accused was arrested in flagrante delicto and investigations revealed the participation of the other defendants in the incident.

The charges against the five defendants

1. Planting a simulated explosive device on a public street for terrorist purposes.
2. Intentional criminal arson for terrorist purposes.
3. Participating in an assembly and riot.
4. Acquisition and possession of incendiary devices (Molotov cocktails) with the intention of using them to endanger the lives of others and public funds.

Statements made by [REDACTED] during the investigation

During questioning by the Public Prosecution, he confessed in detail to the charges against him and admitted that he had participated in the incident with the other accused and two juveniles. He received a telephone call from one of the other accused prior to committing the offence and went to the place where it was to take place. The rest of the accused then arrived. They had with them a fake bomb and petrol. They all went out onto the street, each of them carrying a tyre. They placed the tyres on the street and set fire to them with the petrol and Molotov cocktails. They also planted the fake bomb on the street.

Measures taken

The accused, [REDACTED], was summoned on 30 April 2019. He was questioned about the incident and arrested. He was then brought before the Public Prosecution and interrogated on 2 May 2019. He was remanded in custody. He was not accompanied by a lawyer during the interrogation, but a lawyer was with him during the trial. He did not claim to have been subjected to torture or ill-treatment during the interrogation. The allegations that confessions were obtained under coercion and torture are therefore unfounded.

It should be noted that, like all other defendants, the individual in question enjoyed all the legally prescribed safeguards at all the stages of the proceedings against him, from the questioning and collection of evidence to the investigation by the Public Prosecution and the trial. The national courts were committed to ensuring that the individual enjoyed all the safeguards during his trial, the most important of which is full compliance with the Code of Criminal Procedure of 2002 and the amendments thereto. This was the case from the moment the arrest warrant was issued and throughout the interrogation. The interrogation was filmed in order to ensure that the suspect was not subjected to any pressure or coercion. He was allowed to appoint a lawyer. The case was heard in a public trial attended by the accused and his lawyer. He had the opportunity to refute the charges, present his defence and plead orally before the court. The verdict issued by the court of first instance could be appealed before the Supreme Court of Appeal and the Court of Cassation.



Court proceedings

1. The case was referred to the High Criminal Court on 19 June 2019 and tried over several sessions. All of the legally prescribed safeguards were provided from the first hearing to the final session on 31 October, when the court handed down the following judgment:

First, all of the accused were sentenced to 2 years' imprisonment on charges of unlawful association.

Second, the material seized was confiscated.

2. The judgment was appealed to the Supreme Court of Appeal, which decided to accept the appeal in formal terms, to dismiss it on the merits and to uphold the judgment on 30 December 2019.

3. The individual was released on 23 May 2020, ahead of his scheduled release date, after being granted a royal pardon.

Complaints submitted to domestic redress mechanisms

- Special Investigation Unit: The Unit has not received any complaints concerning the individual in question.
- Office of the Ombudsman: The Office has not received any complaints or requests for assistance from or on behalf of the individual in question.

Allegations that the individual was detained for unlawful periods without an arrest warrant, that his confessions were obtained under coercion and torture, and that he was not allowed to contact his family

On 30 April 2019, he was summoned in relation to an incident of arson pursuant to an arrest warrant issued by the Public Prosecution on 18 April 2019. He was brought before the Public Prosecution on 2 May 2019. He was allowed to contact his relatives on the day of his arrest, 30 April 2019, and for the duration of his period in custody and in the correction and rehabilitation centre. All pretrial detainees and convicted prisoners in correction and rehabilitation centres are granted all the rights provided for by law and are always allowed to contact their families.

To add to what has already been explained above, we wish to emphasize that all confessions are obtained in accordance with legal guidelines and the individual in question was not subjected to torture or coercion in order to extract a confession from him, either during questioning and the gathering of evidence or during the investigation by the Public Prosecution.

