

IN THE KINGDOM OF BAHRAIN COURT OF CASSATION

RE. HUSAIN ALI MOOSA

MOHAMED RAMADAN

AMICUS CURIAE BRIEF
ON BEHALF OF THE BAR HUMAN RIGHTS COMMITTEE
OF ENGLAND AND WALES

The Bar Human Rights Committee of England and Wales (“BHRC”) is the independent, international human rights arm of the Bar of England and Wales. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England & Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its agenda.

Introduction

1. On 6 October 2017, BHRC submitted a petition (“2017 Petition”) to His Majesty the King, in support of applications for clemency made on behalf of Husain Ali Moosa and Mohamed Ramadan (the Appellants) (Appendix 1). At that point the Appellants had been convicted of the murder of a police officer and other related offences and sentenced to death. They had exhausted all avenues of appeal.
2. Although the 2017 Petition supported applications for clemency, it also called for the reopening of the legal process because of a number of substantial concerns as to whether the men had received a fair trial, and concerns that the key evidence in the case – confessions – had been extracted through torture or serious ill-treatment.
3. In fact, on 15 June 2016, the Office of the Ombudsman, Ministry of the Interior (MoI), Kingdom of Bahrain, had already issued a statement indicating it had instituted a full investigation into a number of allegations of ill-treatment of the two men. Subsequently, the complaints of torture were referred to the Public Prosecutor’s Special Investigation Unit (SIU), which considered evidence from doctors from the MoI who had examined the men at times after their arrest and detention, and concluded there was sufficient evidence to raise suspicions that the men were subject to serious ill-treatment. As this evidence had not been before the trial or appeal courts, the Public Prosecutor sought a review of the convictions by the Court of Cassation.
4. By judgment dated 22 October 2018, the Court of Cassation set aside the earlier decisions and referred the allegations and evidence to the Court of Appeal for review.
5. By Amicus Curiae brief dated 21 June 2019, Dr Agnes Callamard, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, raised similar concerns to those previously raised by BHRC in its 2017 Petition (Appendix 2).
6. By judgment dated 8 January 2020, the Fifth Criminal Supreme Appeal Court, dismissed the grounds for review and, relying on the reasoning of the original trial court, upheld the earlier convictions and sentences. In so doing the court considered evidence only from a number of doctors from the MoI, who had examined the two men at various times. A number of injuries to both men were documented but the court found that none were the result of ill-treatment at the relevant time, and attached importance to the apparent failure

of the Appellants to make contemporaneous allegations of torture to the Public Prosecutor.

7. For reasons elaborated in the 2017 Petition, the 2019 UN Special Rapporteur's Amicus, and developed further below, BHRC considers the convictions in these cases to be fundamentally flawed, in accordance with both domestic and international law. Furthermore, the death sentences are themselves a breach of Article 14 of the International Covenant on Civil and Political Rights and the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

The facts

8. The Trial Court judgment¹ sets out the allegations against Husain Ali Moosa, Mohamed Ramadan and ten other accused. In summary, the judgment records:
 - a. Mohamed Ramadan obtained an explosive device, which was placed and set by Husain Ali Moosa in the Al-Dair area on 14 February 2014.
 - b. Together with a crowd of others, some of whom were co-accused, the men lured police officers to the scene and then detonated the device, killing one officer and injuring others.
9. Husain Ali Moosa, Mohamed Ramadan and ten other men were charged with murder, attempted murder and a number of other related offences.
10. The prosecution evidence heard at trial consisted of:
 - a. Testimony from five police and four Central Investigation Department (CID) officers.
 - b. Confessions from Husain Ali Moosa, Mohamed Ramadan and four other defendants.

¹ Fourth Superior Criminal Court, Case no: 4974/2014/07, Date of judgment: December 29, 2014.

