

SHEIKH HASSAN ISA

TRIAL OF CONSCIENCE UNDER THE PRETEXT OF TERRORISM



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Bahraini Forum for Human Rights



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TRIAL OF CONSCIENCE UNDER THE PRETEXT OF TERRORISM

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 9 of the International Covenant on Civil and Political Rights



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SHEIKH HASSAN ISA

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A report that monitors the malicious lawsuit and the trial of Sheikh Hassan Isa, former MP of Al-Wefaq National Islamic Society's bloc in the Bahraini Parliament, and the 10-year sentence issued against him because of his political, social and religious activities and roles.

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He is a former Member of the Bahraini Parliament for Al-Wefaq National Islamic Society, the members of which who were 18 MPs resigned in 2011. He was born on the island of Sitra in 1970, and grew up there. He is known for his moderate religious, political, social and humanitarian roles through following people's needs and conditions and providing financial assistance and humanitarian services to them, especially the needy, the underprivileged and the disadvantaged, in accordance with his religious and humanitarian duty.

Sheikh Hassan won the highest number of votes in the 2010 parliamentary elections, with a rate of 92%, because of the social and humanitarian presence he was known for on the island of Sitra.

In addition to the social and humanitarian role that Sheikh Hassan has been known for, he has also been known for his political role since his youth. He was arrested because of his political activity in the nineties events witnessed by Bahrain between 1994 and 2001. Moreover, he has

been known for his political positions that support the political movement witnessed by Bahrain since 2011. He once said, “We stand with every peaceful activity demanding a right that is lost in the pockets of influential people and the closed chambers of politics, and we support all the oppressed and the deprived”, stressing that the peaceful choice is one of the principles of the people.

Despite all this, Sheikh Hassan was arrested on charges of financing terrorism, although his positions and statements on Twitter and other sites and in events clearly condemned and criticized violence. He emphasized the peaceful movement as an ethical issue that is linked to the origin of the Bahraini people and the nature of its composition and religious background.

As an emphasis on the peaceful choice of the political movement in Bahrain and in criticism of the government, he said, “Peacefulness can embarrass any regime that has some moral values, but unfortunately it has been met with unprecedented violence and continued killing and torture by the Bahraini regime, which confirms the odd disappearance of its moral side, although it is a Muslim regime by appearances.”

On December 15, 2016, the Bahrain Forum for Human Rights (BFHR) along with activists launched a large-scale campaign on social media in solidarity with Sheikh Hassan Isa, after he spent more than 700 days in solitary confinement (isolation), which violates Article 50 of the Reform and Rehabilitation Institution Law issued in 2014 under Law No. (18). Human rights activists published footages in which they spoke about some of his characteristics, the most prominent of which is believing in the peaceful and reforming approach, and they denied the charges brought against him. The activists also deemed his arrest “a revenge” for his political activism and demanded his immediate release and dropping of charges against him.



Background of the arrest

On Tuesday, August 18, 2015, Sheikh Hassan Isa was arrested at Bahrain International Airport after his return to Bahrain without knowing the reasons for the arrest and without a warrant from the Public Prosecution. During his arrest, he was denied the right to defend himself and was not allowed to communicate with his family or his lawyer. He was immediately transferred to the Criminal Investigation Directorate (CID) building, and his family and lawyer didn't know his place of detention except after 20 days of the enforced disappearance, although the file of the case later revealed that the Public Prosecution had interrogated Sheikh Hassan on August 23, 2015 without the knowledge of his lawyer. His lawyer later found out when Sheikh Hassan was presented to the Public Prosecution on September 7, 2015.

When he was presented to the Public Prosecution on that day, his lawyer was allowed to speak with him for only three minutes. In this short period, Sheikh Hassan Isa told his lawyer: "I am threatened and I cannot reveal

what happened to me in the CID building; give my family my regards.”

The lawyer knew that it was not the first time Sheikh Hassan had been brought before the Public Prosecution. Although his lawyer had submitted more than one letter and asked the Public Prosecution to allow him to attend the interrogation sessions, the prosecution denied his presence or that he was brought before it.

Sheikh Hassan Isa remained in solitary confinement even after being brought to trial on January 12, 2016. He was referred to the Fourth Criminal Court on charges of funding terrorist acts.

The Public Prosecution said in a statement that it “received a report on July 28, 2015 from the Capital Governorate Police Directorate stating that an explosion occurred that morning in Sitra and resulted in the killing of two police officers and wounding six others.” It added that “By conducting investigations by the Criminal Investigations Directorate, we reached the accused perpetrators who established a terrorist group and included in it a number of the defendants based on the instructions of accused individuals found in the Republic of Iran for the purpose of carrying out terrorist acts and targeting the police officers”. The statement further added: “A number of the defendants – one of whom is a member of a political association – were assigned to finance the terrorist group with the necessary funds to carry out its operations; and one of the defendants found out about the plan and the perpetrators of the crime and did not inform the competent authorities. In addition, some of them possessed explosives and homemade weapons, while four of the defendants hid members of the terrorist group, against whom criminal sentences and arrest warrants were issued. Meanwhile, five defendants helped a member of the terrorist group to exit and enter the Kingdom of Bahrain illegally; this member went then to the Republic

of Iran and received training on how to use explosives and weapons after he was received by official bodies.” The statement further added that “13 accused were arrested and brought before the Public Prosecution, which interrogated them in the presence of some of their lawyers, and completed the investigation procedures and referred the defendants to criminal trial.”



