

# TERRORIZING PEOPLE BY THE LAW OF TERRORISM

Highlights the violations against citizens and civil society by The Law of Protection of the Community Against Terrorist Acts and its Judicial Applications



**Bahrain Center for Human Rights**  
Defending and promoting human rights in Bahrain

**Bahrain Center for Human Rights**

 [www.bahrainrights.org](http://www.bahrainrights.org)

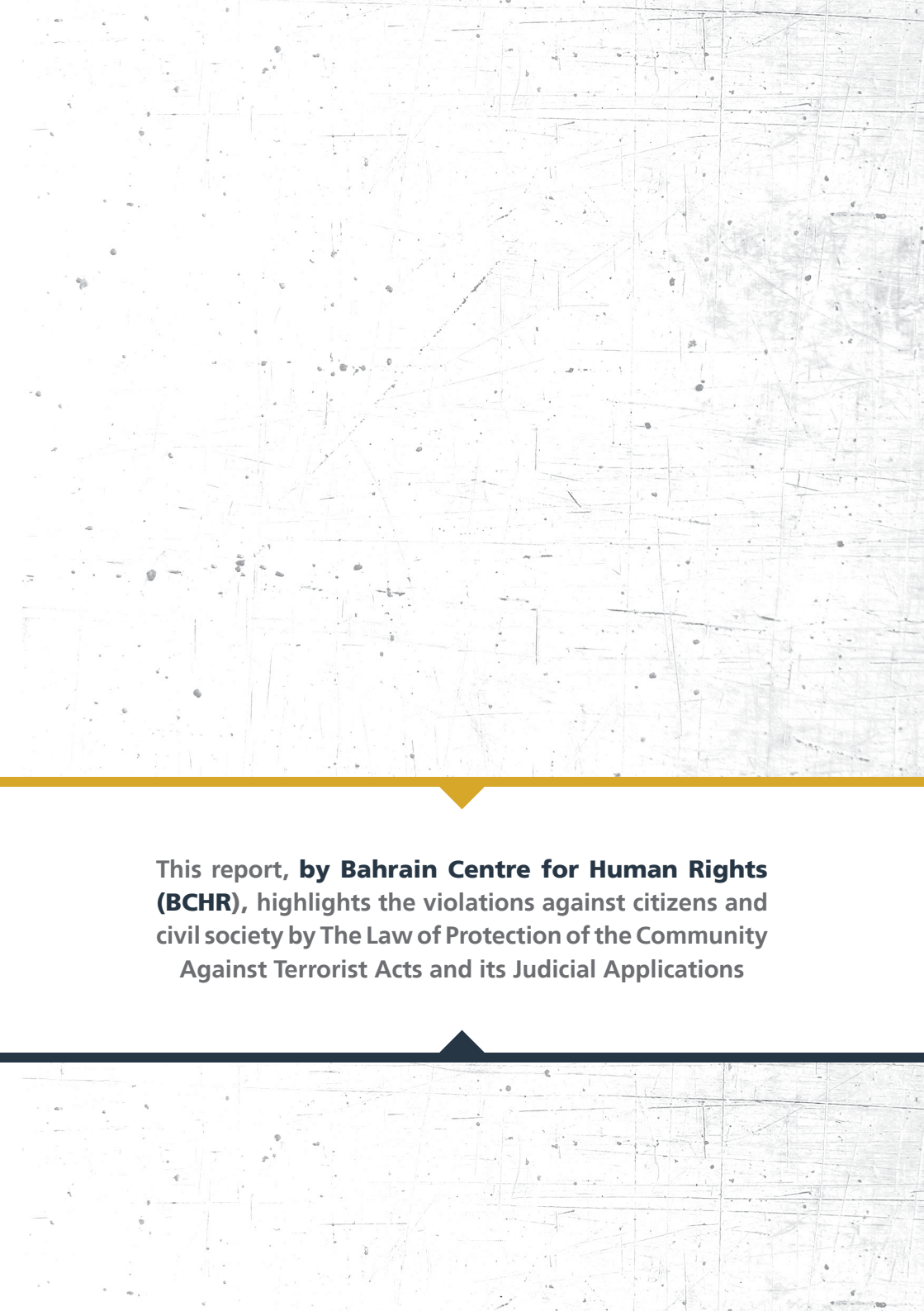
 +45538 931 33

 @BahrainRights

 @BahrainRights

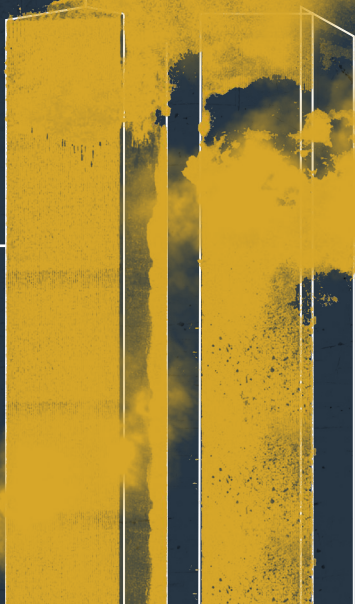
 Bahrain Center For Human Rights


MAY 2018



This report, by **Bahrain Centre for Human Rights (BCHR)**, highlights the violations against citizens and civil society by The Law of Protection of the Community Against Terrorist Acts and its Judicial Applications

# INTRODUCTION





The «War on Terrorism» is a modern term that has emerged after the events of September 11, 2001, which claimed the lives of nearly 3000 civilians of different nationalities. This terrorist act also resulted in thousands of casualties and financial losses in billions. Following this terrorist incident, the United States adopted war on terror by various means including legal legislation. Later, it was followed by many countries both democratic and authoritarian, creating excellent opportunity for the latter to legislate laws that are outwardly anti-terrorism and within the context of international cooperation in the fight against terrorism, while they were repressive against peaceful dissidents and carrying within a hidden agenda against human rights activists, politicians and civil society organisations. How? This is what we are going to explain substantively and systematically in this report.

THE  
METHODOLOGY  
OF THE REPORT



**In this report, we will apply the analytical methodology on the Bahraini law and study some of judicial applications of the law as available. We will also do a brief comparative study of the relevant local and international anti-terror legislation, and the extent to which it is in line with the international law, international conventions and human rights treaties. The study will try to determine the impact of Bahraini laws on Bahrain civil society and the judicial decisions against citizens and human rights activists.**

## LEGISLATIVE ENVIRONMENT

When the international community was concerned about the fight against terror through various means, including legislating on international peace and security as well as preservation of fundamental human rights and freedoms in order to combat and dry up sources of terrorism, Bahrain had adopted Act No. 58 of 2006 on the Protection of Community Against Terrorist Acts after its accession to the International Convention on Terrorist