- c. Reports from the Crime Scene Division, the Criminal Investigations lab (relating to samples from the scene).
 - d. Autopsy and medical reports relating to the victims.
 - e. Photographs and video footage from a re-enactment.
 - f. The criminal records of Husain Ali Moosa and six other defendants.
 - g. Reports on the phones of two defendants.
11. The police witnesses gave evidence that they were at the entrance to Al-Dair village when they were attacked by a group of men with Molotov cocktails and other weapons, to whom they gave chase. The bomb was detonated in the vicinity of the Nur al-Hidaya Grocery, near to the Khayf mosque, killing one officer and injuring others.
12. On 21 February 2014, seven days after the bombing, Husain Ali Moosa and four other defendants were arrested. Husain Ali Moosa confessed under interrogation, asserting that he had planted the bomb, contained in a black plastic bag, at the instigation of one of the other defendants, Muhammed Makki. It had been supplied by Mohamed Ramadan. After planting the bomb, Husain Ali Moosa left the scene but later heard it explode.
13. On a date unspecified in the judgment², Mohamed Ramadan also made admissions, but of a different, inconsistent nature. He asserted that he had agreed with Husain Ali Moosa to take part in the demonstration on 14 February 2014 and to attack police officers, but stated that neither himself nor Husain Ali Moosa were present when the bomb was detonated, and he made no admissions to involvement in the bombing.
14. Four other defendants made admissions under interrogation, relating to involvement in the demonstration on 14 February 2014. Those admissions referred to the leading roles played by Husain Ali Moosa and Mohamed Ramadan in the demonstration but did not implicate them further. No other defendant made relevant admissions.
15. Notably, only Husain Ali Moosa made any admissions relating to the bomb. One of the other defendants, Mustafa Ahmad Yusuf Habib, stated that he saw Muhammed Makki

² Mohamed Ramadan was arrested on 18 February 2014.

place a black plastic bag near to the Nur al-Hidaya Grocery: an admission inconsistent with the confession made by Husain Ali Moosa.

16. The scientific evidence indicated that the injuries sustained by the victims were consistent with a bombing and samples linked the victims to the scene. There was evidence regarding the physical construction of the explosive device and its means of detonation. There is no suggestion in the judgment that there was scientific evidence linking any of the defendants to the bomb or the scene. It has later come to light that a fingerprint on the bag containing the bomb was that of an unidentified female.
17. The antecedents relied upon by the prosecution, concerned previous convictions relating to unlawful assemblies and associated public order offences.
18. The phone evidence indicated communications regarding the security situation and the breaking of shop CCTV cameras prior to assemblies.
19. The judgment records that the defence submitted that the warrants and searches had been invalid, and that Husain Ali Moosa asserted that his confession had been induced by torture. The Court rejected the submission relating to the investigative shortcomings. The Court also rejected Husain Ali Moosa's allegations of torture, holding that injuries to his wrists had been caused by handcuffs and an injury to his back had been caused by a fall when he tried to escape.
20. As stated above, the case was reopened when the Ombudsman referred the allegations of torture and ill-treatment to the SIU. Based on *prima facie* findings, the Public Prosecutor asked for the Court of Cassation to reopen and review the cases.

The relevant law

a. Domestic law

21. The salient provisions of the Constitution are:

- a. Article 19 guarantees the integrity of the person³. In particular the Constitution prohibits torture and other degrading treatment and expressly declares that forced confessions shall be treated as “null and void”⁴.
- b. Article 20 guarantees fair trial rights (due process), including representation by a lawyer of choice at all stages of investigation and trial⁵.

22. The *Code of Criminal Procedure*⁶ further guarantees:

- a. Article 61: The personal integrity and right of access to lawyers, of an arrested person.
- b. Article 84: Lawyers for an accused are entitled to be present at an investigative procedure,
- c. Article 87: The accused is entitled to full disclosure.
- d. Article 134: The Public Prosecutor should only question an accused in the presence of his lawyer, on proper notice.
- e. Article 135: The lawyer must be given advanced access to the investigation.
- f. Articles 220-1: At criminal trial, witnesses for the prosecution shall be examined and cross-examined by the Public Prosecutor and Defence respectively, and then defence witnesses shall be examined and cross-examined by Defence and Prosecutor.
- g. Article 253: The judges must only rely upon evidence before them, and must ignore any statement made by the accused or other witness, that is proven to have been made by coercion.
- h. Article 261: The judgment must state the reasons upon which it is based.

