

# “Death or Confession”

Bahrain: Secret military courts sentence civilians forced to confess under torture



DESIGNED BY:



December 2017

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## INTRODUCTION

The general principles of the Comparative International Law and the International Bill on the judiciary and trials warn of trying civilians in military courts or extending the application of special judicial laws in extraordinary cases.

It is well known and recognized that military courts are those which handle offenses committed by military personnel and associated with their military functions, and this is how the military court was described in the 2002 Constitution of the Kingdom of Bahrain, and particularly in section b of Article 105 thereof, which stipulates that,

“The jurisdiction of military courts shall be confined to military offences committed by members of the Defense 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.”

However, after the report of the Bahrain Independent Commission of Inquiry (BICI) was issued – especially paragraph 119, which led to consequent legal effects

nullifying the sentences of military courts during the period of the declaration of martial law that was accompanied by human rights violations, and then repeating the trials in civil courts – Bahrain resorted to surpassing this constitutional prohibition by amending Article 105 of the Constitution on March 30, 2017, lifting the constitutional impediment of trying civilians in military courts.

This constitutional amendment resulted in an amendment to the Military Judiciary Law on April 18, 2017, i.e. after less than twenty days and on an expedited basis. This law expands to make the military judiciary specialized in prosecuting civilians accused in the political cases stated in the Bahraini Penal Code (general law).

## **HISTORICAL BACKGROUND ABOUT THE LEGAL AMENDMENTS TO THE MILITARY JUDICIARY LAW**

Bahrain declared martial law on March 15, 2011 to confront the popular movement, which started then to demand constitutional reforms and guaranteeing human rights. More than 340 civilians had been tried in military courts over political cases and received harsh sentences, which ranged between five years imprisonment as the lowest sentence and life imprisonment or execution as the maximum sentence.

However, military sentences were canceled, and the cases were referred to civil criminal courts, based on what was stated in paragraph 119 of the report of the Bahrain Independent Commission of Inquiry (the BICI or better known as Bassiouni Commission).

## **Constitutional Amendments**

**Section b of Article 105 of the 2002 Constitution of the Kingdom of Bahrain used to stipulate the following:**

**“The jurisdiction of military courts shall be confined to military offences committed by members of the Defense 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”.**

According to this Article, civilians may not be prosecuted in military courts except in case martial law is declared and within the bounds prescribed by law. Since the Military Judiciary Law did not regulate such a case then, the jurisdiction of military courts does not extend to the prosecution of civilians under it.

**Then, this article was replaced on March 30, 2017 (Official Gazette 3307) with the following text:**

**“The law regulates the military judiciary and shows its competencies with regards to Bahrain Defense Force, the National Guard and the Public Security Forces”.**

The purpose of the constitutional amendment is probably to lift the constitutional guarantee established in the old text that prevents the trial of civilians by military courts. The phrases

“It does not extend to other persons except when martial law is declared” and “within the bounds prescribed by law” were deleted, and it is believed that this deletion is intended to avoid legal objection and appeals to military judgments or laws, and thus this amended article permits an amendment to the Military Judiciary Law, which is what happened.

## **Legal Amendments**

According to the latest amendment to Article 105 of the Constitution, the Military Judiciary Law was amended after less than twenty days. Law No. 12 of 2017 was promulgated on April 18, 2017, and it added to the Military Judiciary Law Article 17 bis, which reads as follows:

**“The military judiciary shall consider the following offenses when committed intentionally by a person who is not subject to the provisions of this law as an actor or partner inside or outside the Kingdom:**

- a. Crimes against the external security of the state, as set forth in Chapter 1 of Part One of the Special Section of the Penal Code, when they have been committed in operations carried out by the Bahrain Defense Force or in the case of armed terrorism from abroad.**
- b. Crimes that occur within the territories of the Bahrain Defense Force or the National Guard, including ships, aircraft, vehicles, buildings, camps, installations, mobilization areas, maneuvers, and advancements of forces and operation zones.**



**c. Crimes against assets, property, equipment, machinery, missions, communications, objects, weapons, ammunition, records, documents, or secrets of the Bahrain Defense Force or the National Guard and all their belongings, wherever they may be.**