The malicious lawsuit and arbitrary detention

The bombing incident, which was referred to by the Public Prosecution, has raised many suspicions. Political and human rights parties have demanded an impartial investigation, especially since political and human rights parties in Sitra in particular and in Bahrain in general, including Sheikh Hassan Isa, have condemned the incident and all similar acts of violence. However, the Bahraini government refuses to form impartial commissions of inquiry for such incidents.

Sheikh Hassan Isa and other activists were included in the same case despite the absence of material evidence that could confirm their association with the incident. Sheikh Hassan Isa was charged with funding terrorism in an illegal adaptation of the law and based on security assessments and information – which were described by the prosecution as confidential – that lack precision and credibility and cannot verify the conviction.

With regard to the arbitrary arrest and detention, Sheikh Hassan Isa was arrested at Bahrain Airport based on investigations and information, and not based on physical evidence, and without the permission of the Public Prosecution. He was also arrested without being informed of the reasons for his arrest, which means that the investigations prior to the arrest and interrogation of the accused were not serious enough to acquire the legal proceedings that followed, thus, what happened with Sheikh Hassan Isa is arbitrary arrest and violation of the right to freedom.

The trial proceedings and papers show that the investigations are not serious, especially since the information of the investigating officer is vague and incomplete and cannot confirm the existence of evidence of conviction, which lead to the conclusion that they are invalid and the resulting procedures are invalid, whether they were the procedures of arrest or the procedures of interrogation of Sheikh Hassan Isa as well as the rest of the defendants.

This was confirmed by the defense of Sheikh Hassan Isa in the trial sessions.

In light of this, it can be said that the procedures for the arrest of Sheikh Hassan Isa and the subsequent proceedings are invalid, which is considered a violation of the right to personal freedom, which is guaranteed in Article 19 of the Constitution of Bahrain, which stipulates: “a. Personal freedom is guaranteed under the law. b. A person cannot be arrested, detained, imprisoned or searched, or his place of residence specified or his freedom of residence or movement restricted, except under the provisions of the law and under judicial supervision.”

The same procedures contravened Article 61 of the Code of Criminal Procedure, which stipulates that: **“No one shall be arrested nor imprisoned except by an order of the legally competent authority. He shall be treated in**

such a manner as to maintain his human dignity and shall not be subjected to any bodily or psychological harm. Every person who is arrested shall be informed of the reasons for his arrest. He shall have the right to contact any of his relatives to inform him of what has happened and to seek the aid of a lawyer.”

In addition, those procedures violated the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other international treaties that guarantee the right to freedom and prohibit arbitrary arrest and detention, as well as other violations that Sheikh Hassan Isa was subjected to, which will be shown through this report.

According to what the prosecution said in the indictment, the charges brought against Sheikh Hassan are: **“exploiting the funds he collects in religious events and public gatherings and the funds he receives from some parties and persons, and distributing them by the twelfth and thirteenth defendants among the defendants from the first until the seventh, knowing that they are engaged in terrorist activities and belong to a terrorist group” and “collecting funds without the authorization of the competent authority and for a terrorist purpose, as indicated on the papers.”**

By looking at his charges, we find that Sheikh Hassan was tried under article 1 and article 3 (1) of Decree-Law No. 4 of 2001 with respect to Prohibition and Combating Money Laundering and Financing Terrorism, as well as Articles 1, 2, 7 and 14 of Decree-Law No. 21 of 2013 on the regulation of fundraising for general purposes.

Article 2 of the law on the regulation of fundraising for general purposes states that: **“natural or corporate persons shall not be allowed to collect funds for general purposes except after obtaining a license from the**

Minister in accordance with the provisions of this Law.”

- In Article 1 of the definitions section, Decree Law No. 21 of 2013 defines the collection of funds as: “Any activity carried out by a natural or corporate person with a purpose of raising funds or accepting cash or in-kind donations by any means of collecting money from any natural or corporate person inside or outside the Kingdom.”

It can be said - as will be clear from the course of the trial and its sessions - that the material element of the crime determined by the law is absent, which is: collecting funds and delivering them to a society, group, organization, association or gang, while the collector and deliverer of the money is aware that this group or society is exercising a terrorist activity.

A number of facts can be presented that emphasize the absence of the principle of determining the violations legally and the principle of legal description of the crime, as well as the proper legal adaptation in the trial. This led to the unequal use of the law to link Sheikh Hassan Isa to the case subject of the lawsuit without the existence of a connection and clear relationship, in addition to the absence of physical evidence, which makes it an unfair trial that lacks the rules and guarantees of fair trial standards. **The following are some of these facts:**

1. What Sheikh Hassan Isa was doing cannot be described as fundraising, but rather receiving donations and charity as a religious rite encouraged by the Islamic religion. Receiving charity and donating it to the needy comes under the freedom to perform religious rituals that is guaranteed by the Constitution and the law in accordance with the customs of the country.

