



**Bahrain's Compliance with the International Covenant on Civil and Political Rights  
Alternative Report about the Death Penalty**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

**123rd Session of the Human Rights Committee  
2–27 July 2018**

**Submitted June 2018**

**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

## EXECUTIVE SUMMARY

1. This report outlines violations of the International Covenant on Civil and Political Rights in the context of the death penalty and individuals charged with capital crimes. As explained in further detail below, since 2011 the Government of Bahrain has stepped up the use of the death penalty in politically motivated cases. Legal safeguards against torture are ineffective, and individuals accused of capital crimes are subjected to enforced disappearance, incommunicado detention, torture, and other forms of ill-treatment.

### **Bahrain fails to uphold its obligations under the International Covenant on Civil and Political Rights**

2. The Government of Bahrain increasingly uses the threat of terrorism as a pretext for violating the civil rights of individuals who criticize the government. Bahrain has expanded its use of the death penalty to include politically motivated cases. The vague definition of terrorism enables prosecutors to punish individuals for their political beliefs, sometimes under threat of the death penalty. Civilians are sometimes tried in military courts.
3. The laws of Bahrain do not limit the death penalty to the most serious crimes. In 2017, Bahrain resumed executions, and courts are increasingly sentencing people to death. Such cases often rely on coerced confessions. Several additional individuals have exhausted their appeals and are at imminent risk of execution.
4. Bahraini authorities use enforced disappearance, incommunicado detention, and torture in capital cases, particularly during the investigation phase of the case. Legal safeguards against torture and the consideration of evidence obtained through the use of torture are not implemented.

#### **I. List of Issues Paragraph 12: The Government of Bahrain uses counter-terrorism efforts as a pretext for targeting individuals who criticize the government.**

5. The vague and broad definition of terrorism in the Law of Protecting Society from Terrorist Acts (No. 58/2006) opens the door to prosecution of individuals who exercise their rights to freedom of expression and peaceful protest, and in some cases those individuals are charged with capital crimes and sentenced to death. Moreover, in some cases civilians are tried and sentenced to death in military courts.
6. The Committee requested that the Government of Bahrain explain its broad definition of terrorism and the steps taken to ensure that the definition does not interfere with the rights to freedom of expression, association, and assembly. The Committee further requested information about the application of recent amendments allowing extended pretrial detention based on secret evidence, authorizing military trials for civilians, and allowing the National Security Agency to arrest and interrogate in terrorism-related cases.
7. The Bahraini Government's Initial Periodic Report concedes that individuals suspected of terrorism offenses may be detained for questioning for successive periods of 28 days, up to 6 months (paragraph 131), as compared with 7 days and 30 days for all other offenses (paragraph 130). The report further concedes that during "investigation procedures" an accused person is not entitled to a court-appointed attorney—such attorneys are provided

only “in court” (paragraph 158). Moreover, even if an accused person has an attorney, in “exceptional cases” an investigation may be conducted in the attorney’s absence (paragraph 156). If an accused person does not have an attorney or if that attorney is not present for an interrogation, prosecutors are nonetheless free to question the accused person (paragraph 157). And if investigators deem that there is an “urgent need arising from the fear of losing evidence,” an investigator may question an accused person and the accused person has no right to access the advice or assistance of an attorney under such circumstances (paragraph 174).

**Bahrain has used the pretext of terrorism to violate the civil rights of government critics.**

8. The European Union recognized in a 2015 resolution that Bahrain has expanded its use of the death penalty to politically motivated cases.<sup>1</sup> According to the Lualua Center for Human Rights and the Gulf Civil Society Associations Forum, the law has become a legal instrument for authorities to repress or threaten opponents under the pretext of fighting terrorism.<sup>2</sup> Article 1 of the law includes a vague, ambiguous definition of terrorism, prohibiting among other things, “damaging national unity” and “obstructing the government authorities . . . from performing their activities.”<sup>3</sup> Article 3 enhances the penalties for ordinary crimes that would otherwise be punishable by life imprisonment to a death sentence if the crime is “deliberately committed for the implementation of a terrorist purpose.”<sup>4</sup>
9. In the case of Mohammed Ramadan, discussed in greater detail below, the government appears to have trumped up terrorism charges in retaliation for Ramadan’s participation in non-violent anti-government protests and related political activities.<sup>5</sup> He allegedly received a telephone call from an unknown person who admitted that the Bahraini Government knew he was innocent but that his participation in protest marches and other opposition activities made him a traitor.<sup>6</sup> Five UN Special Procedures Mandate-Holders

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<sup>1</sup> FIDH, *Rights groups condemn death penalty sentence of Mohammed Ramadan and Husain Ali Moosa*, 16 Dec. 2015, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/rights-groups-condemn-death-penalty-sentence-of-mohammed-ramadan-and> (last visited 16 Sept. 2016).

<sup>2</sup> Electronic communication from Lualua Centre for Human Rights to The Advocates for Human Rights, 7 Sept. 2016, on file with The Advocates for Human Rights.

<sup>3</sup> Law No. 58 of 2006 With Respect to Protection of the Community Against Terrorist Acts, available at [http://www.vertic.org/media/National%20Legislation/Bahrain/BH\\_Law\\_No\\_58\\_Protection\\_Community\\_against\\_Terrorist\\_Acts.pdf](http://www.vertic.org/media/National%20Legislation/Bahrain/BH_Law_No_58_Protection_Community_against_Terrorist_Acts.pdf) (last visited 19 Sept. 2016).