**d. Crimes committed against members of the Bahrain Defense Force or the National Guard, that occur due to or while they perform their professional duties.**

**e. Crimes against vital or important installations or official motorcades, when they are secured or guarded by the Bahrain Defense Force or the National Guard.**

**f. Crimes related to any of the crimes mentioned in the preceding clauses.**

**The military judiciary may refer any of the crimes within its jurisdiction in accordance with the preceding provisions to the civil judiciary or to any competent judicial authority”.**

**The amendment to Law No. 12 of 2017 also added to the Military Judiciary Law Article 17 bis 1, which reads as follows:**

**“As an exception to what is stated in any other law, the Public Prosecutor may, after the approval of the military judiciary, refer to this judiciary any of the crimes stated in the Law on Protecting Society**

**from Terrorist Acts or any of the crimes against the external or internal security of the state listed in Chapters 1 and 2 of Part 1 of the Special Section of the Penal Code, and the offenses associated with them”.**

Pursuant to this law, military courts have the jurisdiction to try civilians permanently, and all criminal lawsuits (which are based on political cases) that have not been referred to civil criminal courts (normal judge) are referred to military courts, according to Article 3 of Law No. 12 of 2017.

## **The Contradiction of the Amendment with International Law**

These constitutional and legal amendments clearly contradict with the International Bill, especially in the trial proceedings and its guarantees and the issue of proportionality of criminal penalties. **For example, Article 14 of the International Covenant on Civil and Political Rights stipulates the following:**

- 1.** All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest

of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

**2.** Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

**3.** In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

**a.** To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

**b.** To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

**c.** To be tried without undue delay;

**d.** To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

- e. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;**
  - f. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;**
  - g. Not to be compelled to testify against himself or to confess guilt.**
- 4.** In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
  - 5.** Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
  - 6.** When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
  - 7.** No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

After comparing the previous article with the constitutional amendment, it is clear that the judicial procedures in the Bahraini military courts are not in conformity with this article, by which Bahrain is bound since it is a state party to this Covenant; especially with regard to the period of remand detention, which is not regulated by the Military Judiciary Law, and the access to a lawyer or communication with the outside world, whether with the family or the lawyer.

Moreover, Bahrain's judicial authority did not follow the Basic Principles relating to the Independence of the Judiciary adopted by the United Nations in 1985, neither in the appointment of judges nor in court proceedings.

### **Some of the legal observations on the Military Judiciary Law are:**

- 1.** The Military Judiciary is concerned with the prosecution of civilians for their political views, as stated in Article 105 of the Military Judiciary Law, which stipulates that the penalty for opposing the general policy of the Kingdom of Bahrain is execution.
- 2.** The Military Judiciary is concerned with the prosecution of civilians under the articles relating to the crimes against the external and internal security of the State of Penal Code No. 15 of 1976 (articles 112 to 185).
- 3.** The Military Judiciary is concerned with the prosecution of civilians based on the Law on the Protection of Society from Terrorist Acts No. 58 of 2006.

4. Conflict of competence in the jurisdiction of the original civil criminal courts for the application of public law (Penal Code).
5. Military courts are not bound by the Code of Criminal Procedure as a general law, therefore the accused lacks fair trial guarantees.
6. The Military Prosecution is not bound by the Code of Criminal Procedure, and there is nothing in the Military Judiciary Law that requires it to respect the rights of the accused stipulated in article 14 of the International Covenant on Civil and Political Rights or even the Code of Criminal Procedure.
7. The Military Judiciary Law is not bound by the Juveniles (children under 18) Act, and therefore children are susceptible to military trials.

## THE MILITARY JUDICIARY RECORD OF CIRCUMVENTING THE LAW

In March 2017, the Bahraini Minister of Justice commented on the constitutional amendment made by the authorities, which authorized the trial of civilians in military courts, saying that the current constitution does not allow trying civilians in military courts except in case martial law was declared and that the presented amendment will allow military courts to try civilians too<sup>1</sup>. This statement clearly indicates the extent of the constitutional circumvention that has been done for returning military courts, in which trials began in March 2011, during the National Safety period, following the outbreak of massive popular protests in February 2011. In May 2011, the Minister of Justice had denied that the military courts, which were held at the time, were actually military courts and said that they were special courts, and military courts were established under the name of the National Safety Court pursuant to Royal Decree No. 18 of 2011.