Bombings<sup>1</sup>. This accession was not a point of consensus with the civil society especially the opposition deputies in the House of Representatives who considered this step as a reinstatement of state security law 1974 (which was abolished on February 18, 2001 after the launch of reconciliation project then). The MPs argued that if this law is to combat terrorism and protect the society, it should be in line with the basic rights and freedoms of society and should not

---

1. <http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=2125#.WpvvGmpubIU>





criminalise the exercise of human rights and political activity. They also emphasised that the words and expressions of the law should be specific and not broad. However, the law was promulgated, despite all the objections, by a decree No. 20 of 2013 by the king with amendment of imposing stricter penalties with the deprivation of nationality as an additional penalty<sup>2</sup>. This amendment was issued amid the growing number of cases of political nature including the exercise of the right to freedom of expression and the right to assemble. The king also abused his authority by issuing the Decree-by-Law No. (68) of 2014<sup>3</sup> on amendment of some provisions to impose stricter penalties and establish «Terrorist Crimes Prosecution» with unrestricted discretionary authority over pre-trial detention, investigative authority, formation of the advocacy and offence characterisation. Both amendments were issued by the unilateral will of the king, without referring to the legislative authority (The Parliament).

---

**2.** <http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=30465#.Wpvq2WpublU>

**3.** <http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=72085#.WpvrE2publU>

## THE CONCEPT OF TERRORISM IN BAHRAINI LAW

II

**Article No. 1 of The Law of Protection of the Community Against Terrorist Acts defines «Terrorism» as:** the use of force or threatening to use it or any other unlawful means constituting a crime legally punishable by law resorted to by a perpetrator for the execution of an individual or collective criminal plan with the aim of disrupting public order or threatening the Kingdom's safety and security or damaging national unity or security of the international community if this would result in harming persons terrorizing and intimidating them and endangering their lives, freedoms or security or causing damage to the environment, public health, national economy or public utilities, facilities or properties or seizing them and obstructing the performance of their business activities, preventing or obstructing the government authorities, places of workshop or academic institutions from carrying out their activities.