<sup>4</sup> Law No. 58 of 2006 With Respect to Protection of the Community Against Terrorist Acts, available at [http://www.vertic.org/media/National%20Legislation/Bahrain/BH\\_Law\\_No\\_58\\_Protection\\_Community\\_against\\_Terrorist\\_Acts.pdf](http://www.vertic.org/media/National%20Legislation/Bahrain/BH_Law_No_58_Protection_Community_against_Terrorist_Acts.pdf) (last visited 19 Sept. 2016).

<sup>5</sup> Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Communication to the Government of Bahrain, 14 Aug. 2014, available at [https://spdb.ohchr.org/hrdb/28th/Public\\_-\\_UA\\_Bahrain\\_14.08.14\\_%2811.2014%29\\_Pro.pdf](https://spdb.ohchr.org/hrdb/28th/Public_-_UA_Bahrain_14.08.14_%2811.2014%29_Pro.pdf) (last visited 19 Sept. 2016); Javier Nart, Member of the European Parliament, et al., Open Letter to the European Parliament’s High Representative, 2 June 2016, available at <http://www.adhrb.org/wp-content/uploads/2016/06/Bahrain-Open-Letter-May-2016.pdf> (last visited 19 Sept. 2016).

<sup>6</sup> Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the

expressed concern to the Bahraini Government “that the charge of ‘terrorism’ is used in order to punish Mr. Ramadan for the political beliefs and convictions he holds and to prevent him from pursuing political activities.”<sup>7</sup>

10. The Bahrain Institute for Rights and Democracy (BIRD) reported that the three most recent executions in 2017 were politically motivated and illustrated the government’s exploitation of its imprecise definition of terrorism—an offence often used to sentence convicts to death.<sup>8</sup> Those three individuals were convicted in 2015 of offences that included “organizing, running and financing a terrorist group (Al-Ashtar Brigade) with the aim of carrying out terrorist attacks” and the “killing of three police officers and attempted killing of others.”<sup>9</sup>

#### **Civilians are tried in military courts.**

11. The Government of Bahrain reversed a decision of the Bahrain Independence Commission of Inquiry (BICI) which had ruled that trying civilians in military courts violated the 2002 Constitution of Bahrain. In April 2017, King Hamad bin Isa Al Khalifa signed legislation authorizing the trial of civilians in military courts<sup>10</sup> in the form of an amendment to article 105(b) of the Bahraini Constitution of 2002.<sup>11</sup> The last time military courts had used such jurisdiction was after the 2011 uprising, when they convicted approximately 300 civilians of political crimes.<sup>12</sup> The Bahrain Institute for Rights and Democracy called the change “de facto martial law.”<sup>13</sup>

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Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Communication to the Government of Bahrain, 14 Aug. 2014, available at [https://spdb.ohchr.org/hrdb/28th/Public\\_UA\\_Bahrain\\_14.08.14\\_%2811.2014%29\\_Pro.pdf](https://spdb.ohchr.org/hrdb/28th/Public_UA_Bahrain_14.08.14_%2811.2014%29_Pro.pdf) (last visited 19 Sept. 2016).

<sup>7</sup> Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Communication to the Government of Bahrain, 14 Aug. 2014, available at [https://spdb.ohchr.org/hrdb/28th/Public\\_UA\\_Bahrain\\_14.08.14\\_%2811.2014%29\\_Pro.pdf](https://spdb.ohchr.org/hrdb/28th/Public_UA_Bahrain_14.08.14_%2811.2014%29_Pro.pdf) (last visited 19 Sept. 2016).

<sup>8</sup> Bahrain Institute for Rights and Democracy, Death Penalty, Mar. 2017, <http://birdbh.org/category/advocacy/death-penalty-advocacy/> (last visited 5 June 2018).

<sup>9</sup> Amnesty International, Urgent Action: Three Men Now Face Imminent Execution, 11 Jan. 2017, <https://www.amnesty.org/download/Documents/MDE1154542017ENGLISH.pdf> (last visited 5 June 2018).

<sup>10</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2017: Bahrain, 2018, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dldid=277237> (last visited 5 June 2018).

<sup>11</sup> George Sadek, Bahrain: Constitutional Amendment Allows Military Trials of Civilians, Global Legal Monitor, 22 Mar. 2017, [www.loc.gov/law/foreign-news/article/bahrain-constitutional-amendment-allows-military-trials-of-civilians/](http://www.loc.gov/law/foreign-news/article/bahrain-constitutional-amendment-allows-military-trials-of-civilians/) (last visited 5 June 2018).

<sup>12</sup> Human Rights Watch, Bahrain Country Summary, Jan. 2018, [https://www.hrw.org/sites/default/files/bahrain\\_3.pdf](https://www.hrw.org/sites/default/files/bahrain_3.pdf) (last visited 5 June 2018).

<sup>13</sup> The Associated Press, Bahrain’s Parliament Approves Military Trials for Civilians, The New York Times, 5 Mar. 2017, <https://www.nytimes.com/2017/03/05/world/bahrain-parliament-approves-military-trials-for-civilians.html> (last visited 5 June 2018).