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1. <https://www.skynewsarabia.com/web/article/924325/>

Bahrain is one of the signatories to the International Covenant on Civil and Political Rights (ICCPR), which strictly prohibits trying civilians in military courts except in the case of declaring martial law. Therefore, the recent constitutional amendment is seen as an indirect declaration of martial law. After these courts were abolished, as a result of the recommendations of the head of the Bahrain Independent Commission of Inquiry, Professor Mahmoud Cherif Bassiouni, it was found that the military judiciary issued its verdicts as a way of retaliation and misused the authority given to it.

When observing all the interrogations, arrests and imprisonments of thousands of citizens in 2011, it is noted that the military courts did not apply any of the principles of fair and independent judiciary. None of the arrests had a legal basis, and all the interrogation procedures, whether in the Military Prosecution or the security centers, included torture or coercion and extremely cruel sectarian and religious insults, and revealed a real direction towards an abhorrent sectarian categorization, on which the security mentality of the army forces and security services is based. Military courts were therefore considered a means of humiliation and political and psychological pressure on the opposition and the citizens, who were forcibly taken to those courts.

The military courts began with a very swift trial over felonies, which are crimes of murder and attempted murder. There was a trial over the charge of murdering two policemen, and the first hearing was held on April 4, 2011. The first ruling was death sentence against four of the defendants, and it was issued on April 28, 2011, i.e. in less than four weeks! During the same



month, military courts heard more than 10 cases and classified them as murder and attempted murder, and issued harsh sentences ranging from 15 years to death. The Misdemeanor Court began in May to hear cases of gathering and inciting hatred against the regime, and issued strict sentences ranging from one year to five years in cases involving participating in marches and political activities that were held during the sit-in at the roundabout. As of June 2011, military courts heard cases related to medical personnel, teachers' association, political leaders, and murder of foreigners. According to the report of the committee that follows up the implementation of the recommendations of the Commission of Inquiry, the sentences of conviction issued by the National Safety Courts amounted to 165, and the total number of convicts amounted to 502. Moreover, the number of rulings that were appealed is 135 rulings, which are reviewed before the ordinary courts of competent jurisdiction according to the law. The number of cases that were transferred from the Military Prosecution to the Public Prosecution after the end of the state of National Safety amounted to (1622), (1185) cases of which were reserved by the Public Prosecution. The Public Prosecution had also dropped 334 charges relating to freedom of opinion and expression. As for the 30 cases that were not appealed before ordinary courts, the committee that follows up the implementation of the recommendations of the Commission of Inquiry heard them and issued similar sentences.

The case of trying political leaders or better known as the "symbols" is one of the most important cases that were heard by the military judiciary, along with the other major case of the medical personnel. On September 29, 2011, a

special military court convicted 20 doctors and health care workers with serious crimes, including kidnapping and storing weapons at Salmaniya hospital. Prison sentences ranged between 5 and 15 years. The court denied doctors and health care workers a fair trial, as the evidences were distorted or dubious, including confessions extracted under duress, reported statements of others, and “secret evidence” provided by investigators. In addition, the investigators were often key prosecution witnesses! The judges prevented doctors and other health workers from testifying in their own defense. However, most of the doctors were acquitted on retrial in the civil court later!

The Bahraini society has a very painful experience with the military judiciary, an experience that reflects the extent of the motive of revenge and the disregard for the law and the rights of the people to fair judiciary and trials. Therefore, the return to the military judiciary as constitutional courts confirms the military path that the Bahraini authorities are taking. This requires an intervention to prevent the continuation on this path, or direct and explicit pressure to stop trying civilians in military courts.

