



منتدى البحرين لحقوق الإنسان
Bahrain Forum For Human Rights



THE MILITARY JUDICIARY

IN COMPARISON WITH THE
STANDARDS AND GUARANTEES
OF FAIR TRIALS

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The trials of civilians in the military judiciary
lacks all standards and guarantees of fair trials.

HUMAN RIGHTS INTRODUCTION

The right to a fair trial is one of the fundamental human rights that should be universally applied all over the world. It was established by the Universal Declaration of Human Rights, which has been adopted by the governments of the world since more than 57 years ago and placed at the top of the universal and international human rights system. Since 1948, this right enshrined in the Universal Declaration of Human Rights has become a legal obligation incumbent on all States as part of the international customary law. The right to a fair trial, which has been identified in details

since 1948, has been reaffirmed in a set of legally binding treaties such as the International Covenant on Civil and Political Rights, which was adopted by the United Nations General Assembly in 1966. This right and other standards have also been recognized and provided for in many treaties that do not fall under the international and regional treaties adopted by the United Nations and regional and international governmental bodies. These standards have been designed to be applied in all judicial systems in the world and to take into account the enormous diversity of legal and judicial processes, since they state the minimum guarantees that all systems should provide. These international human rights standards represent, in terms of fair trials, a consensus reached by the nations of the world on the criteria for assessing the manner in which governments treat persons accused of crimes of any kind and with any motives.

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Since the Kingdom of Bahrain is a member of the United Nations and has ratified the International Bill of Human Rights, in accordance with Article 37 of the Constitution of the Kingdom of Bahrain, the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and other international treaties have

become part of the national legislation and as an applicable law, except for the parts that Bahrain declared it has partial reservations about, which does not disrupt their essence. Therefore, Bahrain is obliged to harmonize its domestic legislation with the international law. Denying this obligation makes its ratification of the International Bill a formality that lacks the guarantees of the core of the rights ensured by the charters and treaties.

FAIR TRIAL

STANDARDS AND GUARANTEES

Article 14 of the International Covenant on Civil and Political Rights laid down the basic guarantees of fair trials and made them the minimum standards. It reads as follows:

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 defence 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.

THE CONSTITUTIONAL TEXT OF THE MILITARY JUDICIARY AND ITS AMENDMENTS

Paragraph (b) of Article 105 of the 2002 Bahrain Constitution 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.

On March 30, 2017, the above Constitutional text was amended as follows:

The law regulates the military judiciary and shows its competencies with regards to Bahrain Defense Force (BDF), the National Guard and the Public Security Forces.

Based on the latter constitutional amendment, Law 12/2017 amending some provisions of the Military Judiciary Law promulgated by Decree Law 34/2002 was issued after approval from the Shura Council and the Council of Representatives. It reads as follows:

Article 1

The two new Articles **(17 bis) and (17 bis 1)** shall be added to the Military Judiciary Law promulgated by Decree Law No. (34) of 2002 as follows:

Article [17 bis]

As an exception to the provisions of any other law, military courts shall consider the following offenses when committed intentionally by a person

who is not subject to the provisions of this law being an active individual or partner inside the Kingdom of Bahrain or abroad:

- a Offenses that harm the foreign security of the State as provided for in Chapter I of Part One of the Special Section of the Penal Code, when they occur in operations conducted by the Bahrain Defense Force or in the case of armed terrorism from abroad.
- b Crimes that fall within the premises subject to the BDF or the National Guard, including ships, aircrafts, vehicles, buildings, camps, installations, mobilization areas, maneuvers, forces advancement locations, and operation zones.
- c Crimes against funds, properties, equipment, machineries, missions, communications, objects, weapons, ammunition, records, documents, or secrets of the BDF or the National Guard and all their belongings, wherever they may be.
- d Crimes committed against members of the BDF or the National Guard that occur due to or in the occasion of performing their professional duties.

- e Crimes against vital or important installations or official motorcades when they are secured or guarded under the responsibility of 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 courts or to any competent judicial authority.

Article [17 bis] 1

As an exception to the provisions of any other law, the Attorney-General may, after the approval of the military judiciary, refer to the latter any of the crimes contained in the Law on Protecting Society from Terrorist Acts or any of the crimes against external or internal State security contained in chapters I and II of Part I of the Special Section of the Penal Code, and the crimes related to them.