12. In December 2017, a military court sentenced 6 defendants to death (two of whom were tried in absentia), all charged with a number of “terrorist crimes.”<sup>14</sup> Amnesty International is concerned that at least two of the men were forced to confess while detained, and reports that their lawyers were restricted access to hearing files.<sup>15</sup>

**II. List of Issues Paragraph 13: The Government of Bahrain has resumed executions and does not limit the death penalty to the most serious crimes; capital trials do not adhere to fair trial standards.**

13. The laws of Bahrain do not limit the death penalty to the most serious crimes. In 2017, the Government of Bahrain resumed executions and courts have increased the practice of handing down death sentences, particularly in cases with purported connections to terrorism.

14. The Committee requested that the Government of Bahrain identify any plans to establish a moratorium on the death penalty and to explain whether the law limits the death penalty to the most serious crimes, as required under article 6(2) of the Covenant. The Committee further requested that the Government of Bahrain respond to allegations that capital trials have not been conducted in accordance with international fair trial standards.

15. The Initial Periodic State Party Report suggests that the death penalty is applied only “for extremely serious offenses” (paragraph 82), but goes on to concede that the death penalty is available for “any offence punishable by life imprisonment under common law if that offence is perpetrated for the purposes of terrorism” as well as for various drug offenses (paragraph 83).

16. In response to paragraph 13 of the List of Issues, the Government of Bahrain simply reasserts that it does not use the death penalty very often, but does not offer any further response to the questions the Committee poses (paragraphs 65-75).

**Bahraini law does not limit the death penalty to the most serious crimes.**

17. Many crimes are eligible for the death penalty simply if they result in death, regardless of whether the death was an intentional killing. Further, many crimes that do not result in death are eligible for the death penalty, including vaguely defined terrorism-related offenses (under the Penal Code and the Law of Protecting Society from Terrorist Acts (No. 58/2006)), opening the door for pretextual targeting of government opponents.

18. Crimes that can result in the death penalty: Murder and aggravated murder (murder of a close relative or a public official, or murder using poisonous or explosive materials) are punishable by death. The following crimes, if they result in death, are also punishable by death: falsely reporting information to judicial officials; kidnapping; rape, sexual assault, or statutory rape; assault; arson; the use of force in theft; drug trafficking; deliberately

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<sup>14</sup> Amnesty International, Bahrain: Six men sentenced to death after unfair military trial as human rights violations continue, 12 Jan. 2018, <https://www.amnesty.org/download/Documents/MDE1177192018ENGLISH.PDF> (last visited 5 June 2018).

<sup>15</sup> Amnesty International, Bahrain: Six men sentenced to death after unfair military trial as human rights violations continue, 12 Jan. 2018, <https://www.amnesty.org/download/Documents/MDE1177192018ENGLISH.PDF> (last visited 5 June 2018).

obstructing funerals or memorial services; and, if aggravating circumstances exist, certain crimes against property, transportation, or agriculture.

19. Several crimes that do not result in death are also punishable by death, including:

- Terrorism-related offenses:
- Forming or leading an armed gang that:
  - i. uses force to occupy or destroy a public building or government building;  
or
  - ii. has attacked the local population; or
  - iii. uses arms to resist public authority; or
  - iv. aims to expropriate property or land.
- “Disrupt[ing] the provisions of the Constitution or laws, or prevent[ing] state enterprises or public authorities from exercising their duties,” including committing or planning a terrorist act.
- Sexual assault of a girl under the age of 16 without her consent (non-consent is presumed if the girl is less than 14 years of age).
- Arson of a public building or government building, if carried out against the state or civil servants.
- Treason, including:
  - i. Deliberately committing an act which affects the country’s independence, unity, or territorial integrity;
  - ii. Taking up arms against Bahrain;
  - iii. Assisting the enemy in weakening the Armed Forces;
  - iv. Inciting services in a hostile armed force;
  - v. Facilitating enemy entry into Bahrain or surrendering State property intended for defense using explosives to overthrow the state;
  - vi. Making attempts on the life or freedom of the Amir or Crown Prince;
  - vii. Cooperating with a foreign power or leading or forming an armed gang in an attempt to overthrow the Constitution, Amiri rule, or system of government.
- Espionage, including:
  - i. Surrendering or destroying defense secrets or intending to do so; or
  - ii. Withholding, destroying, embezzling, or falsifying documents related to national security in order to assist the enemy or adversely affect Bahrain’s armed forces, if the act contributes to realizing this purpose.
- Military offenses, including:
  - i. Deliberately damaging weapons or other items used to defend the country during wartime;
  - ii. Successfully instructing armed forces or police personnel, by a person with authority to give orders, to oppose government orders for an illegal purpose.

**Death sentences and executions are on the rise, particularly in cases with purported connections to terrorism, which often target government critics.**

20. The Initial Periodic State Party Report asserts that “the imposition of the death penalty in Bahrain is very rare” (paragraph 85).