2. Being a cleric, one of Sheikh Hassan Isa's religious roles is that donors give him money, knowing that he will spend it on good deeds, such as helping the poor, aiding those in need, building and renovating mosques in his area, and other charitable activities. He did not collect money by force, money came to him from benefactors for charity.

3. The Public Prosecution has failed to provide any material evidence to prove that Sheikh Hassan Isa paid money to terrorist groups, except for the guesses and conclusions of the investigating officer according to his secret sources. The investigating officer reported that Sheikh Hassan had paid money to groups he described as terrorist, but he did not specify who those groups were, how the money was delivered to them, and the amount of that money; he also didn't identify the evidence that proves his statements.

Therefore, it can be said that everything Sheikh Hassan Isa was doing did not exceed practicing a religious ritual, which is receiving charity and donating it to those in need, as a religious rite encouraged by the Islamic religion and falls under the freedom to perform the rituals guaranteed by the Constitution and the law in accordance with the customs of the country.

The third section, Freedom of belief, of the first chapter of the National Action Charter, Basic principles of the society, stipulates that "The state ensures freedom of belief. Freedom of conscience shall be absolute. The state maintains inviolability of houses of worship and guarantees freedom to practice religious rites according to considered custom of the land." Article 22 of Bahrain's amended Constitution of 2002 also stipulates that "Freedom of conscience is absolute. The State guarantees the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings in accordance with the customs observed in the country."

Using the phrase “The state [...] guarantees freedom to practice religious rites according to considered custom of the land” in the Charter and the phrase “The State guarantees the inviolability [...] in accordance with the customs observed in the country” in the Constitution emphasizes that the constitutional legislator and thereafter the National Action Charter refrained from regulating these issues and left them to be determined by the customs observed in Bahrain. Those customs, including collecting charity, donations, Khums and similar funds and spending them on the poor and the needy and on other various good deeds, are fixed in the people’s conscience and they got used to practicing them.

Therefore, Decree Law No. 4 of 2001 on the Prohibition of and Combating Money Laundering and Financing Terrorism and the Decree Law No. 21 of 2013 with respect to the regulation of collecting money for general purposes should not be used if the collection or receipt of money is within the exercise of religious rites such as charity, Khums, Zakat, and others.

The proceedings of the trial sessions

FIRST SESSION

On January 12, 2016, at 10:15 AM, the Fourth High Criminal Court, presided over by judge Ali Al-Dhahrani with the memberships of judges Osama Al-Shadhili and Wael Ebrahim and Ahmad Al-Sulaiman as secretariat, held its first session to try Sheikh Hassan Isa and others. The defense of Sheikh Hassan consisted of the lawyers: Dr. Hassan Radhi, Mr. Abdullah Al-Shamlawi, and Mr. Youssef Rabeeh. In addition, Mr. Jassim Sarhan and Mr. Mohsen Al-Alawi were present with some of the defendants in the same case.

Ms. Cathy Clum, a delegate from the US Embassy, and another woman concerned with the human rights file at the US Embassy also attended the trial. The local press was allowed to attend. Ibrahim Sarhan was present as an observer of the trial.

Before the beginning of the session, Sheikh Hassan's defense arrived, and Sheikh Hassan was accompanied by four members of the security forces in civilian clothes. He was sitting on the defendants' seats surrounded by security men from each side. After Mr. Jassim asked the Sheikh's companions for permission to allow the defense members to shake hands with Sheikh Hassan, the defense members were allowed to shake hands with him and greet him without talking about matters related to the case.

At the beginning of the trial, the judge recited the names of the defendants with the charges brought against them. Sheikh Hassan denied the charge brought against him. All the other defendants denied the charges against them except the first defendant. He admitted one charge, namely, entering and leaving Bahrain illegally.

After that, the secretary of the court confirmed the names of the defense lawyers representing the defendants. Then, Mohammed Ibrahim Mullah Radhi al-Tawq, the first defendant, requested to speak, and the judge allowed him to do so. He said that he was tortured in the Criminal Investigation Directorate (CID) building and the confessions he had made were obtained under physical and psychological torture. He added that he was stripped of his clothes in the CID building and was tortured with electric shocks, and that despite being referred to trial, he was still being tortured. He further added that one of the CID security members escorting him – pointing at him in front of the judge – tells the prison officer at Jaw Central Prison to torture him, and the torturer forces him to enter into a room dedicated to torture. (He mentioned the name of the person who tortures him.)

Al-Tawq also said that the incident was not really as described in confessions, and in order to prove this, he asked the Court committee to bring the security footage of the Sitra Health Center and the street on the day of the blast and the moment it occurred.

At the end of the session, the defense requested the release of Sheikh Hassan Isa with any guarantee that the court deems appropriate, and asked to be authorized to receive a copy of the case file.