Article 2

- Article 46 of the Military Judiciary Law promulgated by Decree Law No. 34 of 2002 shall be replaced by the following text:
- Article 46: Military courts shall adjudicate in cases within the jurisdiction of the military judiciary in accordance with the provisions of this law.

Article 3

- All cases which have become within the jurisdiction of the military judiciary, under this Law, shall be referred to military courts, unless they have been submitted to the competent court before the provisions of this law have been applied.

LEGAL AND HUMAN RIGHTS OBSERVATIONS ON THE BAHRAINI MILITARY JUDICIARY LAW

With regard to the trial of civilians in military courts:

1. The Military Judiciary Law does not expressly establish the right of the accused to seek counsel from the moment of arrest onwards, during interrogation sessions, and in court hearings.
2. The Military Judiciary Law gives those accused of felonies only the right to have a lawyer with them in court hearings.

3. Article 2 of the Military Judiciary Law provides that a criminal action shall not be abated, contrary to article 18 of the Code of Criminal Procedure, which stipulates that “A criminal action involving felonies shall abate upon the lapse of 10 years, in case of misdemeanors shall abate upon the lapse of 3 years and in case of offences upon the lapse of one year [...].”
4. Article 3 of the Military Judiciary Law stipulates that any person accused of initiating a crime shall be subject to the penalty prescribed for the perpetrator of the original crime, in violation of Article 37 of the Penal Code, which reduces the penalty inflicted upon the person who is found guilty of initiating the crime without completing it.
5. Article 11 (b) of the Military Judiciary Law stipulates that, based on the suggestion of the Director of the Judiciary, a decision shall be made by the Commander-in-Chief to determine the conditions and procedures for the appointment and discipline of members of the military judiciary, the organization of their duties, and the judicial inspection of them. This is contrary to Article 69 of the Judicial Authority Law, which grants this authority to the Supreme Council, which is composed of the President

of the Court of Cassation, the Attorney General, and five members of the judiciary. Here lies the danger of the lack of independence of the Military Judiciary and its submission to the will of an individual, which violates the standards of an independent judiciary.

6. The Military Judiciary Law does not expressly determine the duration of remand and does not set time limits, which makes this issue extremely dangerous.

7. Article 18 of the Military Judiciary Law stipulates that the Military Prosecution shall carry out confinement, detention, arrest and imprisonment in military prisons. As civilians became targeted by this law after the amendment, it is possible that this article shall be applied and they may not be sent to civil prisons such as the Reform and Rehabilitation institution (Jaw Prison).

8. Article 53 of the Military Judiciary Law stipulates that the trial shall be public, but gives the court the right to make the trial secret whenever it deems appropriate and with broad authority under the pretexts of public order, moralities and preservation of secrets.

9. Article 58 of the Military Judiciary Law stipulates that only a person

accused of a felony may be assigned a lawyer if he didn't have one. This article grants the right to a counsel only in court proceedings because the president of the court is the one who decides to assign a lawyer, thus, the law does not expressly grant the right to a counsel during interrogation sessions.

10.


Article 72 of the Military Judiciary Law stipulates that the rulings for crimes set forth in section 2 thereof cannot be appealed against, and these articles target both civilians and military personnel after the last amendment. Incidentally, article 105 of this Law was used in one of the charges against the Secretary-General of Al-Wefaq Society.


11.


The recent amendment to the Military Judiciary Law (article 17 bis 1) has granted the military judiciary the power to apply the Law on Protecting Society from Terrorist Acts, although this is within the jurisdiction of civil criminal courts, thus a contradiction of jurisdictions is created. In addition, under the Law on Protecting Society from Terrorist Acts, political activity and peaceful opposition are being tried.


12. Article (17 bis 1) also gave the military judiciary jurisdiction over the prosecution of civilians (opposition and human rights activists) under Chapters 1 and 2 of the special section of the Penal Code, which could lead to tightening and intensifying sanctions against peaceful dissidents.
13. The death penalty in the Penal Code, the Military Penal Code, and the Law on Protecting Society from Terrorist Acts, with a total of 61 articles and clauses, has become in the hands of the military judiciary, thus increasing the danger of the sentences against the opposition and political and human rights activists.


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