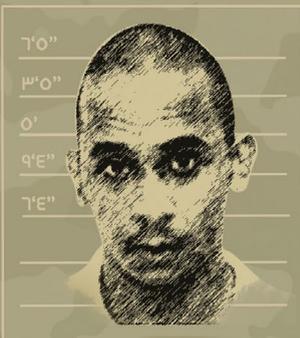
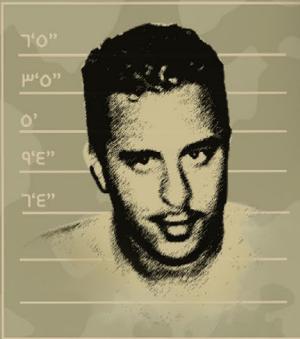
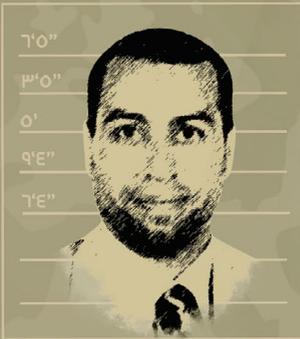
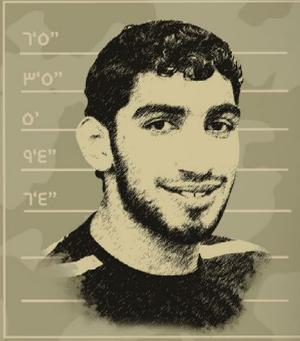


The Massacre of Justice

A report by Bahrain Centre for Human Rights on violations of the Military Court and trials of civilians by military tribunals prior and after the amendments of Military Judiciary Law from 2011 to 2018



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



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Methodology:



The following report is based on the study of Bahraini laws and legislation related to the prosecution of civilians in military courts and shows the compatibility of Bahraini laws with the International Bill and international laws. The report reviews the state of military justice and the violations of the trials.

ABOUT US

The Bahrain Center for Human Rights is a non-profit, non-governmental organization founded in 2002, and registered with the Bahraini Ministry for Employment and Social Affairs in the same year. The Center was officially shut down in 2004 following the arrest of its executive head, Abdel Hadi al-Khawaja, in relation to a conference he had organized focusing on poverty in Bahrain. Since 2011, Khawaja has been serving a life sentence relating to his human rights activities. The Center's acting head, Nabeel Rajab, is also currently in prison, with both of them prevented from exercising their right to freedom of expression and from using social media. The headquarters of the Bahrain Center for Human Rights has remained closed to the public since 2007 by order of the government.

Despite constant attempts to put pressure on the Bahrain Center for Human Rights, including by imprisoning its members, the organization remains one of the most important rights groups in Bahrain, and has international credibility. Thanks to its ongoing work to strengthen the human rights situation in Bahrain, it has been able to attract support and respect within the country and beyond.

As members of the Bahrain Center for Human Rights, our goal is to build a thriving, democratic society based on the values of justice and freedom. We want to live in a society that is free of discrimination and human rights abuses. We empower and advocate alongside individuals and communities to encourage them to become pioneers in fighting for human rights not just for their own communities but for others, too, based on knowledge of international human rights standards, covenants and conventions. The Center's work also focuses on strengthening public freedom and civil, political and economic rights, fighting against discrimination in all its forms and providing support and protection to victims of human rights abuses, as well as vulnerable communities.