³ Article 19: <http://www.refworld.org/docid/48b54f262.html>

⁴ Art 19(d)

⁵ Art 20(c), (d) and (e)

⁶ Code of Criminal Procedure, Legislative Decree No. 46 of 2002 (CoCP):
http://www.vertic.org/media/National%20Legislation/Bahrain/BH_Code_Criminal_Procedure.pdf

- i. Article 131-2: The litigants may instruct a consulting expert who may be a medical practitioner, and may challenge the Public Prosecutor's expert.
23. Anti-terrorism legislation has allowed for suspects to be detained without reference to a court and prior to interrogation by the Public Prosecutor for up to 28 days⁷, but no provision allows for exclusion of defence lawyers up to the start of trial.
 24. The death penalty must not be carried out unless the King gives his approval⁸.

b. International law

25. Bahrain acceded to the UN *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* on 6 March 1998 and the *International Covenant on Civil and Political Rights (ICCPR)* on 20 September 2006.
26. Article 1 of the *CAT* defines torture as the infliction of severe physical or mental pain, in particular during interrogations. Article 2 prohibits torture in all circumstances. Article 16 further requires state parties to prevent cruel, inhuman or degrading treatment or punishment (ill-treatment), which does not constitute torture. Parties must promptly investigate any allegations of torture, Articles 12 and 13 (further referred to below), and must prohibit the use of evidence gained under torture, Article 15. The prohibitions are absolute and non-derogable.
27. Article 6 of the *ICCPR* recognises the individual's inherent right to life and has been described as a "supreme right" which should be interpreted widely and from which no derogation is allowed. Although abolition of the death penalty is not required by Article 6, it is clear that the UN Human Rights Committee (UNHRC) considers that it is implicit that abolition is desirable⁹. Furthermore, the UNHRC vigorously encourages ratification of the Second Optional Protocol to the *ICCPR* (abolition) in its dialogues with state parties. International pressure for the abolition of the death penalty has been demonstrated in

⁷ Article 27, Protection of Society from Terrorist Acts, Law No 58 of 2006:

[https://www.mofa.gov.bh/Portals/0/pdf/AntiTerrorist/LAW%20NO.%20\(58\)%20OF%202006%20amended%20by%20law%20\(68\)%20and%20\(20\)%20PDF.pdf](https://www.mofa.gov.bh/Portals/0/pdf/AntiTerrorist/LAW%20NO.%20(58)%20OF%202006%20amended%20by%20law%20(68)%20and%20(20)%20PDF.pdf)

⁸ Art 51, Penal Code 1976, Art 328, CoCP. Under Art 90 of the Penal Code the King may commute any sentence by Decree.

⁹ 'CCPR: Right to Life', General Comment No 6, OHCHR, 30 April 1982: <http://www.refworld.org/docid/45388400a.html>

reaction to the executions of three men on 15 January 2017 by Bahrain¹⁰ and again after more executions on 27 July 2019¹¹, and by state recommendations to the 2017 UN Universal Periodic Review (UPR) cycle¹².

28. Article 6 *ICCPR* requires strict adherence to due process in any such case: Article 14. A death sentence where the provisions of Article 14 have been breached is itself a breach of Article 6¹³.
29. Article 7 *ICCPR* prohibits the use of torture. The extent of this prohibition has been developed by the CAT but, in conjunction with Article 14(3)(g) *ICCPR*, requires that confessions obtained under coercion must be excluded from the trial and the court must investigate allegations of forced confessions.
30. Article 14 *ICCPR* sets out wide-ranging fair trial guarantees for the accused. Due process requirements include:
 - a. The right to be informed promptly and in detail of the nature and cause of the charges: A14(3)(a).
 - b. The right to have adequate time and facilities for the preparation of his/her defence and to communicate with counsel of his/her choosing: A14(3)(b).
 - c. The right to have prosecution witnesses examined and to have defence witnesses called and examined under the same conditions as witnesses against him/her: A14(3)(e).
 - d. The right not to be compelled to testify against himself/herself or confess: A14(3)(g).
31. The UNHRC has dealt with the denial or delay in according access to lawyers under both Article 14(3)(a) and (b). In *Kurbanov v Tajikistan* (1096/02) the UNHRC held that a delay in charging had affected the accused's ability to defend himself, in part because it delayed