## PROCEEDINGS OF THE FIRST MILITARY TRIAL OF CIVILIANS

The details of the case being reviewed in the report are as follows:

**The first military lawsuit after the constitutional and legal amendment: No. (Terrorism 1 - 2017) Charges: Establishment of a terrorist cell aimed at committing a number of terrorist crimes against the Bahrain Defense Force.**

### Defendants:

Name	Date of arrest
Sayed Alawi Hussein Alawi	24/10/2016
Sayed Fadhel Sayed Abbas	29/9/2016
Mohammed Abdul Hussein Saleh Ali Al-Shehabi	30/5/2017
Mohammed Abdul Hassan Ahmed Kadhem Al-Mutagawi	23/5 /2017
Montather Fawzi Abdul Karim Al-Durazi	22/12/2016
Mohammed Yussef Marhoun Al-Ajami	23/5/2017
Mohammed Abdul Wahed Mohammed Al-Najjar	22/12/2016
Hussein Isam Hussein Abdulla Al-Durazi	23/10/2016
Hussein Mohammed Ahmed Shehab	15/6/2016

## Sequence of events

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- Incidents of enforced disappearances began: The family of the Bahraini citizen Sayed Fadhel Sayed Abbas and the family of the Bahraini citizen Sayed Alawi Sayed Hussein report the enforced disappearance on 9/29/2016 and 10/24/2016 respectively.
- The King of Bahrain approves amendments to the Military Judiciary Law that allow the prosecution of civilians on 4/19/2017<sup>2</sup>
- Bahraini human rights organizations say that the recent constitutional amendment on the powers of the military judiciary approved by the King of Bahrain will lead to unrestrained issuing of arbitrary sentences by the military institution against prisoners of conscience. The organizations also noted that the “Military Judiciary Law” allows issuing the death penalty in thirty-three cases of crimes, whatever the crimes where and whether they were intentional or unintentional, adding that “the judges of military courts follow the orders and decisions of the Commander-in-Chief of the Bahrain Defense Force, and he is the one who presents the names of the judges to the King to appoint them.”<sup>3</sup>
- The Bahrain National Contact Center announces on 5/10/2017 that the Military Judiciary considers for the first time the case of three persons, one of whom is associated with the military and the other two are not,

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2. <http://www.alwasatnews.com/news/1231887.html>

3. <https://bfhr.org/article.php?id=871&cid=4>

accused of committing crimes for a terrorist purpose related to planning to target military facilities and Defense Force personnel.<sup>4</sup>

- On 10/17/2017, attorney General Ali Fadl Al-Buainain says that only one case has been referred to the military judiciary since the constitutional amendment was passed.<sup>5</sup>
- The Head of the Military Judiciary, Brigadier Youssef Rashid Fleifel, announced on 10/22/2017 that the security services concerned with combating terrorism in the Bahrain Defense Force were able, in a proactive step, through the information they received and through conducting research, investigation and observation, to arrest a terrorist cell aimed at committing a number of terrorist crimes against the Bahrain Defense Force, and the Military Prosecution referred the accused in this case to the competent military court after the completion of its investigations.<sup>6</sup>
- First trial session was held on 10/23/2017
- Second trial session was held on 10/30/2017
- Five Bahraini human rights organizations say in a statement on 10/30/2017 that the trial of civilians by the military judiciary is void and that those involved in torturing the victims must be held accountable.<sup>7</sup>

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4. <http://www.bna.bh/portal/news/785150>

5. <http://albiladpress.com/news/20173291//bahrain/455678.html>

6. <http://www.alayam.com/online/local/685282/News.html>

7. <http://www.bahrainrights.org/ar/node/8919>

- Third trial session was held on 11/2/2017
- On 11/2/2017, head of the military judiciary, Brigadier Youssef Rashid Fleifel, says that the High Military Court issued on Thursday a decree which bans reporting any information, data or news about case No. (Terrorism 1-2017)<sup>8</sup>
- Fourth trial session was held on 11/13/2017
- 4/4/2017 Amnesty International: the constitutional amendment in Bahrain is catastrophic
- 4/13/2017 The Bahraini Shura Council approves the amendment of the Military Judiciary Law
- 10/22/2017 The head of the military judiciary announces the start of the first military trial of civilians
- The National Institute for Human Rights (NIHR) announces its presence for the first time at the fourth session of the trial, and stresses that the competent court's procedures and way of handling the trial took into account the basic principles of human rights and legal regulations, in addition to activating the guarantees of fair trials. The NIHR also says that the principle of presumption of innocence has been taken into account, in addition to the principle that says that the accused is innocent until proven guilty in a legal trial, which provides for him the necessary guarantees to exercise the right of defense at all stages of interrogation and trial in accordance with the law.

