

FALSE JUSTICE

Report on the Arbitrary Sentences in Bahrain of the First Half of 2020



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PREAMBLE

Independence of the judiciary is described as a human right and a manifestation of advanced democratic systems. It is approved by the International Bill of Human Rights, acknowledged by all countries of the world, and confirmed by the majority of democratic systems which - therefore - take measures that would completely ensure achieving the principle of independence of the judiciary.

As for Bahrain, the laws and legislation recognize the principle of independence of the judiciary and ensure that the judicial authority works completely independent from the executive authority's interference and desires of other governance-related institutions. However, the sentences, particularly the ones with political and security backgrounds, are directed by state agencies. In fact, when reviewing the judgments of the Bahraini courts in the past decades, they are found to be consistent to a large extent with the government's policy and wishes. The Bahraini courts punish political, human rights, and media activists, and rarely issue sentences against government and security officials and members of the security services for breaking the law and committing human rights violations.

The continuous monitoring of arbitrary detention campaigns and subsequent judicial procedures shows that the principle of independence of the judiciary is still absent, and that the number of arbitrary sentences is on a rising. This report provides a summary of the monitoring of 78 arbitrary sentences, issued for political reasons during the first half of 2020.

MONITORING SUMMARY

In the first half of 2020, 78 arbitrary sentences were handed down by Bahraini courts to 74 men and 4 children, as the following distribution: 4 by the Lower Court, 27 by the High Court, 1 by an unspecified First Instance Court, 16 by the Court of Appeal, and 30 by the Court of Cassation.

The sentences were as follows: 663 years and 10 months of imprisonment, including 12 life sentences, 5 sentences of revocation of nationalities, 4 death sentences, 2 acquittal verdicts, and a total of BD 800,000 of fines.

June witnessed the largest number of arbitrary sentences amounting to 31, 28 of which were issued by the Court of Cassation, which concluded 26 rulings in the case of the so-called establishment of a terrorist organization. This case included upholding 5 revocations of nationalities against convicts Jawad Ridha Al-Tarifi, Hassan Ali Fateel, Muhammad Mamdouh Muhammad, Daniel Hassan Al-Sayegh, Mortada Muhammad Abdul-Ridha, and 8 life sentences against Jawad Rida Al-Tarifi, Hassan Ali Fateel, Bassem Allawi, Ali Hussein Al-Fardan, Sayed Ali Alawi Ashour, Habib Abdul-Wahed, Kadhem Ali Kadhem, and Hussein Muhammad Hassan Al-Shihabi. In addition, 3 previous life sentences against Wajih Moussa Al-Qamar, child Ali Hussein Moftah, and Muhammad Jaafar were monitored in January, and 1 against Hassan Abdel-Nabi in February. Thus, the total number of those sentenced to life imprisonment (as previously mentioned) is 12.

However, the most prominent arbitrary rulings issued so far are

the upholding of two death sentences in June by the Court of Cassation against prisoners of conscience Hussein Abdullah Khalil Rashed and Zuhair Ibrahim Jassem Abdullah Al-Sanadi. This means that the levels of litigation of their lawsuits ended, and the implementation of the two rulings awaits the signature of the king. June ended with an 8-month prison sentence handed down to lawyer Abdullah Al-Shamlawi by the Lower Criminal Court in the case of his comment on fasting on the occasion of Ashura.

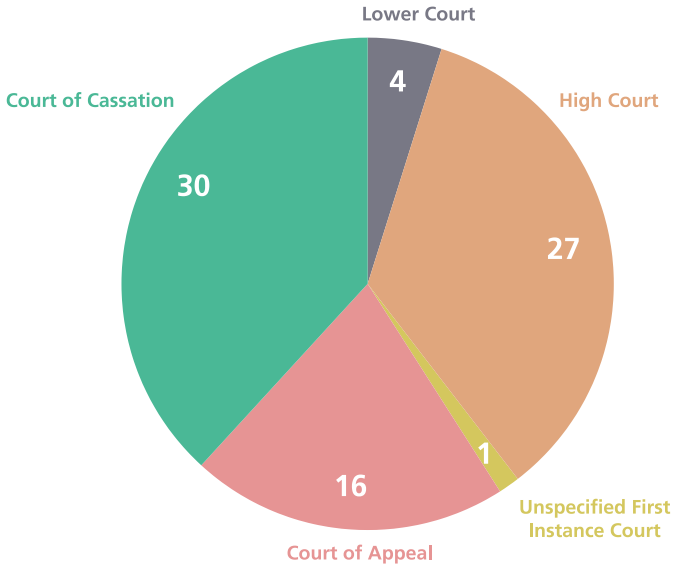
In addition to the two new death sentences, two other death sentences were upheld by the Court of Appeal against prisoners of conscience Muhammad Ramadan Issa Ali Hussein and Hussein Ali Moussa Hassan, in January, which witnessed the second largest number of arbitrary sentences amounting to 26. It was also the only month which included fines against 5 convicts totaling to BD 800,000.