21. Yet the number of people sentenced to death in Bahrain has increased significantly since 2011.<sup>16</sup> In 2014, Bahraini courts sentenced at least three people to death, and two of the three have exhausted their appeals.<sup>17</sup> In 2015, Bahraini courts sentenced seven people to death.<sup>18</sup> Among those sentences was the 31 December sentencing to death of a person whose name the government withheld.<sup>19</sup> Appellate courts have rejected the appeals of at least four of the 2015 defendants.
22. In 2017, Bahrain executed three men sentenced to death in 2014 on charges of terrorism.<sup>20</sup> Abbas al-Samea, 27, Sami Mushaima, 42, and Ali al-Singace, 21, were convicted of a bomb attack on police, though the trial was marred by allegations of torture and forced confessions, as well as contradictory evidence to the prosecutions claims.<sup>21</sup> The U.S. State Department said that activists accused the Ministry of Interior and Public Prosecutor's Office of using beatings, electric shocks, and resource deprivation to force confessions, and then of improperly investigating such claims prior to the executions.<sup>22</sup> This trial seemed not to meet international standards: their lawyers did not have access to either their clients or to important evidence much of the time.<sup>23</sup> Prior to 2017, Bahrain carried out its last execution in 2010.<sup>24</sup> The condemned in that case was Jassim Abdulmanan, a Bangladeshi national.<sup>25</sup> Prior to 2010, Bahrain carried out executions rarely, maintaining de facto moratoriums on the death penalty from 1977

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<sup>16</sup> FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016).

<sup>17</sup> *Bahrain man 'sentenced to death for killing policeman'*, BBC News, 19 Feb. 2014, <http://www.bbc.com/news/world-middle-east-26263627> (last visited 16 Sept. 2016); FIDH, *Rights groups condemn death penalty sentence of Mohammed Ramadan and Husain Ali Moosa*, 16 Dec. 2015, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/rights-groups-condemn-death-penalty-sentence-of-mohammed-ramadan-and> (last visited 16 Sept. 2016); FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016); Amnesty International, *Death Sentences and Executions 2012*, ACT 50/001/2013, September 16, 2016.

<sup>18</sup> FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016).

<sup>19</sup> Electronic communication from Lualua Centre for Human Rights to The Advocates for Human Rights, 7 Sept. 2016, on file with The Advocates for Human Rights.

<sup>20</sup> *Bahrain executes three over police killings*, Al Jazeera, 15 Jan. 2017, <https://www.aljazeera.com/news/2017/01/bahrain-executes-men-police-killings-170115074210829.html> (last visited 4 June 2018).

<sup>21</sup> *Bahrain Institute for Rights and Democracy, Bahrain Executes three Stateless Torture Victims Following King Hamad's Authorisation*, 15 Jan. 2017, <http://birdbh.org/2017/01/bahrain-executes-three-stateless-torture-victims-following-king-hamads-authorisation/> (last visited 5 June 2018).

<sup>22</sup> U.S. Department of State, *Country Reports on Human Rights Practices for 2017: Bahrain*, 2018, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277237> (last visited 5 June 2018).

<sup>23</sup> (translated) *Amnesty International; Bahrain remains a country where people face the death penalty*, Manama Post, 13 April, 2018, <http://www.manamapost.com/news.php?name=2018041220> (last visited June 5, 2018).

<sup>24</sup> Amnesty International, *Urgent Action: Bahrain Sentences Two Bangladeshis to Death*, 24 Mar. 2015, <https://www.amnesty.org/download/Documents/MDE1112932015ENGLISH.pdf> (last visited 16 Sept. 2016).

<sup>25</sup> Amnesty International, *Urgent Action: Bahrain Sentences Two Bangladeshis to Death*, 24 Mar. 2015, <https://www.amnesty.org/.../MDE1112932015ENGLISH.pdf> (last visited 16 Sept. 2016).

to 1996 and from 1996 to 2006<sup>26</sup>. The High Cassation Court upheld a death sentence in 2017 in a case with a defendant charged with, again, terrorism.<sup>27</sup>

23. In December of 2017 a Bahraini military court sentenced six men to death after they were convicted of forming a terrorist cell and plotting to kill a military official.<sup>28</sup> In 2018 the Bahraini High Military Court of Appeals upheld the death sentences for four of the six defendants, one of whom was a civilian who was tried in military court alongside the other soldier-defendants.<sup>29</sup>
24. In January of 2018, a Bahraini court sentenced two men to death on charges of terrorism in a mass trial during which 47 defendants were stripped of citizenship, 19 sentenced to life in prison, 17 sentenced to five years, 9 sentenced to ten years, and 11 sentenced to five years. Coerced confessions were also a problem in this case – it is becoming a “norm for Bahraini courts” to rely on them.<sup>30</sup>
25. Recently, some death penalties have been reduced to life imprisonment on charges of terrorism.<sup>31</sup> But numbers of Bahraini individuals sentenced to death has been increasing since 2017, and as of February 2018, 22 people in Bahrain have been sentenced to death.<sup>32</sup>
26. In March 2018, the Bahrain Public Prosecutor announced a request to review the cases of Mohamed Ramadhan Issa Ali Hussain and Hussain Ali Moosa Hussain Mohamed, citing new evidence from the Special Investigations Unit.<sup>33</sup> On April 25, the Military Court of Cassation confirmed the death sentences of four of the six men convicted on terrorism charges in December 2017. But on the following day, King Hamad commuted these four sentences to life imprisonment.<sup>34</sup> On April 30, a group of UN human rights experts, which included Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, called

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<sup>26</sup> Cornell Center on the Death Penalty Worldwide, Death Penalty Database: Bahrain, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Bahrain> (last visited 5 June 2018).

<sup>27</sup> *Court upholds death, prison sentences*, Bahrain News Agency, 4 June, 2017.

<http://www.bna.bh/portal/en/news/843858> (last visited on 4 June 2018).