To find out more about the activities of the Bahrain Center for Human Rights and read some of our previous reports and publications, please visit our website at:

www.bahrainrights.org



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Introduction:

In Bahrain, the judiciary authority is divided into two branches: the Civil Law Courts (commercial, civil, administrative and criminal) and the Shari'a Law Courts. The King chairs the judicial authority under article 33 of the constitution and appoints judges of the Supreme Judicial Council (SJC). The Minister of Justice (from the Executive Authority) runs the work in the courts and court hearings. In addition to the civil court, there is the Military court (private) which is established and organised by law, as defined by Article 105 of the constitution. The jurisdiction of military courts are confined to military offences committed by members of the Defence Force, the National Guards, and the Security Forces. There is a military court in the Ministry of Interior for the members of the Ministry of the Interior and the National Security Apparatus. Another military court is in the Ministry of Defence for the members of the Defense Force and the National Guards. After an amendment to Article 105(b) of the Bahraini Constitution on March 30th, 2017, military courts have been authorized to have jurisdiction over civilians, which was condemned by the report of the Bahrain Independent Commission of Inquiry (BICI) when 380 citizens were sentenced during National Security Period in 2011. The (BICI) recommended transferring all trials conducted before the military court system to the civilian court system. Thus, 380 Bahraini citizens have been tried, but in 2017, military courts were re-established to try civil people following the amendments of (Article 105) of the constitution, which allowed amendment of the Military Judiciary Law.



first:

A Brief History of Military Justice:

The Military Court was established in 1968 with the creation of Bahrain Defence Force. The military justice was regulated by the 1968 Military Judiciary Law, which was issued prior to the Bahrain's independence from Britain. Since then, the law remained in force and military courts were either in the buildings of Ministry of Defence or in the army camps until the year 2002 when an independent building was established for Lower and Higher Military Courts. The Military Court of Cassation was later established in 2010 by a decree law ⁽¹⁾ and it was held for the first time on December 12, 2011.

Since the establishment of the military court, all the judges are all Sunni and members of the military, who are named by the Commander-in-Chief of the Bahrain Defence Force and appointed by the King. The Military courts have a Military Prosecution Division, which is responsible for initiating and undertaking trial procedures before Military Courts, while Legal Affairs Department of Bahrain Defense carries out the investigation with soldiers and officers over charges punishable under the Military Penal Code. ⁽²⁾

Second:

Military Jurisdiction in the National Safety Court 2011

On March 15, 2011, a Royal Decree 18 for the year 2011, declared a three-month State of National Safety ⁽³⁾. It included a formation of a military court, judges of which are appointed by the Commander-in-Chief of the Bahrain Defence Force and consisted of two levels of jurisdiction. The implementation of this degree was accompanied by the arrest of hundreds of citizens, most of whom were tried before military courts and received heavy sentences. Among the detainees were the doctors of Salmaniya Hospital (28 medical staff) who were re-tried before civil courts ⁽⁴⁾ as well as other cases ⁽⁵⁾. This formation coincided with a ban issued by the President of the appealing court of the state of National Safety, not to publish the hearings of the court or the summaries of the proceedings, ⁽⁶⁾ causing the court to lose the principle of open trial. After the end of the State of National Safety period, all the cases that were not brought before the National Safety Courts (military) were referred to civil criminal courts ⁽⁷⁾. All the cases in which judgments have been rendered were abolished by a royal decree and referred to civil criminal courts. Among the abolished sentences by the civil courts were two death sentences against (Ali Abdulla Al-Singace and Abdul-Aziz Abdulredha Ebrahim) ⁽⁸⁾. Unless the trials were referred to civil courts, the death sentences were executed, which proves that military courts provide no enough guarantees of justice.

This also confirms that the National Safety Courts do not adhere to the fair trial guarantees under the International Covenant on Civil and Political Rights, as mentioned by BICI report in 2011 (Bassiouni Report).

Third:



Laws and legislations regulating Military Justice

1. Earlier legislations against trials of civilians before military courts:

A. Military Code of 1968

This law regulates legal procedures of trying members of all Bahrain Defense Force sections. The decree was repealed on September 25, 2002.