¹⁰ https://eeas.europa.eu/headquarters/headquarters-homepage/18588/statement-spokesperson-executions-carried-out-bahrain_sl

¹¹ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24855&LangID=E>

¹² https://www.upr-info.org/sites/default/files/document/bahrain/session_27_-_may_2017/a_hrc_wg.6_27_1.1.pdf

¹³ *Gunan v Kyrgyzstan* (1545/07): http://www.bayefsky.com/pdf/kyrgyzstan_t5_ccpr_1545_2007.pdf

his recourse to legal assistance. In *Gridin v Russian Federation* (770/97) the UNHRC held that a delay of 5 days in allowing access to a lawyer violated the requirements of Article 14 *ICCPR*. The principle in *Gridin* has been confirmed in many other cases and Concluding Observations¹⁴. It is of particular note that the UNHRC has emphasised that these requirements apply to all persons arrested or detained on criminal charges, including ‘terrorism’ suspects.

32. A failure to grant prompt access to counsel of choice is a violation of Article 14(3)(b): *Kelly v Jamaica* (537/93) and numerous cases have held that incommunicado detention breaches the same provision¹⁵.
33. The requirement for the accused to be able to cross-examine adverse witnesses and call relevant witnesses on his own behalf – Article 14(3)(e) - is a manifestation of the principle of ‘equality of arms’. The importance of the right to cross-examine important prosecution witnesses has been highlighted in *Rouse v Phillipines* (1089/02), and in Concluding Observations on the Netherlands (2009)¹⁶ the UNHRC indicated that the right to cross-examine will also, in some circumstances, extend to being able to identify the witness and see his/her demeanour and not simply the right to pose questions.
34. In *Fuenzalida v Ecuador* (480/91) the UNHRC underlined the importance of an accused being able to obtain and rely on expert testimony: Article 14(3)(e).
35. The prohibition on obtaining confessions by coercion is dealt with under Article 7. However, the HRC has found that a failure to properly investigate allegations of forced confessions breached A14(3)(g): *Kouidis v Greece* (1070/02).
36. With respect to the investigations of forced confessions, Article 12 of the *CAT* requires the State Party to promptly and impartially investigate wherever there are reasonable grounds to believe that an act of torture has been perpetrated within its jurisdiction. Article 13 *CAT* requires the State Party to ensure that any individual who alleges torture has a

¹⁴ *Smartt v Guyana* (867/99), §6.3, *Lyashkevitch v Uzbekistan* (1552/07) §9.4, *Khuseynov and Butaev v Tajikistan* (1263-4/-4) §8.4, Concluding Observations on the UK (2008) UN doc CCPR/C/GBR/CO/6, §19 and Concluding Observations on the Netherlands (2009) UN doc CCPR/C/NLD/CO/4, §11.

¹⁵ *Drescher Caldas v Uruguay* (43/79), *Carballal v Uruguay* (33/78), *Izquierdo v Uruguay* 973/80) and *Machado v Uruguay* (83/80).

¹⁶

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NLD/CO/4&Lang=En

means of complaint and has his/her case promptly and impartially investigated by the competent authorities. The procedural obligations of these requirements have been set out in detail in the Istanbul Protocol¹⁷ which require the state, and in particular the trial court, to properly investigate allegations of torture and forced confessions.

37. The right to a fair trial and the prohibition on torture are further reflected in Article 7 and Article 13 of the Arab Charter on Human Rights¹⁸.