<sup>28</sup> *Bahrain's King Commutes Death Sentences of 4 Terrorists*, Asharq Alawsat, 27 Apr. 2018, <https://aawsat.com/english/home/article/1250866/bahrain%E2%80%99s-king-commutes-death-sentences-4-terrorists> (last visited 4 June 2018).

<sup>29</sup> *Bahrain upholds death sentence against men who 'planned to assassinate' an Emir*, Middle East Monitor, 22 Feb. 2018, <https://www.middleeastmonitor.com/20180222-bahrain-upholds-death-sentence-against-men-who-planned-to-assassinate-an-emir/> (last visited 5 June 2018).

<sup>30</sup> *Two sentenced to death in Bahrain's mass trial*, Al Jazeera, 31 Jan. 2018, <https://www.aljazeera.com/news/2018/01/sentenced-death-bahrain-mass-trial-180131093705798.html> (last visited 4 June 2018).

<sup>31</sup> *King's decision to commute death sentence hailed by Shura Council*, Bahrain News Agency, 29 Apr. 2018, <http://www.bna.bh/portal/en/news/838746> (last visited 4 June 2018).

<sup>32</sup> (translated) *The International Federation for Human Rights Strongly condemns the wave of death sentences in Bahrain*, Alkawthar TV Channel, 2 Feb. 2018, <http://www.alkawthartv.com/news/120178> (last visited 5 June 2018).

<sup>33</sup> Amnesty International, *Urgent Action: Review for Upheld Death Sentence Requested*, 19 Apr. 2018, <https://www.amnesty.org/download/Documents/MDE1182422018ENGLISH.pdf> (last visited 5 June 2018).

<sup>34</sup> Amnesty International, *Bahrain: King commutes four death sentences to life imprisonment but trials remain nonetheless unfair*, 2 May 2018, <https://www.amnesty.org/download/Documents/MDE1183332018ENGLISH.pdf> (last visited 5 June 2018).

for a retrial of the four men (Mohamed AbdulHasan AlMutaghawi, Fadhel Sayed Radhi, Sayed Alawi Husain, and Mubarak Adel Mubarak Mahanna).<sup>35</sup>

**III. List of Issues Paragraphs 15 and 16: Police forces use torture to extract confessions and those confessions are used to obtain convictions in capital cases.**

27. Legal safeguards against the use of torture may exist on paper, but in practice individuals accused of capital offenses are subjected to arbitrary arrest and torture, and courts use confessions obtained under torture to obtain convictions in capital cases. Bahraini authorities use enforced disappearance, incommunicado detention, and torture in capital cases. Perpetrators are not held accountable, and courts admit as evidence confessions obtained under these circumstances.
28. The Committee in paragraph 15 requested that the Government of Bahrain respond to reports of torture and ill-treatment of prisoners in police custody, including the use of confessions obtained under torture. In paragraph 16, the Committee requested information about the measures taken to ensure that procedural safeguards are fully respected when persons are taken into custody.
29. The Initial Periodic State Party Report asserts that there are legal safeguards to criminalize the use of torture during investigation proceedings and suggests that complaint mechanisms are in place to allow victims of torture to seek remedies, including the exclusion of evidence obtained by means of torture (paragraphs 98-108).
30. The Initial Periodic State Party Report states that “no one may be detained or imprisoned in locations other than those designated in prison laws . . .” (paragraph 133). According to that report, the Ministry of the Interior issued a manual in January 2014 outlining procedures for arrest and pre-trial detention “that comply with national laws and regulations and international norms and standards” (paragraph 135). As noted in paragraph 29 above, the report also identifies various protections against the use of torture in custodial settings.
31. In responding to the List of Issues, the Government of Bahrain asserts that people are not detained without cause and that individuals are always held in places specifically designated for the purpose of detention (paragraph 90). The government further asserts that people are not prohibited from making telephone calls while in detention (paragraph 92). The government also asserts that the authorities responsible for arrest and detention are always subject to scrutiny with respect to the treatment of persons in their custody (paragraph 98).
32. In practice, individuals accused of capital crimes are vulnerable to torture and other forms of ill-treatment during investigation procedures.
33. The Government of Bahrain recently reinstated the authority of the Bahrain National Security Agency (BNSA) to conduct arrests and investigations,<sup>36</sup> after initially accepting

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<sup>35</sup> United Nations, Office of the High Commissioner for Human Rights, *Bahrain: UN rights experts condemn military court convictions, cite torture allegations*, 30 Apr. 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23010&LangID=E> (last visited 5 June 2018).

the recommendation of the Bahrain Independent Commission of Inquiry (BICI) to suspend BNSA's authority in 2011.<sup>37</sup> In January 2017, the Bahraini government decided to reinstate BNSA powers of arrest and investigation.<sup>38</sup> Since that time, opposition activists have alleged that the BNSA engages in systemic abuse.<sup>39</sup>

34. The LuaLua Center for Human Rights and the Gulf Civil Society Associations Forum report that individuals in capital cases have been subjected to arbitrary arrests and severe torture, as well as cruel, inhuman, and degrading treatment during the investigation phase, including: blindfolding, long periods of forced standing, electrocution, beatings with a hose pipe, beatings with a metal rod, insults, threats to the welfare of family, sleep deprivation, food deprivation, prayer deprivation, toilet deprivation, beatings in sensitive areas such as genitalia, cold water dousing, extreme cold temperatures, suspension from the ceiling (*falaqa*), removal of clothing, sexual assault, and solitary confinement.<sup>40</sup> In February 2015, after he was sentenced to death, Abbas Al Samea confirmed these practices: "The monstrous physical and psychological torture was unbearable. My family were threatened, and even my lawyers were threatened from being expelled and having their licenses revoked."<sup>41</sup>