The manner in which sentences are distributed by courts, months, and types is shown in the table and diagrams below.

Sentences by Type							
	Prison Years	Additional Months	Life Sentence	Revocation of Nationalities	Death Sentence	Acquittal	Fines
Lower Court	5	8	0	0	0	0	0 BD
High Court	218	0	3	0	0	2	800,000 BD
Unspecified First Instance Court	0	2	0	0	0	0	0 BD
Court of Appeal	99	0	1	0	2	0	0 BD
Court of Cassation	341	0	8	5	2	0	0 BD
Total	663	10	12	5	4	2	800,000 BD

Number of Arbitrary Sentences

- By Types of Courts -



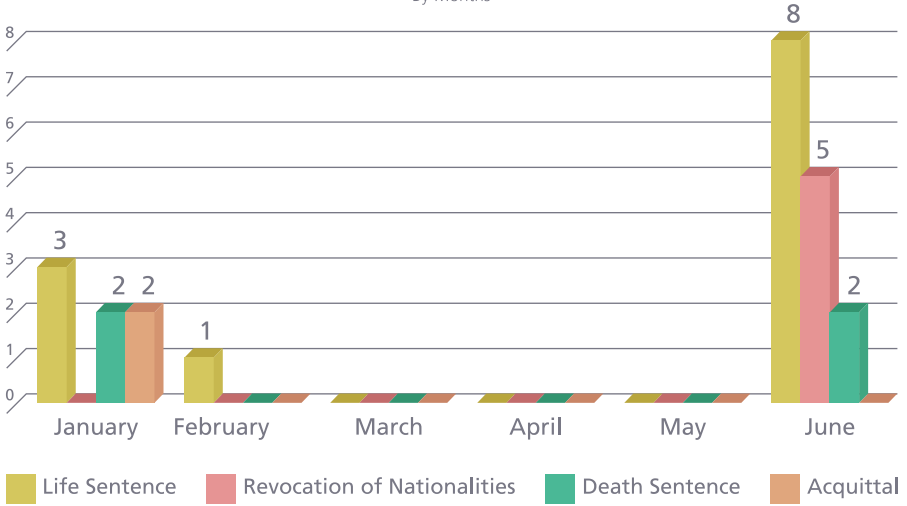
Number of Arbitrary Sentences

- By Months -



Some Types of Arbitrary Sentences

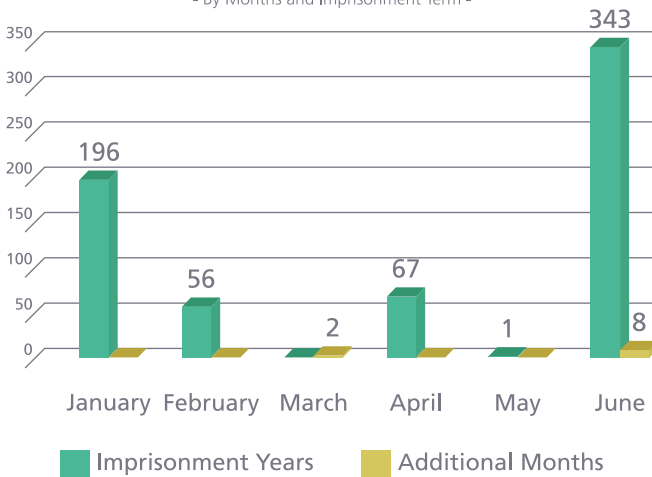
- By Months -



The prison sentences varied between a minimum of 2 months and a maximum of life sentence (25 years).

Arbitrary Prison Sentences

- By Months and Imprisonment Term -



PREAMBLE

The cases previously mentioned indicated that the judiciary and the law have been systematically used to punish activists who oppose the government's policy, although these cases clearly intervene with the right to exercise freedom of opinion and expression and other rights and freedoms guaranteed by the international law and Bahraini laws.

These trials and prosecutions occur despite the fact that Bahrain's amended Constitution of 2002 affirms the right to freedom of opinion and expression, as it is one of the rights that are protected by the Constitution and shall not be violated. Article 23 of the Constitution stipulates that, "Freedom of opinion and scientific research is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or otherwise under the rules and conditions laid down by law, provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused."

In addition, article 24 stipulates, "With due regard for the provisions of the preceding Article, the freedom of the press, printing and publishing is guaranteed under the rules and conditions laid down by law."