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8. <http://akhbar-alkhaleej.com/news/article/1095527>

- The Bahrain Forum for Human Rights says in a statement on 11/14/2017 that the presence of the NIHR at the fourth session for the first time indicates that the NIHR came in late to observe the case and its facts and events, and it did not listen to the torture complaints and ill-treatment made by the detainees over this case, and therefore, it cannot deny the claim of enforced disappearance or the crime of torture and ill-treatment; and attending the session by the NIHR does not nullify the decision of secret trial.<sup>9</sup>
- Fifth trial session was held on 11/19/2017
- Sixth trial session was held on 23/11/2017
- The Military Judiciary informs lawyers over the phone that the hearing set on December 3, 2017 is postponed to December 11, 2017.
- The seventh trial session was held on December 11, 2017 and the sentencing was adjourned until the eighth session on December 25, 2017.

### **Decisions of the High Military Court:**

**On Thursday, November 2, the following statement was issued by the military judiciary:**

Head of the military judiciary, Brigadier Youssef Rashid Fleifel, declared that the High Military Court issued a decree which bans reporting any information, data or news about case No. (Terrorism 1- 2017), which includes trying members

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9 · <https://bfhr.org/article.php?id=945&cid=4>

of the terrorist cell that planned to carry out operations against the Bahrain Defense Force, in all read, visual, audio, or electronic media outlets, for the public interest, and for maintaining the integrity of the evidence and ensuring the right of the witnesses to legal protection, with the exception of the parties that will be authorized by the Court.<sup>10</sup>

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10. <http://akhbar-alkhaleej.com/news/article/1095527>



# SEQUENCE OF EVENTS INFOGRAPHIC



**29 / 9 / 2016**

The family of the Bahraini citizen Sayed Fadhel Sayed Abbas reports the enforced disappearance



**24 / 10 / 2016**

The family of the Bahraini citizen Sayed Alawi Sayed Hussein reports the enforced disappearance



**21 / 2 / 2017**

The Bahraini Council of Representatives approves the constitutional amendment to Article 105 regarding the Military Judiciary



**3 / 4 / 2017**

Bahraini human rights organizations say that the recent constitutional amendment on the powers of the judiciary will lead to unrestrained issuing of arbitrary sentences by the military institution, and in thirty-three cases of crimes the amendment allows issuing the death penalty



**4 / 4 / 2017**

Amnesty International: the constitutional amendment in Bahrain is catastrophic



**19 / 4 / 2017**

The King of Bahrain approves amendments to the Military Judiciary Law that allow the prosecution of civilians



**17 / 10 / 2017**

Attorney General Ali Fadl Al-Buainain says that only one case has been referred to the military judiciary since the constitutional amendment was passed



**13 / 4 / 2017**

The Bahraini Shura Council approves the amendment of the Military Judiciary Law



**10 / 5 / 2017**

The National Contact Center announces that the Military Judiciary considers for the first time the case of persons accused of committing crimes for a terrorist purpose related to planning to target military facilities and Defense Force personnel



**22 / 10 / 2017**

The head of the military judiciary announces the start of the first military trial of civilians

**23 / 10 / 2017**  
First trial session was held

**30 / 10 / 2017**  
Second trial session was held



**30 / 10 / 2017**

**Five Bahraini human rights organizations**

say

that the trial of civilians by the military judiciary is void



and that those involved in torturing the victims must be held accountable

**2 / 11 / 2017**  
Third trial session was held



**21 / 11 / 2017**

The head of the military judiciary says that the High Military Court issued a decree which bans reporting any information, data or news about case (Terrorism 1 -2017)

**13 / 11 / 2017**  
Fourth trial session was held



منتدى البحرين لحقوق الإنسان  
Bahrain Forum For Human Rights

**14 / 11 / 2017**

The Bahrain Forum for Human Rights criticizes the statement of the National Institute for Human Rights, and says that the NIHR came in late to monitor the case and did not hear the complaints of torture