**Several recent cases highlight Bahrain's use of incommunicado detention and torture to coerce confessions, which prosecutors then use to obtain convictions and death sentences.**

35. In February 2014, for example, a court in Bahrain sentenced Maher al-Khabaz (also known as Maher Abbas Ahmad) to death for killing a police officer in 2013.<sup>42</sup> He had been arrested without a warrant and then plainclothes police officers disappeared him for seven days, when he was denied access to counsel.<sup>43</sup> During that time, he was subjected to torture, including frequent beatings, whipping of the feet and hands, and electrocution.<sup>44</sup> The government used torture to coerce al-Khabaz into signing a

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<sup>36</sup> U.S. Department of State, *Country Reports on Human Rights Practices for 2017: Bahrain*, 2018, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277237> (last visited 5 June 2018).

<sup>37</sup> U.S. Department of State, *Country Reports on Human Rights Practices for 2017: Bahrain* (2018), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277237> (last visited 5 June 2018).

<sup>38</sup> Human Rights Watch, *Bahrain Country Summary*, Jan. 2018, [https://www.hrw.org/sites/default/files/bahrain\\_3.pdf](https://www.hrw.org/sites/default/files/bahrain_3.pdf) (last visited 5 June 2018).

<sup>39</sup> U.S. Department of State, *Country Reports on Human Rights Practices for 2017: Bahrain* (2018), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277237> (last visited 5 June 2018).

<sup>40</sup> Electronic communication from LuaLua Centre for Human Rights to The Advocates for Human Rights, 7 Sept. 2016, on file with The Advocates for Human Rights.

<sup>41</sup> Electronic communication from LuaLua Centre for Human Rights to The Advocates for Human Rights, 7 Sept. 2016, on file with The Advocates for Human Rights.

<sup>42</sup> *Bahrain man 'sentenced to death for killing policeman'*, BBC News, 19 Feb. 2014, <http://www.bbc.com/news/world-middle-east-26263627> (last visited 16 Sept. 2016).

<sup>43</sup> Bahrain Center for Human Rights, *NGOs Condemn Capital Punishment Sentence for Maher al-Khabaz*, 30 Oct. 2014, <http://www.bahrainrights.org/en/node/7144> (last visited 16 Sept. 2016).

<sup>44</sup> Bahrain Center for Human Rights, *NGOs Condemn Capital Punishment Sentence for Maher al-Khabaz*, 30 Oct. 2014, <http://www.bahrainrights.org/en/node/7144> (last visited 16 Sept. 2016).

confession.<sup>45</sup> Then, when he appeared before the public prosecutor, the prosecutor threatened to resume the torture if al-Khabaz did not repeat his confession.<sup>46</sup> The coerced confession played a significant role in al-Khabaz' conviction.<sup>47</sup> Al-Khabaz and his lawyer were banned from attending portions of the trial.<sup>48</sup> The High Criminal Court of Appeal upheld his death sentence in August 2014,<sup>49</sup> but in December 2015 the Cassation Court rejected his death sentence and remanded the case to the Court of Appeal.<sup>50</sup>

36. In December 2014, a court in Bahrain sentenced Mohammed Ramadan and Husain Ali Moosa to death for their alleged involvement in a February 2014 bombing.<sup>51</sup> Both men say that they were tortured into confessing.<sup>52</sup> Moosa says that officials hung him from the ceiling for three days, beat him, and threatened to harm his family.<sup>53</sup> Ramadan says that he was arrested without a warrant and then severely beaten on sensitive parts of his body to extract a confession.<sup>54</sup> The men recanted their confessions, but two courts rejected their appeals and they have exhausted their domestic legal remedies.<sup>55</sup> The UN Special Rapporteur on Torture joined with four other UN experts in expressing serious concern that both men had confessed under duress.<sup>56</sup> The European Parliament has also expressed

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<sup>45</sup> Bahrain Center for Human Rights, *NGOs Condemn Capital Punishment Sentence for Maher al-Khabaz*, 30 Oct. 2014, <http://www.bahrainrights.org/en/node/7144> (last visited 16 Sept. 2016).

<sup>46</sup> Bahrain Center for Human Rights, *NGOs Condemn Capital Punishment Sentence for Maher al-Khabaz*, 30 Oct. 2014, <http://www.bahrainrights.org/en/node/7144> (last visited 16 Sept. 2016).

<sup>47</sup> Bahrain Center for Human Rights, *NGOs Condemn Capital Punishment Sentence for Maher al-Khabaz*, 30 Oct. 2014, <http://www.bahrainrights.org/en/node/7144> (last visited 16 Sept. 2016).

<sup>48</sup> Bahrain Center for Human Rights, *NGOs Condemn Capital Punishment Sentence for Maher al-Khabaz*, 30 Oct. 2014, <http://www.bahrainrights.org/en/node/7144> (last visited 16 Sept. 2016).