Article 208 of the Criminal Code was amended by Act No. 52 of 2012 in order to bring it into line with the International Covenant on Civil and Political Rights, particularly article 7, which provides that no one is to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Domestic legislation seeks to endorse these concepts, principles and legal norms in accordance with international standards. Physical and moral pain and suffering are placed on an equal footing in defining the elements of a crime. Domestic legislation has adopted a broad approach in this regard, particularly by using the term moral rather than mental suffering in defining the offence, inasmuch as the concept of moral pain is far broader. Furthermore, the penalty prescribed for threats of torture is similar to that prescribed for the act itself.

In line with article 12 of Legislative Decree No. 4 of 1998 concerning the accession of the Kingdom of Bahrain to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Kingdom guarantees that its competent authorities proceed to a prompt and impartial investigation, wherever there are reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction. The Kingdom is committed to respecting international principles aimed at the effective investigation and documentation of torture and complies with its legal obligations to prevent torture and the recommendation that the State should ensure that investigations are conducted by an investigating authority that is independent of any institution, agency or person that is under investigation.

We emphasize that there is zero tolerance of legal abuses, whether related to torture, ill-treatment, excessive use of force, arbitrary measures or other rights violations. All detainees, pretrial detainees and convicted prisoners are provided with all legal safeguards, without discrimination. In the event that a law enforcement officer commits such abuses, the principle of accountability is applied in adopting legal and disciplinary measures in response to any allegations. The Office of the Ombudsman, which was established by Decree No. 27 of 2012, as amended by Decree No. 35 of 2013, is mandated to receive, review and investigate complaints against members of the Public Security Forces. It is also authorized to take action without receiving a complaint where a wrongful act has an adverse impact on public confidence in the staff of the Ministry of the Interior. It should be noted that the statistics published by the Office of the Ombudsman in its most recent annual reports indicate that there is growing public confidence in its performance, the effectiveness of its action and its independence. In addition, the Internal Investigation Department of the Ministry of the Interior investigates allegations of abuses attributable to the civilian and military staff of the Ministry of the Interior. The National Human Rights Institution was established by Act No. 26 of 2014 as a financially and administratively independent corporate body that specializes in the promotion, development and protection of human rights, and in awareness-raising of human rights values. Complaints can be filed with the Institution by persons who believe that one of their rights has been violated by either the military or the governmental authorities. The Commission for the Rights of Prisoners and Detainees, which was established by Decree No. 61 of 2013, is tasked with monitoring prisons, detention centres, juvenile welfare centres, pretrial detainee facilities and other places of detention, such as hospitals and psychiatric clinics, in order to investigate the conditions of detention of inmates and to ensure that they are not subjected to torture or inhuman or degrading treatment. The Commission performs its functions in an entirely free, impartial, transparent and independent manner.

Lastly, the Special Investigation Unit was established pursuant to Attorney General Decision No. 8 of 2012 as a mainstay of prompt and impartial investigations, as mentioned above. It is tasked with protecting and promoting rights and freedoms as an independent judicial body in the Kingdom's judicial system. The Unit relies in the performance of its duties on several authoritative legal reference works, including its operational instructions, a document containing comprehensive practical guidelines in six chapters comprising 65 articles. It specifies in detail the nature of the Unit, its objectives, the powers vested in it, its terms of reference and composition, the functions of its sections and branches, the duties of the members and associate members of the Unit and their requisite attributes, the means of gathering oral, material and technical evidence, and the procedures to be followed in that regard. It was drafted on the basis of existing legal provisions and principles, and the norms enshrined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

The Unit also takes into account relevant international instruments with a view to undertaking all investigative procedures required to determine the truth, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as declarations, rules, principles, guidelines and codes of conduct, such as the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Unit is an independent entity in the Public Prosecution Service and undertakes its legal assignments under the full authority of its president. Its tasks are assigned to a number of full-time investigators, and its actions are independent from the investigating and judicial authorities that handle cases in which persons are charged with torture, ill-treatment or cruel punishment, in accordance with the decision establishing the Unit and its operational instructions. As the Special Investigation Unit is an independent judicial body and operates separately, at both the regional and international levels, from other authorities entrusted with similar functions, it was essential that its members should be drawn from the judiciary, especially the Public Prosecution Service, given its key role in criminal proceedings. It undertakes investigations, files charges, institutes criminal proceedings and conducts them as prescribed by law.