المؤسسة الوطنية لحقوق الإنسان  
National Institution for Human Rights



**13 / 11 / 2017**

The National Institute for Human Rights (NIHR) announces its presence for the first time at the fourth session of the trial, and stresses that the competent court's procedures and way of handling the trial took into account the basic principles of human rights

**23 / 11 / 2017**

Sixth  
trial session was  
held

**19 / 11 / 2017**

Fifth  
trial session was  
held

**11 / 12 / 2017**

seventh  
trial session was  
held



**3 / 12 / 2017**

The Military Judiciary informs lawyers over the phone that the hearing set on December 2017 ,3 is postponed to December 2017 ,11.

**the sentencing was adjourned until the eighth session on December 2017 ,25.**



## **PROCEEDINGS OF THE FIRST MILITARY TRIAL OF CIVILIANS**

### **First hearing**

**The first hearing of the trial was held on October 23, 2017 for 5 minutes. The court refused to hear the accused, and the court requested the appointment of lawyers for the accused. The present lawyers requested a copy of the case file, but their request was denied by the court.**

The defendants who attended this hearing were: Sayed Alawi Sayed Hussein, Sayed Fadhel Sayed Abbas, Mohammed Abdul Hassan Ahmed Kadhem Al-Motaghawi, and Mohammed Abdul Hussein Saleh Ali Al-Shehabi.

The lawyers present at the hearing noted that the defendants looked like they had been tortured and appeared extremely exhausted. None of the defendants had contacted his family prior to the hearing to request the appointment of a lawyer. It is noteworthy that the defendants Sayed Alawi Sayed Hussein, Sayed Fadhel Sayed Abbas, Mohammed Abdul Hassan Ahmed Kadhem Al-Motaghawi and Mohammed

Abdul Hussein Saleh Ali Al-Shehabi were in solitary confinement, and had not met with each other except in the dock, and their families were not aware of their referral to trial. After the hearing, defendants Sayed Alawi Sayed Hussein, Sayed Fadhel Sayed Abbas, and Mohamed Abdul Hassan Ahmed Kadhem Al-Motaghawi were allowed to contact their families to request the appointment of a lawyer in a telephone conversation that lasted only 30 seconds.

## Second hearing

**The second hearing was held on October 30, 2017, in the presence of lawyers and defendants. The court charged the defendants with the charges mentioned in the indictment. After calling the defendants, it appeared that there are other defendants' names in addition to those mentioned in this report, making the total number of the defendants in the case 17.**

At the end of the hearing, the lawyers asked for a period of time for examination. The defense team (lawyers) renewed the request to receive a copy of the case file. The request was rejected, and the court called on the lawyers to attend the court's offices to review the case file without allowing them to have a copy.

The court refused to respond to the request of Mohamed Abdul Hassan Ahmed Kadhem Al-Motaghawi to submit an oral complaint about being subjected to torture and ill-treatment. After the hearing, the defendants did not contact their families and were not allowed to sit with their lawyers or meet with their families. The defendants who were not

allowed visits are Sayed Alawi Sayed Hussein, Sayed Fadhel Sayed Abbas, Mohammed Abdul-Hassan Ahmed Kadhem Al-Motaghawi and Mohammed Abdul-Hussein Saleh Ali Al-Shehabi.

### **Third hearing**

**The third hearing of the trial was held on November 2, 2017. The defense team submitted a request to the court to question the prosecution witnesses, the court said that it will consider the request. The defense team once again requested to receive the case file, but the response was that the court decision stipulates that the hearings are secretive. Afterwards, the lawyers requested to allow the four defendants, who are banned from visits, to meet their families. The court allowed each defendant to sit with his family and lawyer for no more than five minutes in the courtroom. This was the first time that the defendants met with their families and lawyers.**

After the hearing had ended, some lawyers were threatened with being subjected to degrading and inhumane treatment, as well as being insulted, in case they revealed the abuses and legal violations to the media and human rights organizations.