The Court Committee decided to postpone the case to February 28, 2016 in order to examine and reply, and authorized the defense to obtain a copy of the case file, but refused to release Sheikh Hassan Isa.

SECOND SESSION

On February 28, 2016, at 10:30 AM, the Fourth High Criminal Court held its second session for the trial of Sheikh Hassan Isa and 23 others. The trial was attended by the defense, lawyer Abdullah Al-Shamlawi, lawyer Sayed Mohsen Al-Alawi and lawyer Jassim Sarhan. Sheikh Hassan Isa was not present at the trial for reasons unknown to the court, according to what the court committee said during the session, adding that it will look into the matter after the end of the sessions to inform the defense about it. A representative from the US Embassy attended the session to follow up the proceedings, and journalist Ali Al-Tarif from the Bahraini Al-Wasat newspaper.

Lawyer Abdullah al-Shamlawi spoke to the court committee about the reasons and justifications for requesting to disqualify the case since Sheikh

Hassan Isa, according to the evidence, has nothing to do with the explosion case being considered before the court. After the justification, the judge asked the secretary to state that in the record of the session, and to attach the request for a decision, and then asked to match the case file and to authorize taking a copy of the file and papers and pens to Sheikh Hassan. The defense presented copies of the complaints submitted to the Ombudsman regarding subjecting Sheikh Hassan Isa to torture and ill-treatment. It should be noted that all these requests were not resolved until the sentencing hearing.

As for the rest of the defendants, the four defendants who attended the session were: Ibrahim al-Mumin, Salah Sa'id, Qasim Ali Hassan Badah and Hassan Abdul Nabi. Ibrahim al-Mumin denied the charges against him and said that the prosecution forced him to sign the interrogation records under threat. Salah Sa'id said that he was detained at the CID building three days before the incident, and he was tortured and the traces of torture were still visible on his body. He showed the traces to the judge who stated this in the record of the session and asked to present him to a forensic doctor. Then, Qasim Ali Hassan Badah also denied the charges against him, emphasizing to the judge that he is imprisoned and has been serving a sentence at Jaw Central Prison for two years and four months since the date of the hearing, which means that he was detained at the time of the incident subject matter of the lawsuit.

The session was suspended at 10:55 AM and adjourned to March 28, 2016 to question the witnesses.

THIRD SESSION

On March 28, 2016, the Fourth Criminal Court presided over by judge Ibrahim Al-Zayed instead of judge Ali Al-Dhahrani, who was absent from the session for health reasons, held its third session. After the Court committee finished the cases before it, it started considering the case of Sheikh Hassan Isa. The defense, lawyer Dr. Hassan Radhi, lawyer Abdullah Al-Shamlawi, lawyer Sayed Mohsen Al-Alawi, lawyer Yussef Rabeeh, and lawyer Zahra Abbas on behalf of lawyer Jassim Sarhan, were present.

After the judge recited the names of the nine prosecution witnesses, it appeared that three of them were absent, so the defense requested summoning them in order to interrogate all the witnesses together and not separately, because dividing the prosecution witnesses may violate the principle of confidentiality of the interrogation. The defense also requested to resolve the subject of disengagement before commencing, and explained to the court the importance of this essential request. The court commented that this request is considered. The defense also requested to visit Sheikh Hassan in his prison, especially since they were not allowed to meet him for a sufficient time in the previous period. The court allowed this within two weeks from the date of the session.

Finally, the court decided to postpone the hearing to April 24, 2016, in order to interrogate all the prosecution witnesses. There were no human rights presence at the hearing to observe the trial, while journalist Ali Tarif of the Bahraini Al-Wasat newspaper was present.

FOURTH SESSION

On April 24, 2016, the Court presided over by Judge Sheikh Rashid bin Ahmed Al Khalifa instead of Judge Ali Al-Dhahrani, who was absent, held its fourth session. The defense constituted of lawyer Sayed Mohsen Al-Alawi, lawyer Ali Ahmed, lawyer Zahra Abbas, and lawyer Zainab Dhahi.

Sheikh Hassan Isa and four other defendants appeared before the court. One of the defendants, who appeared for the first time, denied his charges and said that since November 2012 he has been serving a prison sentence, so how did he commit the crime that occurred in 2015?

Moreover, two of the twelve witnesses attended, so the defense objected to hearing the prosecution witnesses to ensure that the testimonies were not divided. However, the court stated this in the session record and listened to the witnesses, who are security guards in two different schools located near the explosion incident subject matter of the lawsuit. They said that they heard a sound of an explosion but did not see it because each of them was in the room assigned to him at the school that he guards.

Finally, the High Court decided to postpone the trial to May 16, 2016 to hear the other prosecution witnesses.

SUMMARY OF THE OTHER SESSIONS

The sessions kept being held and the hearing of the case postponed several times for formal reasons. One of the reasons was because the prosecution witnesses were not present together, although the defense emphasized that

it is important not to divide the testimonies of the prosecution witnesses in order to preserve the principle of confidentiality of the interrogation. The testimonies were divided because of the absence of the witnesses, even though all the prosecution witnesses belong to the security services of the Ministry of the Interior.