Discussion

38. In its 2017 Petition, BHRC noted a number of specific concerns regarding the fairness of the trial and the evidence considered by the court. These concerns were repeated and added to by Dr Callamard, UN Special Rapporteur, in her 2019 report. The concerns included:

- a. A refusal of access to defence lawyers at all times from arrest until the trial began.
- b. Disclosure of the full case file only during the course of the trial itself.
- c. Defence lawyers were not allowed to cross-examine prosecution witnesses.
- d. An inequality of arms with respect to expert medical evidence relating to the allegations of ill-treatment and forced confessions: requests for independent medical evidence were denied. The only witness as to the medical condition of the defendants was Dr Mohammed Nour al Din Ahmad Ans Fouda of the Public Prosecution General Directorate of Forensic Science.
- e. The lack of incriminating evidence beyond the disputed confessions. All six defendants who made pre-trial admissions alleged they were subject to serious physical ill-treatment which induced untrue statements.

¹⁷ UN Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Istanbul Protocol”): <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>. Both the UN General Assembly and UN HRC have encouraged states to follow the guidance in the Istanbul Protocol, and it is a key document in determining breaches of both ICCPR and CAT.

¹⁸ Adopted 15 September 1994: <http://www.humanrights.se/wp-content/uploads/2012/01/Arab-Charter-on-Human-Rights.pdf>

39. In the absence of independent medical evidence at trial, BHRC reviewed evidence from an internationally renowned medical expert in the investigation of allegations of torture, Dr Brock Chisholm, from St George's Medical School, London. Dr Chisholm highlighted significant breaches of the Istanbul Protocol in the medical reports before the trial court. In particular Dr Chisholm noted that the reports were not independent, did not properly record injuries, did not record histories from the men as to how they came by injuries, did not consider causation or provide a rationale for the injuries, and examinations were not conducted in the presence of a lawyer. To the contrary, a police officer was present during the examinations: a significant negative factor where ill-treatment is alleged because of the obvious effect this may have on the making of a complaint. BHRC further noted that Husain Ali Moosa and Mohamed Ramadan were not examined until 9 and 12 days after their arrests¹⁹. This observation has become more important given the recent Court of Appeal judgment, a point returned to below.
40. Dr Chisholm's conclusions in respect of the reports of Dr Fouda were stark: the report regarding Mohamed Ramadan "fails in almost all aspects of what is required in a forensic investigation of possible torture. The report provided to me is in complete violation of the internationally recognised Istanbul Protocol and should therefore be completely disregarded". A similar conclusion was reached with respect to the report regarding Husain Ali Moosa. Dr Chisholm was a 'Contributing Author' to the Istanbul Protocol, underlining his expertise in this area.
41. In addition, BHRC submitted that the above grounds should be considered in the context of:
- a. Proven cases of serious ill-treatment of detainees, by the *Bahrain Independent Commission of Inquiry* (BICI) – findings received and fully accepted by His Majesty the King.
 - b. Serious ongoing international concerns regarding the human rights situation in Bahrain, as expressed at the May 2017 UN Universal Periodic Review.
42. BHRC has now considered its original submissions, and those of the UN Special Rapporteur, in light of the Ombudsman and SIU findings and the latest decision of the

¹⁹ The two examinations were apparently done on the same day, 2 March 2014, and a template was used for the reports: Husain Ali Moosa is incorrectly referred to in the body of the report for Mohamed Ramadan.

Court of Appeal. It is our understanding that the opinions and conclusions of Dr Chisholm were provided to the Ombudsman and SIU, although this material is not referred to in the recent Court of Appeal judgment.