**COMMENT:** It is clear that this definition is broad and not specific in terms of the framework of the crime, not committed to the concept of criminal responsibility and unclear in terms of the elements of the crimes. This makes it, on the one hand, applicable to many legitimate acts and civil activities, and on the other hand, inconsistent with the constitutional principles, especially with regard to the non-derogability of basic rights and freedoms. In addition, the definition is not in line with the international comparative laws and is disproportionate to the democratic societies, since the terrorist crime, according to this definition, includes any harmful act against the kingdom, damages national unity, causes damage to the environment or obstructs the government authorities. All these concepts are not specifically defined by another Bahraini law, which could be interpreted by the judiciary or the public prosecution without any kind of oversight, leading, in most times to characterise the offence to be terrorist crimes.



## CHARACTERIZING A TERRORIST CRIME BY BAHRAINI LAW



Article 1, paragraph 2, of The Law of Protection of the Community Against Terrorist Acts defines the terrorist crime as: **the crimes provided for in the Penal Code or any other law if the purpose of committing them is a terrorist one.**

**COMMENT:** This means that punitive (penal) laws including offences and crimes could receive severe penalties under The Law of Protection of the Community Against Terrorist Acts, merely for a possible intention which is considered, in criminal jurisprudence, as mens rea (intent). The intent or the purpose is usually hidden and can only be judged by physical evidence or reinforced by evidence.

Based on such definition of the terrorist crime, many human rights and political activists were tried solely for accusing them of having an intent (mens rea) to commit a terrorist crime, although



the practise (act) is not an offence punishable by law. To cite one example, (the criminal proceedings on February 21, 2018 against Mrs / Najah Ahmed Habib Yousef, Bahraini, 40 years old) in which she was accused of promoting to overthrow and change the political system based on article 160 of Penal Code, which states: A prison sentence of no more than 10 years shall be the penalty for any person who promotes or favours in any manner the overthrow or changing the political, social or economic system of the State where the use of force, thereat or any other illegitimate method is noticed. The Public Prosecutor's office also based its charges on article 11 of The Law of Protection of the Community Against Terrorist Acts which stipulates that: «A prison sentence and a fine of no less than BD2,000 and no more than BD5,000 shall be the penalty for each one who promotes any activities that constitute a crime for implementing a terrorist objective.

Apenalty of imprisonment for a period not exceeding 5 years shall be inflicted upon everyone who holds or possesses personally or through another person a document or publication containing the aforesaid promotion where it is intended to be distributed and also upon everyone who holds or possesses any means of printing, recording or publicizing regardless of the type thereof whether used or intended for use even on a temporary basis for printing, recording or broadcast of such promotion.» Thus, it is clear that a mere accusation of any act, considered by the Public Prosecution as unlawful, can be easily characterised as a terrorist act or a terrorist objective.

## THE COMPATIBILITY OF TERRORISM LAW WITH INTERNATIONAL LAW

### IV

**CUSTODY:** Article 26 of The Law of Protection of the Community Against Terrorist Acts states that: «The Public Prosecution shall in addition to the powers vested therein be empowered to issue an order of rendering in custody by the Attorney General or whoever acts for him for a period or for successive periods not exceeding six months in total.» However, Article 9, paragraph 3 of The International Covenant on Civil and Political Rights states that: «Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

**THE RIGHT TO BE ASSISTED BY A LAWYER:** Article 20, paragraph (e), states that «Every person accused of an offence must have a lawyer to defend him with his consent», while article 50 of Code of Criminal Procedure describes this right by «whenever possible,» which means that the Code of Criminal Procedure does not consider the access to legal counsel a defendant's right (which is a clear violation of the constitution). Article 27 of The Law of Protection of the Community against Terrorist Acts, on the right lawyer assistance, did not regulate the matter of lawyer assistance during the enquiry and interrogation sessions, both of security authorities or Terrorist Crimes Prosecution. However, article 14, paragraph 3 of The International Covenant on Civil and Political Rights states that: «In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality;