The Unit uses diverse specialized branches to achieve its goals. Special mention should be made in this connection of the Forensic Medicine and Psychological Support Branch. The Branch is composed of two forensic physicians, one of whom is a woman, who sign the results of medical examinations concerning cases of alleged torture and ill-treatment. There is also a psychiatrist, to whom cases are submitted if necessary. He is a consultant psychiatrist who has had a vibrant professional career, in particular as the head of a psychiatric hospital and as a mental health representative at the World Health Organization. He has received an Arab fellowship in psychiatry and a special fellowship in psychiatry from Australia, published a book called “A History of Psychiatric Services in Bahrain”, prepared educational leaflets on psychology and undertaken a great deal of psychiatric research.

The Branch was legally regulated, and its methods of work were specified in detail in chapter 5, section 3, paragraph 21, of the Unit’s operational procedures. The paragraph focuses on the purpose of each inquiry, examination and documentation, and the procedural safeguards with respect to detainees set forth in the Istanbul Protocol. The Branch undertakes medical and psychological examinations of victims in cases that fall under the Unit’s fields of competence and prepares the necessary technical reports with a view to clarifying the traumatic and psychological effects, the reasons for their occurrence, the date, the methods used, and the extent to which the effects are compatible with the victim’s account. The Branch also draws attention to similarities with other cases, provides health care and psychological treatment for victims, conducts additional interviews and monitors their treatment.

The Special Investigation Unit, in keeping with its legally defined powers and its operational instructions, adopts specific measures to prevent any reprisals by law enforcement officials with a view to preventing victims from filing a complaint. The Unit’s powers also include the possibility of dismissing persons who may have been involved in torture or ill-treatment from a position that provides them, directly or indirectly, with influence or authority over complainants, witnesses or their families. The Unit requests the competent authorities to issue decisions aimed at halting the work of any persons responsible for such acts with a view to preventing any adverse impact on the investigations.

It should also be noted that the Unit is fully committed to investigating all allegations that are brought to its attention by diverse sources with integrity, honesty and restraint. Communication with the Unit is permissible by any means, and any person who claims to have been subjected to torture or ill-treatment should contact the Unit directly or file a complaint by any feasible means.

Allegations of denial of health care

All health procedures have been followed, including the requirement that an immediate medical check-up be conducted for all persons upon arrest. Like all other detainees and prisoners, the individual in question has also undergone periodic medical examinations by the doctor of the correction and rehabilitation centre, who provides the necessary treatment or orders a transfer to an external hospital where necessary. This is in accordance with the requirements of domestic laws and regulations, including the Correction and Rehabilitation Institution Act (No. 18) of 2014 and its implementing regulations.

Procedures to ensure the safety of all juvenile inmates

1. Upon being placed in detention, inmates are informed of their rights and duties and the behaviours and actions that are considered violations under the Correction and Rehabilitation Institution Act are explained.
2. According to the classification rules in place in correction and rehabilitation centres, juvenile inmates are placed in their own wings and do not mix with adult inmates, who are housed in separate buildings.
3. There is a daily programme for juvenile detainees that includes all their activities and allows them additional time for exercise, as it is important for them to expend more energy at their age.
4. They are granted all legally guaranteed rights. With the support of specialists in coordination with the Ministry of Education, they are allowed to complete their studies and sit their exams.

5. The centre has a religious counsellor, a social worker and a psychologist to follow up on their cases and needs. They also receive counselling and social and educational lectures on an ongoing basis in order to rehabilitate them and evaluate their behaviours.
 6. Those who are interested are enrolled in the available programmes, activities and competitions.
 7. There are security cameras in all rooms, corridors and courtyards to monitor inmates and ensure their safety.
-