43. BHRC has also considered further reviews of the contemporary medical evidence by the International Rehabilitation Council for Torture Victims (IRCT). The reviews of the medical reports relating to both Appellants also found that the forensic examinations failed to meet minimum standards and the principles of appropriate investigation into allegations of torture and ill-treatment under international law, to which Bahrain is bound. The reviews were conducted by Professor Jason Payne-James, a member of the Independent Forensic Expert Group (IFEG) who concluded that the examinations were “cursory” and “superficial”, “limited” and “ineffective”.²⁰ The review raised concerns regarding the lack of independence of the forensic examinations in light of the association between the medical examiner and the state institutions at which the torture and ill-treatment allegations are aimed. With respect to both Appellants, the review concluded there were serious deficiencies with compliance with the Istanbul Protocol, particularly regarding: promptness of examination, lack of independence both structurally and regarding the presence of a state agent at the examination, lack of impartiality, and lack of effectiveness in terms of comprehensiveness and sufficiency of clinical findings to substantiate all conclusions.

Submissions

44. BHRC submits that the failure to allow either Appellant access to lawyers prior to questioning and interview, or at any subsequent stage before trial, is at the most serious end of the denial of fair trial rights. Where, as here, convictions are based solely or substantially on disputed confession evidence, the denial of these basic rights should of itself render the convictions unsafe.
45. The failure to permit independent medical investigation of torture and ill-treatment allegations, at trial, was a further and distinct serious denial of fair trial rights.

²⁰ See Letter dated 22 June 2019 from IRCT to Reprieve, https://irct.org/uploads/media/IRCT_Submission_Reprieve_MAA_23_June_2019_FINAL-unsigned.pdf.

46. The Ombudsman and SIU have considered the allegations and their investigations concluded that there was a suspicion that the confessions were obtained under torture or ill-treatment, leading to the review by the Court of Appeal. The Court of Appeal rejected the allegations underpinning the review on the basis that the Appellants had not made contemporaneous claims of torture, in particular to the Public Prosecutor, the evidence of injuries did not prove torture and could have had innocent causes, and one unexplained injury was not more than a week old, when the examination took place some 10 days after the confession.
47. There are a number of serious problems with the approach and analysis of the recent Court of Appeal review:
- a. The fact that the Appellants were denied access to lawyers for the whole of the relevant period, and the interrogations during which the alleged confessions occurred, makes it more difficult for the State to refute the allegations. It is well-established in international law, that where a suspicion of a violation of the prohibition on torture and inhuman and degrading treatment arises, the State has an increased burden to explain its actions or omissions²¹. The Appellants had a right to legal advice and access to lawyers, which was denied to them. Access to lawyers as soon as practicable after arrest, and prior to interrogation, is a fundamental safeguard against coerced confessions.
 - b. The Appellants had no access to independent doctors during the relevant period, or at all.
 - c. On review, remarkably, the Court of Appeal considered the medical evidence without recourse to any independent expert review or analysis. Given the multiple failures to comply with the criteria of the Istanbul Protocol, and the obligation on the State to answer allegations which arise within detention facilities, it was a serious error for the Court of Appeal to fail to hear independent medical evidence in this central regard.
 - d. A number of prominent independent medical professionals have had an opportunity to review the existing medical evidence, as outlined above. Some of

²¹ Bleier v Uruguay (30/78) at §13.3, Mukong v Cameroon (458/91).

this evidence had been provided to the Ombudsman and SIU at the time of their investigations and was therefore available to the Court of Appeal.

- e. The allegations should not have been considered in a vacuum. The Bahraini security forces were found to have committed serious violations of the prohibition on torture by the BICI, and the findings were fully accepted by His Majesty the King. Further, the UN Committee against Torture has recognised that there “continue to be numerous and consistent allegations of widespread torture and ill-treatment” in Bahrain, in order to extract confessions or as punishment.²² By the time the allegations of ill-treatment in this case were said to have occurred, the MoI assert that steps had been or were being taken to prevent serious human rights violations against detainees. There are a number of ways in which such violations can be minimised, most importantly access to lawyers and independent doctors at the relevant time, but also measures such as video-recorded interrogations. None of those measures were applied here.
- f. The allegations and SIU finding of a suspicion of torture or serious ill-treatment regarding the confession evidence was not looked at in the context of the other evidence or lack thereof. Without a finding that the confession of the first Appellant was reliable there was plainly insufficient evidence to convict either Appellant of murder, attempted murder or other offences relating to the explosion.
- g. Each of the six defendants who made confessions or admissions alleged that they were subject to serious physical ill-treatment and were thereby forced to make untrue statements. None of the defendants were allowed to instruct or be examined by independent medical examiners at any point prior to, during, or after the trial, despite the allegations that they had been induced to make confessions under torture. The prevalence of such allegations, and the failure to allow independent expert examiners, is an important part of the context which was not considered by the Court of Appeal.