### **Fourth hearing**

**The fourth hearing was held on November 13, 2017. Due to the court's decision to keep the hearings secretive and threatening the concerned parties not to reveal the information and the violations and proceedings to the media and human rights**

**organizations, we were unable to find out all the proceedings of the hearing. However, some details were mentioned in two statements by the NIHR, but they are unreliable for the following reasons:**

- 1.** The delegation of the NIHR came in late to monitor the hearing.
- 2.** The NIHR did not listen to the defendants' complaints about being subjected to torture, and also did not listen to the lawyers; and it announced at the fourth hearing that the judicial proceedings are valid.
- 3.** It was unknown of the proceedings of the interrogation at the Public Prosecution.
- 4.** It was unknown of the decision of the court to keep the case secretive.
- 5.** The NIHR statement issued on November 14, 2017 did not mention that the military judiciary is not the normal judge provided for in article 14 of the International Covenant on Civil and Political Rights. Therefore, this is a contribution to legitimize the role of the military judiciary in the trial of civilians, despite the violations of the International Law found in the Military Judiciary Law.
- 6.** The NIHR did not have a clear position on the enforced disappearance of the four defendants in the case.
- 7.** The NIHR praised the trial, although three children under the age of 18 were present, which contravene the International Bill of Human Rights.



## **Seventh hearing**

**The seventh hearing was held on December 11, 2017. An eyewitness (who refused to be named for fear of being tortured) stated the following:**

At the hearing, the public prosecutor called for the harshest sentences against the defendants, whereas some lawyers, while reading out the defense, stressed the following:

- The Military Court is not competent to consider such a case for two main reasons. First, the amendment of the law granting the military court the power to hear civil cases came after the date of the incident; therefore, it is not legally permissible to refer this case retroactively.

**Second**, the existence of what is legally known as conflict of interest, since it is the plaintiff himself who oversees the appointment of military judges and the distribution of positions.

Due to these reasons, the lawyers requested to transfer the case to the civil judiciary, because the military judiciary did not have jurisdiction over the case.

**The witness added** that it was noted that the Military Prosecution had no evidence to prove the incident or any other charges except the confessions extracted under psychological and physical torture, in addition, the military prosecution relied on the secret witness who evaded the lawyers' questions and was unaware of the location of the Duraz cemetery.

The eyewitness also pointed out that one of the detainees told his family that he had no other choice but to confess under torture because death is the fate that awaited him if he had not done so. He added that one of the defendants (a child under the age of 18) asks his family: Who is the plaintiff referred to in this case? I do not know him and I have not heard of him before.

According to the eyewitness, lawyers at the hearing asked for acquitting the defendants, and requested that their clients be allowed to speak, and that they question the prosecution witness again. Moreover, they requested that some of the defendants be brought before a psychiatrist, and that they check if the other defendants were subjected to torture, ill-treatment, sleep deprivation and coercion during interrogation, but the court rejected all previous requests and adjourned the case for sentencing on December 25, 2017.

## THE VIOLATIONS THE DETAINEES CLAIMED THEY WERE SUBJECTED TO

Name	Enforced dis-appearance	Tor-ture	Not allowed visits	Not allowed communication	Unable to meet the lawyer	Knowing the interrogating party
Sayed Alawi Hussein Alawi	✓	✓	✓	✓	✓	✓
Sayed Fadhel Sayed Abbas	✓	✓	✓	✓	✓	✓
Mohammed Abdul Hussein Saleh Ali Al-Shehabi	✓	✓	✓	✓	✓	✓
Mohammed Abdul Hassan Ahmed Kadhem Al-Mutagawi	✓	✓	✓	✓	—	✓
Montather Fawzi Abdul Karim Al-Durazi	—	✓	—	—	✓	✓
Mohammed Yussef Marhoun Al-Ajami	—	✓	—	—	✓	✓
Mohammed Abdul Wahed Mohammed Al-Najjar	—	✓	—	—	✓	✓
Hussein Isam Hussein Abdulla Al-Durazi	—	✓	—	—	✓	✓
Hussein Mohammed Ahmed Shehab	✓	✓	✓	✓	✓	✓