Those sessions include:

- **On May 16, 2016, after hearing some of the prosecution witnesses, the court decided to postpone the trial to May 29, 2016 to hear the other prosecution witnesses.**
- **On May 29, 2016, the court heard the testimonies of a number of the remaining prosecution witnesses and decided to postpone the case to June 26, 2016 to hear the other prosecution witnesses.**
- **On November 6, 2016, the court held a session to hear the other prosecution witnesses, and the trial was postponed to November 8, 2016 – i.e. two days later – to hear one witness.**
- **On November 8, 2016, the court heard a prosecution witness. The prosecution claimed that he made confessions against Sheikh Hassan Isa which prove that Sheikh Hassan was financing terrorist acts. However, the witness, who is a defendant in other cases of political background, denied those confessions before the court, and said that he was forced to confess against Sheikh Hassan Isa, where he was forced to sign papers without knowing their content. The court decided to postpone the trial to December 20, 2016 to hear the defense witnesses.**
- **On December 20, 2016, the court heard the defense witnesses, and one of them said before the court, "We have been abused**

and accused of disloyalty. Statements about that were written on my house personally because we rejected the violence and vandalism." He added that "Sheikh Hassan Isa is one of those who were abused and accused of disloyalty, because he has adopted calls to stay away from violence and so forth..." The court decided to postpone the trial to January 18, 2017 to attach photographs of the sentences of some of the defendants convicted in other cases.

- **On January 18, 2017, after completing some formalities, the court postponed the hearing to February 28, 2017 to hear the closing arguments.**
- **On February 28, the court decided to set the date for adjudication on March 29, 2017, after it received the final arguments.**

SENTENCING HEARING

Despite all the above, the court sentenced, on Wednesday, March 29, 2017, Sheikh Hassan Isa to 10 years in prison. The same court issued death penalty sentences against two defendants and whole-life sentences against 5 others. Meanwhile, it sentenced the other defendants to periods ranging from 6 months to 10 years in prison. The court also revoked the citizenship of 8 defendants out of 24 suspects in the case (12 of whom are imprisoned).

Sheikh Hassan Isa's defense filed an appeal before the Supreme Court of Appeal and the hearings continue until the issuance of this report.

The most important chapters of what was stated in the defense argument, in which it demanded the acquittal of Sheikh Hassan Isa, are the following:

- **According to a lot of data – some of which were presented in this report – the defense demanded the annulment of the arrest and detention procedures and the annulment of the subsequent proceedings, because they were based on inaccurate investigations which violate the right to freedom. For example, some investigations were based on account statements of the accused (Sheikh Hassan), which were obtained by the investigating officer after Sheikh Hassan’s arrest and not before it, and these investigations were as a result of the detention and the arrest was not based on them. This means that those investigations are invalid because the arrest of Sheikh Hassan is primarily labeled as invalid because it did not come in accordance with valid investigations.**



Violating the guarantees of fair trial standards

With reference to some principles that regulate the work of the judiciary, such as the legal description of the crime, the legal adaptation of the crime, and the constitutional principle "there shall be no crime and no punishment except under a law" – which prohibits a judge from creating crimes and punishments from his own and limits his job to the application of the legal text specified by the legislator for the incident before him – we find that the court did not take this into account in the trial of Sheikh Hassan Isa. When it comes to adapting the law, the judge must adapt the law specified by the legislator to the case before him and determine the appropriate text for the sentence before him. However, the judiciary in Bahrain adapts the laws relating to acts of terrorism for crimes which do not include acts and facts that can be described as terrorist crimes. The legal description of the crime is absent and the legal adaptation of the crime is not compatible with the legal text, especially since these laws, particularly the law on protecting society from terrorist acts, are too broad in their definition of terrorist acts and

deeds. In many cases, many activists, media workers, human rights activists and demonstrators have been tried under the Terrorism Law through a legal adaptation that is not compatible with the facts.

The presentation of Sheikh Hassan Isa's trial sessions and their proceedings revealed the absence of a set of principles and guarantees that ensure a fair trial, including the guarantees and rights of the pre-trial period and during the course of the trial.

The security authorities and the court violated a number of rights and guarantees, which are adopted by national and international laws and constitute the guarantees of a fair trial. When these guarantees are absent or the court violates these rights, the trial is then described as unfair.

Article 61 of the Code of Criminal Procedure stipulates: "No one shall be arrested nor imprisoned except by an order of the legally competent authority. He shall be treated in such a manner as to maintain his human dignity and shall not be subjected to any bodily or psychological harm. Every person who is arrested shall be informed of the reasons for his arrest. He shall have the right to contact any of his relatives to inform them of what has happened and to seek the aid of a lawyer."