<sup>49</sup> Americans for Democracy & Human Rights in Bahrain, *Sacrifice to the State: Capital Punishment in Bahrain and Saudi Arabia*, [www.adhrb.org/wp-content/uploads/2015/04/Sacrifice-to-the-State-Capital-Punishment.pdf](http://www.adhrb.org/wp-content/uploads/2015/04/Sacrifice-to-the-State-Capital-Punishment.pdf) (last visited 16 Sept. 2016).

<sup>50</sup> Electronic communication from Lualua Centre for Human Rights to The Advocates for Human Rights, 7 Sept. 2016, on file with The Advocates for Human Rights.

<sup>51</sup> FIDH, *Rights groups condemn death penalty sentence of Mohammed Ramadan and Husain Ali Moosa*, 16 Dec. 2015, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/rights-groups-condemn-death-penalty-sentence-of-mohammed-ramadan-and> (last visited 16 Sept. 2016).

<sup>52</sup> FIDH, *Rights groups condemn death penalty sentence of Mohammed Ramadan and Husain Ali Moosa*, 16 Dec. 2015, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/rights-groups-condemn-death-penalty-sentence-of-mohammed-ramadan-and> (last visited 16 Sept. 2016).

<sup>53</sup> FIDH, *Rights groups condemn death penalty sentence of Mohammed Ramadan and Husain Ali Moosa*, 16 Dec. 2015, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/rights-groups-condemn-death-penalty-sentence-of-mohammed-ramadan-and> (last visited 16 Sept. 2016).

<sup>54</sup> FIDH, *Rights groups condemn death penalty sentence of Mohammed Ramadan and Husain Ali Moosa*, 16 Dec. 2015, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/rights-groups-condemn-death-penalty-sentence-of-mohammed-ramadan-and> (last visited 16 Sept. 2016).

<sup>55</sup> FIDH, *Rights groups condemn death penalty sentence of Mohammed Ramadan and Husain Ali Moosa*, 16 Dec. 2015, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/rights-groups-condemn-death-penalty-sentence-of-mohammed-ramadan-and> (last visited 16 Sept. 2016).

<sup>56</sup> FIDH, *Rights groups condemn death penalty sentence of Mohammed Ramadan and Husain Ali Moosa*, 16 Dec. 2015, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/rights-groups-condemn-death-penalty-sentence-of-mohammed-ramadan-and> (last visited 16 Sept. 2016).

concern about their case.<sup>57</sup> Despite these concerns, authorities have not conducted any investigation of their treatment in custody.<sup>58</sup>

37. In December 2015, a court in Bahrain sentenced Hussen Abdullah Khalil Ebrahim to death in absentia for forming a terrorist organization, recruiting agents, engaging in rioting and planting explosives to disturb the peace, targeting police officers, and killing a police officer in 2014 with the goal of violently overthrowing the government.<sup>59</sup> Ebrahim was the only one of the 23 defendants sentenced to death; the others were sentenced to life imprisonment.<sup>60</sup> Most of the defendants were subjected to enforced disappearance for ten days, during which time they were denied access to counsel.<sup>61</sup> The defendants report that they were tortured during the disappearance.<sup>62</sup> One of the defendants, following his arrest, was physically beaten, primarily on his head and genitals, including with a wooden plank with nails, and was also electrocuted and sexually assaulted.<sup>63</sup> After three days of such torture, he confessed, but the beatings continued.<sup>64</sup> When he appeared before the public prosecutor, the prosecutor threatened to resume the torture if he recanted.<sup>65</sup>
38. In February 2015, a court sentenced Abbas Al Samea, Sami Mushaima, and Ali Al Singace to death for their involvement in an explosion that killed three police officers.<sup>66</sup> An appeals court upheld their sentences in May 2016.<sup>67</sup> The defendants deny all charges and allege their confessions were made after extensive torture, including electrocutions,

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<sup>57</sup> Americans for Democracy & Human Rights in Bahrain, *ADHRB Welcomes Open Letter to EU High Representative Concerning Mohamed Ramadan and Husain Ali Moosa*, 3 June 2016, <http://www.adhrb.org/2016/06/9851/> (last visited 19 Sept. 2016).

<sup>58</sup> FIDH, *Rights groups condemn death penalty sentence of Mohammed Ramadan and Husain Ali Moosa*, 16 Dec. 2015, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/rights-groups-condemn-death-penalty-sentence-of-mohammed-ramadan-and> (last visited 16 Sept. 2016).

<sup>59</sup> FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016).

<sup>60</sup> FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016).

<sup>61</sup> FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016).

<sup>62</sup> FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016).

<sup>63</sup> FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016).

<sup>64</sup> FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016).

<sup>65</sup> FIDH, *NGOs condemn death sentences in Bahrain after record year*, 8 Jan. 2016, <https://www.fidh.org/en/region/north-africa-middle-east/bahrain/ngos-condemn-death-sentences-in-bahrain-after-record-year> (last visited 16 Sept. 2016).

<sup>66</sup> Electronic communication from Lualua Centre for Human Rights to The Advocates for Human Rights, 7 Sept. 2016, on file with The Advocates for Human Rights.