Name	Not submitting a torture complaint	Threatened to target relatives	Solitary confinement	Violating Standard Minimum Rules for the Treatment of Prisoners	Violating fair trial guarantees
Sayed Alawi Hussein Alawi	✓	✓	✓	✓	✓
Sayed Fadhel Sayed Abbas	✓	✓	✓	✓	✓
Mohammed Abdul Hussein Saleh Ali Al-Shehabi	✓	✓	✓	✓	✓
Mohammed Abdul Hassan Ahmed Kadhem Al-Mutagawi	✓	✓	✓	✓	✓
Montather Fawzi Abdul Karim Al-Durazi	✓	✓	—	✓	✓
Mohammed Yussef Marhoun Al-Ajami	✓	✓	—	✓	✓
Mohammed Abdul Wahed Mohammed Al-Najjar	✓	✓	—	✓	✓
Hussein Isam Hussein Abdulla Al-Durazi	✓	✓	—	✓	✓
Hussein Mohammed Ahmed Shehab	✓	✓	✓	✓	✓

**NOTE:** Hussein Muhammed Ahmed Shehab was subjected to all these violations in the first case in which he was sentenced to five years in prison, but he was only subjected to the violations of the inability to meet the lawyer and the violation of fair trial guarantees in the second case in the military judiciary.

## Conclusion

**The litigation proceedings of the military courts during the National Safety period in 2011 proved to be a means of humiliation and political and psychological pressure on the opposition and the citizens who were forcibly taken to those courts.**

The amendment to the Military Judiciary Law has given military courts permanent jurisdiction to try civilians in general and to try opinions in particular (which it describes as “anti-public policy”). Therefore, this law targets the political opposition with harsh and severe punishments that may reach execution. Also, this law does not abide by the International Bill, especially concerning the independence of the judiciary and guarantees of a fair trial.

The trial violated the principles of fair trials and the defendants were subjected to torture and ill-treatment. The recent constitutional amendment on military judiciary was used to expose the defendants to a trial that produced harsh sentences, and also to arbitrarily issue harsh sentences against at least

three accused children. In addition, the judicial authority did not investigate the defendant's allegations of torture and ill-treatment. Instead, the security authorities threatened the concerned parties to subject them to degrading treatment if the violations were revealed to the media or human rights organizations. Therefore, the judicial authority exploited the decision of secret hearings to commit violations and to enable those involved in torturing the defendants to avoid accountability.

The Bahraini society has a very painful experience with the military judiciary, an experience that reflects the extent of the motive of revenge and the disregard for the law and the rights of the people to fair judiciary and trials. Therefore, the return to the military judiciary as constitutional courts confirms the military path that the Bahraini authorities are taking. This requires an intervention to prevent the continuation on this path, or direct and explicit pressure to stop trying civilians in military courts.

## Recommendations

**Based on the before mentioned, the government of Bahrain should:**

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- **Repeal the constitutional amendment and restore Article 105 of the Bahraini Constitution to its previous state to ensure that civilians are not tried in military courts.**
- **Repeal Law No. 12 of 2017 amending the Military Judiciary Law, which allowed for the prosecution of civilians in military courts.**
- **Adopt the Basic Principles on the Independence of the Judiciary adopted by the United Nations in 1985.**
- **Open an independent investigation into all complaints of violations in this and other cases, particularly concerning complaints of torture and ill-treatment.**

### **It is also necessary that:**

- **The United Nations Secretary-General, the High Commissioner and Member States of the Human Rights Council urge the Government of Bahrain to adopt and implement the basic principles on the independence of the judges, to ensure that the Government of Bahrain refrains from trying civilians in military courts and amends the law.**
- **The Special Rapporteur on the Independence of Judges and Lawyers submits a request to visit Bahrain and the Bahraini authorities are pressured to accept the request for a visit.**
- **The mechanisms for the appointment of the Supreme Judicial Council are amended in order to allow the public to exercise its authority to supervise the work of the judiciary.**
- **A clear and transparent mechanism is put in place to ensure that all groups of society who meet the substantive conditions of the judiciary are allowed access and engage in judicial work.**
- **Legislative guarantees are put in place so that none of the other authorities interfere in the work of the judiciary.**



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December 2017

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