**(B)** To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

## THE IMPACT OF THE LAW OF TERRORISM ON THE CIVIL SOCIETY

V

The Government of Bahrain has sought, for 17 years ago following a plebiscite on the National Action Charter in 2001, to promote itself to the international community and the UN as a country that respects and safeguards all the fundamental human rights and freedoms, aimed at whitewashing the human rights situation. All these allegations were supported by a set of legislation and laws that we think are incompatible with the International Bill of Human Rights. This package of legislations was called «legislations under the reform project.»<sup>4</sup> However, since this report addresses The Law of Protection of the Community Against Terrorist Acts, we will only study its impact on the civil society in Bahrain, hoping to address the rest of the laws in future reports.

---

4. <http://www.legalaffairs.gov.bh/70.aspx?cms=iQRpheuphYtJ6pyXUGiNqgrUvslkOaoP>



The government of Bahrain replaced the 1974 State Security Law<sup>5</sup>, which was abolished in 2011, with The Law of Protection of the Community Against Terrorist Acts<sup>6</sup>. As the abolished law does not differ from the new law in substance and effect, especially after the actual experience of it which resulted in prosecuting political and human rights activists, against whom harsh sentences were issued that fall short of internationally recognized fair trial standards. Even legal human rights and political societies have not been spared this law. This experience, which lasted more than 12 years after the promulgation of this law and its negative consequences, reflected the direct impact on the civil society, which was locked up tight in 2018. Human rights activists would be able to work only if they are prepared to bear harsh sentences.

---

5. <http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=5682#.WqRHdWpubIU>

6. <http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=2125#.WqRIYWpubIU>



## VI

### THE DEATH PENALTY IN THE TERRORISM LAW

Death penalty is a cruel, inhumane and degrading punishment, which should never be applied anywhere, regardless of the causes, the nature of the crime, presumed innocence or methods of execution.<sup>7</sup> Bitter experience has proven that the execution is ineffective punishment and does not put an end to the crime. Indeed, it could be, in most times, a cause of increased violence as side effects, prompting the international human rights community to adopt and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights to abolish the death penalty.<sup>8</sup> Accordingly, this punishment has been abolished, partially or entirely, in many states, through either legislation or practice. To date, more than third

---

7. [https://www.amnesty.org/ar/what-we-do/death-penalty/?utm\\_source=google&utm\\_medium=cpc&gclid=Cj0KCQiA oY7VBRDtARIsAHWoO-LvisLciAO6bdtb0tKembvhi1fkiZYkGnlYedCRK Og-nt9w\\_MAKJZoaAhwZEALw\\_wcB](https://www.amnesty.org/ar/what-we-do/death-penalty/?utm_source=google&utm_medium=cpc&gclid=Cj0KCQiA oY7VBRDtARIsAHWoO-LvisLciAO6bdtb0tKembvhi1fkiZYkGnlYedCRK Og-nt9w_MAKJZoaAhwZEALw_wcB)

8. <http://www.ohchr.org/AR/ProfessionalInterest/Pages/2ndOPCCPR.aspx>

of world states has abolished the death penalty in legislation or practice.<sup>9</sup> **The numbers are as follows:**

1. States that have abolished death penalty for all crimes: **92**
2. States that have abolished death penalty for ordinary crimes only: **10**
3. States that have abolished death penalty in practice: **35**
4. States that have abolished death penalty in legislation and practice: **137**
5. The remaining states: **60**

The Kingdom of Bahrain is one of the countries that not only abolish the death penalty in legislation and practice (execution), but also added this penalty to many different penal laws, reaching up to (38) articles.

Article 3 of The Law of Protection of the Community Against Terrorist Acts grants the criminal judge the authority to impose heavier sentence from life imprisonment to death penalty.

---

9. <http://www.dp.achrs.org/numbers/countries.html>

## VII

### APPLICATION OF TERRORISM LAW IN THE BAHRAINI JUDICIARY

In a press conference held on January 16, 2018 to present 2017 achievements, the Public Prosecution mentioned that the number of terrorist crimes (according to its legal qualification) has reached 5126 crimes.<sup>10</sup> However, the Ministry of Interior has previously stated, on November 28, 2015, that the number of terrorist crimes was only 162 from 2011 to December 2015.<sup>11</sup> And since Bahrain courts have not witnessed any terrorist acts, since the issuance of Law of Protection of the Community Against Terrorist Acts in 2006 until 2011, this means that the terrorist crimes (according to the legal qualification of the security authorities and the judicial system) began after the events of February 14, 2011, which are linked to the human rights and political movement.