<sup>67</sup> Electronic communication from Lualua Centre for Human Rights to The Advocates for Human Rights, 7 Sept. 2016, on file with The Advocates for Human Rights.

beatings, and sexual assault.<sup>68</sup> Al Samea was forcibly disappeared for 20 days after his arrest, during which time the torture to which he was subjected caused severe internal bleeding, fractured vertebrae, a broken pelvis, and low blood pressure, prompting his transfer to intensive care where he had surgery to stop the internal bleeding.<sup>69</sup> One week later, security forces removed Al Samea from the hospital against the orders of his doctor, and then the torture continued in order to extract a false confession.<sup>70</sup> His lawyer was allowed to contact him only three months after his initial detention, and after the court had conducted three hearings in Al Samea's case.<sup>71</sup> According to Amnesty International, the trial "was unfair: the court failed to adequately investigate their allegations of torture and other ill-treatment by CID interrogators; they were denied access to their lawyers until their trial began; their lawyers were not permitted to see the full case file, and their requests to cross-examine prosecution witnesses were ignored."<sup>72</sup>

#### **IV. List of Issues Paragraph 19: Individuals accused of capital crimes face inadequate access to counsel, evidence, and witnesses.**

39. The Committee requested that the Government of Bahrain respond to reports that individuals have been denied procedural safeguards, including inadequate access to counsel, evidence, and witnesses.
40. As noted in paragraph 7 above, the right to counsel during the course of an investigation is sharply limited. In many cases, the accused must obtain his or her own attorney and has no right to a government-appointed attorney. Moreover, the right to counsel often attaches not during the investigation and interrogations, but only "in court."
41. As described in the preceding sections, in some cases individuals accused of terrorism-related offenses are held incommunicado and denied access to counsel during interrogations. Investigators subject those individuals to torture in an effort to extract confessions.

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<sup>68</sup> Bahrain Center for Human Rights, *NGOs Condemn Use of Death Penalty amid Allegations of Severe Torture*, 27 Feb. 2015, <http://bahrainrights.org/en/node/7363> (last visited 12 Sept. 2016).

<sup>69</sup> Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Communication to the Government of Bahrain, 14 Aug. 2014, available at [https://spdb.ohchr.org/hrdb/28th/Public\\_UA\\_Bahrain\\_14.08.14\\_%2811.2014%29\\_Pro.pdf](https://spdb.ohchr.org/hrdb/28th/Public_UA_Bahrain_14.08.14_%2811.2014%29_Pro.pdf) (last visited 19 Sept. 2016).

<sup>70</sup> Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Communication to the Government of Bahrain, 14 Aug. 2014, available at [https://spdb.ohchr.org/hrdb/28th/Public\\_UA\\_Bahrain\\_14.08.14\\_%2811.2014%29\\_Pro.pdf](https://spdb.ohchr.org/hrdb/28th/Public_UA_Bahrain_14.08.14_%2811.2014%29_Pro.pdf) (last visited 19 Sept. 2016).

<sup>71</sup> Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Communication to the Government of Bahrain, 14 Aug. 2014, available at [https://spdb.ohchr.org/hrdb/28th/Public\\_UA\\_Bahrain\\_14.08.14\\_%2811.2014%29\\_Pro.pdf](https://spdb.ohchr.org/hrdb/28th/Public_UA_Bahrain_14.08.14_%2811.2014%29_Pro.pdf) (last visited 19 Sept. 2016).

<sup>72</sup> Amnesty International, *Amnesty International Report 2015/16*, <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF> (last visited 19 Sept. 2016).

V. **Suggested recommendations:**

42. The coauthors of this report suggest the following recommendations for the Government of Bahrain:

- Replace the death penalty with a sentence that is fair, proportionate, and respects international human rights standards.
- Impose an official moratorium on the death penalty immediately, both going forward and for persons currently on death row.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights and align domestic legislation to conform with the Protocol.
- Amend the Penal Code and the Law of Protecting Society from Terrorist Acts to eliminate the possibility of a death sentence for all crimes not involving intentional killing.
- Amend the Law of Protecting Society from Terrorist Acts to ensure that the definition of terrorism is narrowly tailored and cannot be used as a pretext to target individuals who are peacefully protesting or otherwise exercising their right to freedom of expression.
- Immediately direct all judicial officers not to impose a sentence of death in any case in which the prosecution has not proven that the defendant committed an intentional killing.
- Immediately direct all judicial officers to categorically prohibit the introduction of any evidence, including confessions, in cases in which the defendant demonstrates that the evidence was likely to have been obtained through torture.
- Immediately commute the sentences of all persons sentenced to death to a lesser sentence in all cases in which the prosecution relied on evidence obtained through torture and ensure that survivors of torture have prompt access to legal, medical, and financial remedies.
- Direct law enforcement to ensure that individuals have immediate and continuous access to counsel, including court-appointed counsel in all capital cases, from the time of arrest to the conclusion of trial.
- Appoint an independent special investigator to conduct a thorough and independent investigation into allegations that the death penalty is being sought against individuals based in part on their opposition to the Government of Bahrain or their involvement in human rights activities.
- Appoint an independent special investigator to conduct a thorough and independent investigation of all allegations of torture during pretrial detention and empower the investigator to hold perpetrators accountable, including by bringing criminal charges, by terminating individuals from their employment, and by overturning any convictions that resulted from confessions obtained via torture.
- Support the next United Nations General Assembly Resolution in favor of a moratorium on the use of the death penalty.
- Immediately extend standing invitations to: the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions; the Special Rapporteur on the Independence of Judges and Lawyers; the Special Rapporteur on Torture; the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of

Association, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.