B. Decree-Law No. 34 of 2002 of Military Penal Code

On December 25, 2002, the Military Penal Code entered into force, without an article or a clause allowing the trial of civilians by public or private military courts. Since the 2002 constitution of Bahrain prohibits the prosecution of civilians in military courts according to Article 105. Therefore, when more than 340 civilians were tried in military courts during the State of National Safety, all the sentences were revoked. Following the BICI reports observations of these rulings, the committee recommended, as in clause 119, retrials in civil courts, and stated that the constitution provision does not allow trials of civil people in military courts under any circumstances. Article 105 clause (B) stipulates »The jurisdiction of military courts shall be confined to military offences committed by members of the Defence Force, the National Guard, and the Security Forces. It does not extend to other persons

except when martial law is declared and within the bounds prescribed by law.

It means this article offers the civil people the guarantee from being tried before military courts.

2- New legislation that permitting trials of civilians by military courts:

A. Amendment of Article 105 of Bahrain constitution:

On Thursday, 30th March 2017 Article 105 of Bahrain constitution was amended, following the King's proposal to the legislative authority. The proposal included an explanatory memorandum that justified combating terrorism (the opposition), and that Bahrain Defence Force, its institutions and members are at risk of terrorist acts. Therefore, military judiciary should be allowed to deal with crimes of terrorism.

On February 21, 2017, the Council of representatives held its twentieth ordinary session of the fourth parliament, in which the agenda items were postponed to the next session to discuss the urgent clause «other matters». After the discussion of the Royal Decree No. 7 of 2017, concerning the draft amendment to the Bahrain constitution (Article 105, clause B), the council agreed on the amendment draft and approved the explanatory memorandum. The council also agreed to refer the amendment to the Shura Council, which approved the amendment in a session held on February 26, 2017 and lasted for half an hour only.

The proposed texts reads as follows: **Military Judiciary is regulated by the law, which defines its competencies in Bahrain Defence Force, the National Guard and General Security Forces.** The enclosed explanatory memorandum

was only renamed as «interpretative note». Although some representatives said that the constitutional amendment would offer more protection to rights and freedoms and it is in line with international Bill ⁽⁹⁾, but it was not since the government submitted a draft amendment to the military judiciary in less than twenty days. The representatives considered the amendment which allows trials of civil people by military courts an excellent opportunity to expand the competencies of the military jurisdiction to the detriment of the civil jurisdiction (criminal).

B. Amendment of Military Jurisdiction:

After twenty days of amending Article 105 of the constitution, the Military Judiciary Law was amended and published on 18 April 2017 as Law No. 12 of 2017, including amendment of Article 17 bis to the Military Judiciary Law. It reads as follows:

Military courts deal with offences, intentionally committed by a citizen or alien, who are not subject to the provisions of this law whether as a perpetrator of or accomplice to any of the following offences within or outside the Kingdom.

a. Offences affecting external state security which are provided for in Chapters I of Part I of the Special Section of the Penal Code, whenever they occurred in the operations carried out by Bahrain Defence Force.

b. Offences that fall within the places under Bahrain Defence Force,

or the National Guards including ships, aircrafts, vehicles, buildings, camps, facilities, and areas of concentration, maneuvers, the axes of advance and operational sites.

- c. Offences against money, property, equipment, machinery, missions, communications, objects, weapons, ammunition, records, documents, secrets of Bahrain Defence Force or the National Guards and all their belongings, wherever they may be.
- d. Offences committed against members of the Bahrain Defence Force or the National Guards, when they occurred on account of or in connection with the performance their duties.
- e. Offences against vital or important facilities or official convoys, when they are secured or guarded by Bahrain Defence Force or the National Guards.
- f. Crimes related to any offences mentioned in the above items.

Military courts may refer any crimes within its jurisdiction, according to the previous provisions, to civil courts or any competent judicial authority.

This amendment added to the military judicial the following text (article 17 bis. 1):

«Notwithstanding any other law, the General Prosecutor may refer to the military courts all the crimes listed in the Law of Protection of the Community Against Terrorist Acts, or any crimes against the internal and external security of the state, which are listed in Chapters 1 and 2 of the Special Section of the Penal Code, and any associated crimes.

Thus, military courts had begun hearing the first Trial of civilians in “Marshal Assassination Plot” on 23 October 2017, after the law amendment.