After examining the proceedings of Sheikh Hassan Isa's trial and the facts presented in this report, and reading the national laws in Bahrain and the international treaties and conventions to which Bahrain has acceded, it is clear that the court violated a number of rights which ensure fair trials. Some of those rights were previously mentioned in the report, while others can be notes as follows:

THE RIGHT TO FREEDOM

The security authorities and the court have violated the right to freedom. This was proven by showing the illegality of Sheikh Hassan Isa's arrest and the invalidity of the arrest and detention procedures, since the arrest decision was issued without the permission of a judicial authority. This violates Article 61 of the Code of Criminal Procedure, which emphasizes that any person must not be arrested or imprisoned except by an order of the competent authorities, and Article 9 (1) of the International Covenant on Civil and Political Rights, which stipulates that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

It also violates Article 14 of the Arab Charter on Human Rights, which guarantees the right to freedom and prohibits arbitrary arrest and detention, as well as other international and national legislations and laws.

THE RIGHT TO KNOW THE CHARGES AND THE REASONS FOR THE ARREST

When Sheikh Hassan Isa was arrested, the security authorities did not charge him with any charges, and he did not know the reasons for the arrest except later. This means that the security authorities violated Article 9 (2) of the International Covenant on Civil and Political Rights, which stipulates that "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

They also violated Article 14 (3) of the Arab Charter on Human Rights, which stipulates that “Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members.”

THE RIGHT TO HAVE CONTACT WITH THE OUTSIDE WORLD

Sheikh Hassan was denied contact with the outside world and his family and lawyer did not know his place of detention except after 20 days of the enforced disappearance he was subjected to by the security services.

THE RIGHT TO A LAWYER

Sheikh Hassan Isa was prevented from contacting his lawyer or any of his relatives after the arrest. He was also denied access to his lawyer during the interrogation. His lawyer submitted more than one letter requesting from the Public Prosecution to allow him to attend the interrogation sessions, however, the Public Prosecution denied that he was present or appeared before it.

He was summoned to the Public Prosecution without his lawyer's knowledge, and even when the lawyer was present at the Public Prosecution, Sheikh Hassan was denied the right to discuss the details of the case with the lawyer. This means a violation of his right to a lawyer and to benefit from the legal advice ensured by the Bahraini and international laws. These laws include Article 20 (e) of the Bahraini Constitution, which ensures that “every person accused of an offense must have a lawyer to defend him,” and Article

14 of the International Covenant on Civil and Political Rights, as well as Article 16 of the Arab Charter on Human Rights.

THE RIGHT TO PRESERVE HUMAN DIGNITY AND NOT BEING SUBJECTED TO TORTURE

Despite the fact that the defendants, including Sheikh Hassan Isa, confirmed to the court that they had been subjected to torture and cruel and degrading treatment, the court did not use its authority to open an investigation concerning these allegations of torture, and only presented one of the accused to the forensic doctor without considering other cases of torture. Also, the court did not abide by Article 19 (d) of the Bahraini Constitution, which stipulates that the statements or confessions extracted under torture shall be void.

The Court has ignored the texts of many laws and legislations that stipulate that torture is illegal, it is important to treat persons deprived of their liberty with humane treatment, which respects the inherent dignity of the human person, and it is illegal to take into consideration confessions suspected to be extracted under torture or coercion to confess.

Those laws include the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, articles 7 and 10 of the International Covenant on Civil and Political Rights, Article 20 of the Arab Charter on Human Rights, and many other laws.

THE RIGHT TO ATTEND COURT HEARINGS

The trial sessions showed that not all defendants were allowed to attend some of the trial sessions, including Sheikh Hassan Isa, who was prevented from attending the second trial session, for unknown reasons.

THE RIGHT TO ACCESS INFORMATION ABOUT THE ACCUSED

Despite the defense's repeated requests to give a copy of the case file to Sheikh Hassan and allow him to prepare his defense by providing papers and pens, the court did not give Sheikh Hassan his right to access the information related to him.

In addition, the security authorities and the court violated other principles in the trial of Sheikh Hassan Isa, including:

- **Not to force the defendant to confess a crime.**
- **Assumption of innocence of the accused.**
- **Trial before a competent and independent court.**
- **The right to equality before the law and the courts.**
- **The right to a fair hearing of cases.**
- **Equal opportunities for the defense.**
- **Trial without undue delay.**
- **The right to call witnesses and discuss matters with them.**
- **Challenging the legality of detention.**

Conclusions and recommendations

In addition to some of the findings presented in the body of the report, the proceedings of the trial show that the Public Prosecution and the Court committee violated a number of rights and freedoms guaranteed by the international law and the Bahraini law, which resulted in a lack of the standards of fair trials in the trial of Sheikh Hassan Isa and the rest of the defendants.

Also, there are no grounds for the detention, which makes the arrest of Sheikh Hassan Isa an arbitrary arrest and a violation of the right to liberty.

According to the presented facts, namely the lack of material evidence, it was clear that the Fourth High Criminal Court, which issued its preliminary judgment, lacks the principles of independence and impartiality.