48. BHRC emphasises that although there is other background evidence, the convictions of both Appellants rely substantially on the confession of Husain Ali Mousa. The reliability of that confession is fundamentally undermined by the failure to comply with both

²² UN Committee against Torture concluding observations on the second and third periodic reports of Bahrain, 29 May 2017, CAT/C/BHR/CO/2-3 at [8].

domestic and international law, with respect to the rights of the Appellants following arrest and during investigation and questioning, and during trial.

49. In addition to the due process arguments raised above, BHRC notes that this is a capital case where both Appellants have been sentenced to death.

50. BHRC opposes the death penalty in all circumstances. BHRC notes that the tide of international opinion is against the continuance of capital punishment, with more and more countries abolishing it by law or abandoning it in practice.²³ On 15 January 2017, Bahrain executed three men by firing squad after a moratorium of nearly seven years. In a letter to the King of Bahrain, dated 3 March 2017, BHRC noted that it was highly regrettable that a country that appeared to have abandoned capital punishment had now taken such a regressive step: one that undoubtedly has had an adverse effect on its international reputation, and caused concern expressed by other nations in the 2017 UPR.²⁴ Although further executions took place on 27 July 2019, it is to be hoped that Bahrain will return to moratorium, and to abolition. This case exemplifies the problems that arise in capital cases, including the fact that errors cannot be corrected once sentence is carried out.

51. BHRC goes further than expressing general opposition to capital punishment. International law requires ‘super due process’ wherever capital punishment is contemplated, in recognition that it is impossible to rectify any defect after the sentence has been carried out.²⁵ Although the death penalty, *per se*, is not a breach of international law, it is clear that the execution of an individual will violate international law in circumstances where a state party has not ensured strict adherence to Article 14 of the ICCPR, in conjunction with both the substantive and procedural obligations of the CAT. Judicial killings offend the rule of law unless procedures are so robust as to remove the possibility of error or unfairness as comprehensively as possible. In particular, this must be so where the context is civil or political conflict.

52. BHRC notes that Husain Ali Moosa and Mohamed Ramadan were convicted of very serious offences by a trial court and sentenced to death, and that the appeal process had

²³ Protocol 13 to the European Convention on Human Rights, ended capital punishment across the continent of Europe (with the exception of Belarus). Worldwide the trend is abolitionist: <https://www.amnesty.org/en/what-we-do/death-penalty/>

²⁴ <http://www.barhumanrights.org.uk/wp-content/uploads/2017/03/Bahrain-open-letter-March-2017.pdf>

²⁵ *Cruel Punishment and Respect for Persons: Super Due Process for Death*, Radin 53 S. Cal. L. Rev. 1143 (1979-80), *Ocalan v Turkey* [2005] 41 EHRR 45 at [60].

been exhausted before the further investigations of the Ombudsman and SIU led to the cases being reopened. All judicial systems are capable of making errors. The recent Court of Appeal decision fails to address the due process arguments noted above, and repeats the erroneous reasoning of the earlier courts with respect to the issues of medical evidence and forced confessions.

53. BHRC asserts that upholding the convictions in these cases would be wholly inconsistent with Bahrain's international obligations under the *ICCPR* and *CAT*. The fact that death sentences followed the convictions highlights the problems, given the evidence that the exacting standards of 'super due process' have not been applied in these cases.



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On behalf of

Bar Human Rights Committee of England and Wales

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