Fourth

Trial of civilians after the amendment of the Military Judiciary Law in 2017.

1. **1/Terrorism/2017** is the number of the first case brought before the military courts. It is the first test to the degree of compliance to the law, the defendants' rights, and whether these trials are independent and impartial. In this case, 18 Bahraini citizens were charged, whose names are as follows:

- 1 - Sayed Alawi Sayed Hussein. (Life imprisonment - commuted from death sentence)
- 2 - Sayed Fadel Sayed Abbas. (Life imprisonment - commuted from death sentence)
- 3 - Mohammed Abdulhassan Almutgawe. (Life imprisonment - commuted from death sentence)
- 4 - Mubarak Adel Mubarak Mohanna, a soldier. (Life imprisonment - commuted from death sentence)
- 5 - Mohammed Abdulhussain Saleh. (7 years' imprisonment)
- 6 - Habib Abdullah Hassan Ali. (Death sentence)
- 7 - Montadher Fawzi Abdul Karim Mahdi. (Innocence)
- 8- Mohammed Abdul Wahid Mohammed Al-Najjar. (7 years' imprisonment)

- 9- Hussain Essam Hussain Al-Durazi. (Innocence)
- 10- Sayed Mohammed Sayed Kassem Al-Moussawi. (7 years› imprisonment)
- 11- Mohammed Abdullah Ibrahim Abbas. (Innocence)
- 12- Ali Jaafar Hassan Al-Rayes. (7 years› imprisonment)
- 13- Hussain Ali Mohsen Badu. (7 years› imprisonment)
- 14 - Ali Ahmed Khalifa Salman. (Innocence)
- 15- Mortadha Majeed Ramadan Alawi. (Life imprisonment - commuted from death sentence)
- 16 - Rami Ahmed Abdullah Al-Arish. (Innocence)
- 17 - Hussain Mohammed Ahmed Shehab. (5 years› imprisonment)
- 18 - Mohammed Yousef Marhoon Al-Ajmi. (5 years› imprisonment)

Nationalities of the convicts were revoked as an additional punishment.

After the follow-up of these and earlier hearings as well as the sentences issued, the following can be demonstrated:

- a. the defendants› were subjected to enforced disappearance for more than a year and denied access to their lawyers and families.
- b. According to defendants, they were investigated after seven months of enforced disappearance and without counsel presence.

c. The trial took place after the amendment of the Military Judiciary Law, which means it is completely null since the law did not permit the trial of civil people by military court at the time of the alleged incident.

d. The first session of the trial was held with absence of the lawyers, making the court to allow the defendants to contact their lawyers to attend the next hearing.

e. The lawyers attended the second hearing, but they were denied access to the case file making it very difficult to prepare their arguments and defenses, this deprivation continued at the Court of Cassation.

f. Six of the accused in this case were sentenced to death and this penalty was supported by the Court of Appeal and the Supreme Court. However, the king dropped the death penalty and replaced it by lifetime imprisonment.

g. The alleged case does not carry the death penalty according to the penal laws of the Kingdom of Bahrain. (Articles 36 and 37 of the Bahraini Penal Code).

h. The court hearing was closed and only lawyers were allowed to attend, by a decision of the Military Court Prosecution. *(1)

i. The judgment was rendered in the first instance. Lawyers were denied access to a copy of the judgment, as well as the Appeal Court and the Supreme Court which makes this denial contradict with fair trial guarantees.

f. On April 26, 2018 (the day after the verdict), the death penalty was commuted to life imprisonment by a royal order for Sayed Fadhel, Sayed Alawi, Mubarak Adel and Mohammed Almutgawe.



j. The prison sentence is enforced in Qureen Prison of the military members. Three of the convicted civilians, in addition to Mohammed Abdulhussain Saleh (7 years imprisonment), are serving the sentence in Qureen while the rest are in Jaw Central Prison.