THE BAHRAIN FORUM FOR HUMAN RIGHTS THEREFORE RECOMMENDS THE FOLLOWING RECOMMENDATIONS:

- **Abolish the sentence of Sheikh Hassan Isa and release him along with the rest of the detainees.**
- **Establish a mechanism to ensure providing guarantees for the independence of the judiciary in Bahrain and the judiciary's commitment to the guarantees and standards of fair trials.**
- **Provide independent judicial control over prisons and detention centers in such a way as to ensure that detainees are protected from torture and ill-treatment, especially during interrogations.**
- **For the Special Rapporteur on the Independence of Judges and Lawyers, to present a request to visit Bahrain and examine the noncompliance of the courts in Bahrain with the principles of fair courts.**



Appendix

Some of the legal articles which were mentioned in the report and violated by the security authorities and the court committee.

BAHRAIN'S AMENDED CONSTITUTION OF 2002

- Article 19

- a.** Personal freedom is guaranteed under the law.
- b.** A person cannot be arrested, detained, imprisoned or searched, or his place of residence specified or his freedom of residence or movement restricted, except under the provisions of the law and under judicial supervision.
- c.** A person cannot be detained or imprisoned in locations other than those designated in the prison regulations covered by health and social care and subject to control

by the judicial authority.

d. No person shall be subjected to physical or mental torture, or inducement, or undignified treatment, and the penalty for so doing shall be specified by law. Any statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void.

- Article 20

a. There shall be no crime and no punishment except under a law, and punishment only for acts committed subsequent to the effective date of the law providing for the same.

b. Punishment is personal.

c. An accused person is innocent until proved guilty in a legal trial in which he is assured of the necessary guarantees to exercise the right of defense at all stages of the investigation and trial in accordance with the law.

d. It is forbidden to harm an accused person physically or mentally.

e. Every person accused of an offense must have lawyer to defend him with his consent.

f. The right to litigate is guaranteed under the law.

- **Article 22**

Freedom of conscience is absolute. The State guarantees the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings in accordance with the customs observed in the country.

BAHRAIN'S PENAL CODE

- **Article 208**

A prison sentence shall be the penalty for every civil servant or officer entrusted with a public service who uses torture, force or threat , either personally or through a third party, against an accused person, witness or expert to force him to admit having committed a crime or give statements or information in respect thereof. The penalty shall be life imprisonment should the use of torture or force lead to death.

- **Article 232**

A prison sentence shall be the penalty for any person who uses torture, force or threatens to use them, either personally or through a third party, against an accused person, witness or expert to make him admit the commission of a crime or to give statements or information in respect thereof. The punishment shall be imprisonment for at least six months if the torture or use of force results in harming the safety of the body.

CODE OF CRIMINAL PROCEDURE

- Article 61

No one shall be arrested nor imprisoned except by an order of the legally competent authority. He shall be treated in such a manner as to maintain his human dignity and shall not be subjected to any bodily or psychological harm.

Every person who is arrested shall be informed of the reasons for his arrest. He shall have the right to contact any of his relatives to inform him of what has happened and to seek the aid of a lawyer.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

- Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. [...]

- Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. 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 judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

- Article 10 (1)

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

- **Article 14**

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 judgement 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.**



رقم القضية: 07201512537 تاريخ الحكم: 29/03/2017 رقم الصفحة: ١ من ٥٩

باسم صاحب الجلالة
الملك حمد بن عيسى بن سلمان آل خليفة
ملك مملكة البحرين
بالجلسة المنعقدة علناً بالمحكمة الكبرى الجنائية الرابعة
بتاريخ ٢٩ / ٣ / ٢٠١٧
برئاسة القاضي علي خليفة الظهراني
وعضوية القاضي أسامة محمد الشاذلي
وعضوية القاضي وائل إبراهيم سيد حسن
وبحضور وكيل النيابة خالد احمد التميمي
وبحضور أمين السر أحمد علي السليمان
صدر الحكم الآتي
في الدعوى رقم ١٢٥٣٧/٢٠١٥/٠٧
المرفوعة من / النيابة العامة

ض

المتهمين:

- ١- محمد إبراهيم ملا رضي آل طوق
- ٢- محمد رضي عبدالله حسن
- ٣- صلاح سعيد صالح الحمار
- ٤- إبراهيم جعفر حسن أحمد
- ٥- علي عبدالكريم حسن مرزوق
- ٦- ليث خليل إبراهيم آل طوق
- ٧- حسن عبدالنبي عمران عبدالنبي خضير
- ٨- السيد مرتضى مجيد رمضان
- ٩- علي أحمد علي يحيى العنصرة
- ١٠- حسن علي حسن الشامي
- ١١- حسن عيسى حسن مرزوق
- ١٢- جعفر إبراهيم آل طوق
- ١٣- محمد جعفر جاسم خميس



ثالثاً: بمعاينة المتهمين الثالث صلاح سعيد صالح الحمار والرابع إبراهيم جعفر حسن أحمد والخامس علي عبد الكريم حسن مرزوق والسادس ليث خليل إبراهيم آل طوق بالسجن المؤبد لكلا منهم عما اسند اليهم من اتهام للارتباط وإسقاط الجنسية البحرينية عنهم .