---

10. <https://www.ppb.gov.bh/arabic/event.aspx?id=zdVPnls0p58=>

11. <http://www.alwasatnews.com/elections/page/1050942.html>

In the face of such figures, we can say that this gloomy result can be attributed to the over-application of the law and the expansion of legal qualifications to try human rights and political activists. These large numbers reached this high level because of the wrong application, from advocacy formation until the verdict. All indicators are that these numbers are increasing if the situation of the law and its applications are not corrected.

In the case of Mrs / Najah Ahmed Habib Yousef, 40-years old Bahraini, who was detained on April 27, 2017 and held in custody for six months by Public Prosecution order on October 24, 2017. On the same day, her detention was renewed by court order until February 22, 2018. This means her custody lasted (6 months by Public Prosecution order, 3 months and 26 days by court order). A review of her case (case file No. 2051682017/) showed that the Prosecution of Terrorist Crimes did not take any action after July 20, 2017 except the pre-trial renewal orders. These facts, in addition to what the official documents contained, prove beyond any doubt the extent of violations to which Mrs. Najah was subjected to by law and misapplication of law, which does not take into account the period of preventive detention. Najah was also denied the right to legal counsel during interrogation sessions. Although her charges apply to Article 160 of the Bahraini Penal Code, the Public Prosecution relied upon Article 11 of Terrorist Crimes Act in addition to the aforementioned Penal Code article.



## VIII

### CONCLUSION (RESULTS)

The Law of Protection of the Community Against Terrorist Acts (Bahrain) is an integral part of the violations to which are subjected in the Kingdom of Bahrain. And it is one of the reasons for the increase in frequency of human rights violations, the overall deterioration of the civil society and restrictions on human rights and political activity. The law has had serious negative effects on the civil society, the accused as well as the convicted persons, resulting in death penalty excessively, deprivation of nationality and life imprisonment sentences. Bahrainis still look at this notorious law as the spectre of state security law, creating more victims and blatant violations everyday. It is well known that this law was only in force after the popular uprising on February 14, 2011, which means that it was only issued to suppress the demands of human rights and freedoms.

Commenting on the amendment of The Law of Protection of the Community Against Terrorist Acts, the Ministry of Interior said that the number of terrorist crimes was only 162 from 2011 to December 2015, but after the law amendment they have reached 5126 crimes in 2017, according to the Public Prosecution. This leads us to state that the exercise of political rights and freedom of expression have been terrorist crimes in the eyes of the Bahraini judiciary. This resulted in thousands of terrorist crimes, which, in reality, are political trials for the exercise of fundamental rights.

# RECOMMENDATIONS



## « TO THE GOVERNMENT OF BAHRAIN »

1. to sign and accede the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims to abolish the death penalty and stop the execution.
2. to repeal or amend The Law of Protection of the Community Against Terrorist Acts, so as to be in conformity with the international legitimacy, and does not apply to the exercise of political rights and freedom of expression.
3. to reform and rehabilitate the security services and the judicial system to take into account the rights of the accused persons according to human rights principles and the standards of fair trials.
4. to issue laws and legislation that shall guarantee the right to legal counsel to every defendant at all the stages of proceedings.
5. to harmonize all the legislation with the human rights principles especially those relating to pre-trial detention.

## « TO THE HUMAN RIGHTS COUNCIL AND THE INTERNATIONAL COMMUNITY »

1. to continue to urge the Government of Bahrain to abide by the international human rights treaties and conventions.
2. to seek by all possible legal and political means to pressure the Government of Bahrain to combat and prevent human rights violations and to release all the prisoners of conscience and compensate the victims.

**Bahrain Center for Human Rights**

 [www.bahrainrights.org](http://www.bahrainrights.org)

 +45538 931 33

 @BahrainRights

 @BahrainRights

 Bahrain Center For Human Rights

MAY 2018