Fifth

Legal and human rights remarks concerning the Military Judiciary Law:

1. The Military Jurisdiction took away the competence and jurisdiction from the civil judiciary in terms of crimes against the external security of the state given in the Penal Code, 1976 (Articles 112 to 146), including 11 death sentences.
2. The Military Judiciary Law allowed the General Prosecution to refer to the military courts all the crimes listed in The Law of Protection of the Community Against Terrorist Acts or any crime against the external and internal security of the state given in the Penal Code including 22 clauses with death sentences.
3. The Military Judiciary Law is not obliged by the Penal Code in trials of civilians.
4. The accused who are subject to Military Jurisdiction are held in military prisons, which are not subject to any inspection.

5. The Military Judiciary Law is not obliged by Juveniles Act (children), giving military courts the jurisdiction to try children like all others.
6. Military Judiciary Law does not respect the guarantees of fair trial in article 14 of the International Covenant on Civil and Political Rights.
7. The jurisdiction of the military court is now fully competent to deal with 60 articles punishable by death in the Military Judiciary Law, the Penal Code and the Law of Protection of the Community Against Terrorist Acts.
8. Military Courts do not respect the principle of public hearings.
9. Lawyers and defendants are denied access to their case documents throughout the trial.
10. Lawyers and defendants were not given copies of the judgments by the military courts throughout the trial.

Conclusion



The Bahraini judiciary does not apply the principle of separation of powers; the king is the head of the judicial, executive and legislative powers. The judges are appointed and promoted by the king, the judiciary has no administrative or financial independence, and the Bahraini courts are subject to the King's will and the judicial rulings are issued on his behalf.

The military judiciary is the same as the civil judiciary in terms of their independence and subordination to the will of the King. It is noted that military courts are supervised by Bahrain Defence Force; military judges are mostly military members. The military law has been designed to deal with crimes committed by members of security institutions with strict and harsh penal provisions. However, after the amendment to article 105 of the constitution, the amendment to the military law was extended to include civilians. The threat has come to punish civilians with harsh sentences including death penalty.

Military Judiciary does not apply the safeguards of fair trials given in article 14 of the International Covenant on Civil and Political Rights, greatly raising the level of threat. Defendants at the Military Prosecution do not enjoy the basic rights such as the right to defend themselves against the charges. Moreover, the prisons under the military judiciary are not subject to legal and human rights observations, making the defendants in danger of being subjected to torture, physical coercion, and detention in solitary confinement.





Recommendations:

We urge the Government of Bahrain to:

- repeal the amendment to Military Judiciary Law, and restore the previous law, which prohibits trials of civilians before military courts.
- provide the civilians the sufficient guarantees re-trials in civil courts with access of legal counsel.
- accede to the Second Optional Protocol of the International Covenant on the abolition of the death penalty.

Recommendations for the International Community:

- We ask the Secretary-General of the United Nations to seek, by various means and mechanisms, to urge the Government of Bahrain to reform the judicial system and to abolish the death penalty in law and practice.
- We ask the High Commissioner for Human Rights and the Special Rapporteur against torture to investigate the crimes of torture in military and other courts.
- We ask the Special Rapporteur on the independence of judges and lawyers to request an urgent visit to the Kingdom of Bahrain in order to obtain first-hand knowledge of the situation of courts.



Footnotes appendix:

1-<http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=5652#.Wr3vL6huaUk>

2-<http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=5572#.Wr3xl6huaUk>

3- <http://www.alwasatnews.com/elections/page/604927.html>

4- <http://www.alwasatnews.com/news/614417.html>

5-<http://www.mohamoon-bh.com/Default.aspx?action=DisplayNews&ID=9303>

6-<http://www.mohamoon-bh.com/Default.aspx?action=DisplayNews&ID=9254>

7-<http://www.mohamoon-bh.com/Default.aspx?action=DisplayNews&ID=9589>

8 - <https://www.bna.bh/portal/mobile/news/457564>

9 - <http://www.alayam.com/online/local/687968/News.html>