بمعاقبة المتهم الثامن السيد مرتضى مجيد رمضان بالسجن لمدة عشر سنوات
عما أسند اليه من اتهام للارتباط واسقاط الجنسية البحرينية عنه .

خامساً : بمعاقبة المتهم التاسع علي أحمد علي يحيى العنصرة بالسجن المؤبد عما أسند اليه من اتهام للارتباط .

سادساً : بمعاقبة المتهم العاشر حسن علي حسن الشامي بالسجن لمدة خمس سنوات وبغريمه خمسمائة دينار عما اسند إليه بالبند تاسعاً من الاتهام للارتباط .

سابعاً: بمعاذلة المتهم العاشر حسن علي حسن الشامي بالسجن لمدة خمس سنوات عما اسند اليه من اتهام بالبندين عاشرًا وحادى عشر من الاتهام للارتباط .

ثامناً : بمعاينة المتهمين الحادي عشر حسن عيسى حسن مزروق والثاني عشر جعفر ابراهيم آل طوق والثالث عشر محمد جعفر جاسم خميس بالسجن لمدة عشر سنوات لكلا منهم وتغريم كلا منهم مبلغ وقدره مائة ألف دينار عما اسند اليهم من اتهام في البند ثامناً من الاتهام للارتباط .

تاسعاً : بمعاقبة المتهم الخامس عشر قاسم عبد الله علي أحمد بالسجن لمدة عشر سنوات عما اسند اليه من اتهام بالبند سابعاً من الاتهام . وإسقاط الجنسية البحرينية عنه.

عاشراً : بمعاينة المتهمين السادس عشر حسين حسن علي سلمان طلاق والسابع عشر علي عبد الحسين علي حسن والثامن عشر موسى أحمد حبيب محمد والتاسع



International Covenant on Civil and Political Rights

- **Article 8**

1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.

2. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.

- **Article 14**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.

2. No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby.

3. Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members.

4. Anyone who is deprived of his liberty by arrest or detention shall have the right to request a medical examination and must be informed of that right.

5. 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. His release may be subject to guarantees to appear for trial. Pre-trial detention shall in no case be the general rule.

6. Anyone who is deprived of his liberty by arrest or detention shall be entitled to petition a competent court in order that it may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.

7. Anyone who has been the victim of arbitrary or unlawful arrest or detention shall be entitled to compensation.

- **Article 20**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. Persons in pre-trial detention shall be separated from convicted persons and shall be treated in a manner consistent with their status as unconvicted persons.

3. The aim of the penitentiary system shall be to reform prisoners and effect their social rehabilitation.



Arab Charter on Human Rights

- **Article 1:** For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Prisoner of Conscience

Former MP Sheikh Hassan Issa

More than **700** days in solitary confinement

1989

He was arrested for the **first time** for reasons related to the **right to freedom of expression and opinion**

1994

He was arrested for the **second time** during the **popular uprising** and was later released

1996

He was **sent back to prison** over **politically motivated and vexatious charges**

1997

He **studied religious studies** outside Bahrain for **more than 10 years**



2010

He was elected to the **Bahraini Parliament** within Al-Wefaq bloc by **92%**



2011

He resigned from the **Parliament** due to the deteriorating situation in Bahrain



2013

He represented the **Bahraini opposition** in many events and forums

2014

He continued to prepare for the **Master's degree** in Islamic studies in parallel with pursuing his political activity



2015

He was arrested at **Bahrain International Airport** upon arriving from a treatment trip abroad



2017

He is still on trial for his political views and humane attitude toward the people



The most **prominent violations** against him

Preventing him from contacting his family and his lawyer except after the interrogation of the public prosecution ended



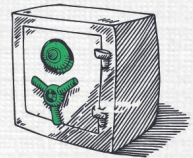
Enforced disappearance for a period of 16 days



Subjecting him to moral coercion and threat when he did not confess about the charges against him in the criminal investigations building.



Searching his mobile phone without his consent, and without permission from the public prosecution



Disclosing the bank accounts without permission from the public prosecution.

More than 590 days
**detained in
solitary confinement
(ISOLATION)**



**Arresting him
without permission**
from the
public prosecution

Prevented from
**praying
and bathing**
(for 11 days)

Facing an unfair trial
based on confessions
extracted
under torture



References

- **The Universal Declaration of Human Rights. December 10, 1948.**
- **Bahrain's amended Constitution of 2002.**
- **The International Covenant on Civil and Political Rights, effective date: March 23, 1976.**
- **The Penal Code promulgated by Decree Law No. 15 of 1976.**
- **The Code of Criminal Procedure promulgated by Decree Law No. 46 of 2002.**
- **Decree Law No. 4 of 2001 with respect to Prohibition and Combating Money Laundering and Financing Terrorism.**
- **Decree Law No. 21 of 2013 on the regulation of fundraising for general purposes.**
- **The Arab Charter on Human Rights. It was adopted by the 16th Arab Summit in Tunisia, on May 23, 2004.**
- **The first-degree sentence issued by the Fourth High Criminal Court.**
- **The argument of Sheikh Hassan Isa's defense.**

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