Article 31 stipulates, "The public rights and freedoms stated in this Constitution may only be regulated or limited by or in accordance with the law, and such regulation or limitation may not prejudice the essence of the right or freedom."

However, when reading the legal articles of the Bahraini Penal Code, under which political and human rights activists are prosecuted, it is noted that they directly undermine rights and freedoms, which leads the reader to the same conclusion reached by the report of the Bahrain Independent Commission of Inquiry, which states in paragraph 1281, "Article 165 of the Penal Code was applied in a way that infringes upon the freedoms of opinion and expression by excluding from the public debate opinions that express opposition to the existing system of government in Bahrain, as well as opinions that call for any peaceful change in the structure or system of government or for regime change." In addition, other paragraphs also indicate the same conclusion and content.

This has been ongoing since 2011. All the criticisms and debates that take place in meetings or press statements of activists in Bahrain are targeted and classified as illegal, including public debates and opinions that express opposition to the Bahraini regime as well as opinions calling for any peaceful change in its political structure, which are supposed to be an axiom of democratic governance and the basis for the exercise of freedom of opinion and expression.

The judiciary in Bahrain continues to pursue activists and political dissidents under articles of the Bahraini Penal Code, including the following:

Article 165, which stipulates that, "A prison sentence shall be passed against any person who expressly incites others to develop hatred or hostility towards the system of government."

Article 168, which stipulates that, "Imprisonment for a period of no more than two years and a fine not exceeding BD 200

or either penalty shall be the punishment for any person who deliberately disseminates false reports, statements or malicious rumors, or produces any publicity seeking to damage public security, terrorize the population or cause damage to the public interest. The said punishment shall be inflicted upon any person who holds either personally or through others any publication or leaflet containing any of the things set out in the preceding paragraph without a lawful excuse, and upon any person who possesses any device intended for printing, recording or broadcasting [...].”

Article 169, which stipulates that, “A punishment of imprisonment for a period of no more than two years and a fine not exceeding BD 200, or either penalty, shall be inflicted upon any person who publishes by any method of publication untrue reports, falsified or forged documents or falsely attributed to other persons should they undermine the public peace or cause damage to the country’s supreme interest or to the State’s creditworthiness. If such publication results in undermining public peace or causing damage to the country’s supreme interest or to the State’s creditworthiness, the punishment shall be a prison sentence.”

Even though some amendments to the Bahraini Penal Code were carried out, they did not change the government’s policy and the way it used the laws to punish dissidents. Instead, the majority of these amendments increased the targeting of the political opposition.

For example, it is noted that the amendment to the Bahraini Penal Code introducing Article 69 bis did not change anything. It stipulates, “All restrictions pertinent to the right of expression must be construed in the Penal Code or any other such law

within the context of the necessary framework of a democratic society, according to the principles of the National Action Charter and the Constitution, and in this context, practicing the right to freedom of expression is considered an excuse exempt from punishment.”¹

The Bahraini government clarified then that the addition of this article will be considered a paradigm shift that will unequivocally separate between crime and freedom of opinion and expression, so that words are not criminalized. However, reviewing the charges against many political activists, media professionals, human rights activists and social media activists and the statements and phrases that were the cause of the charges brought against them and how they were employed, contradicts the government’s claims of separating between crime and freedom of opinion and expression. The provision established in Article 69 bis – when implemented – forms a basic indication to understand the regulating or punishing provisions related to freedom of expression. Therefore, the judicial authority has no right to give an understanding not compatible with the concept stated in the article when implementing it.

The concept of the democratic society stated in Article 69 bis, can be indicated in a frame that distinguishes it from other concepts; it specifies whether the society is a democratic one or not. The practice of political action and the adoption and dissemination of political opinions through the exercise of freedom of opinion and expression of these political and non-political views through statements, publication, declaration, political speeches, conferences, etc. are one of the most

1. Law No. 51 of 2012 regarding the amendment of some provisions of the Penal Code issued by decree law No. 15 of 1976.

important elements of a democratic society; therefore, they must not be interpreted in a way that contradicts that.

Nevertheless, we find that many trials and prosecutions continue against many because of the dissemination of statements, declarations and opinions that oppose or criticize the governments policy, which is a violation of the principle of legally defining violations that implies that the legitimate exercise of fundamental freedoms cannot be legally described as violations, because the Penal Code should only prohibit forms of behavior that harm the society. This is the same conclusion presented in the report of the Bahrain Independent Commission of Inquiry in paragraphs 1282 to 1284, which refers to the implementation of articles of the Bahraini Penal Code with the aim of restricting freedom of opinion and expression, without providing for material action that results in harm to the society or the individual. For example, paragraph 1284 stipulates, "Articles 165, 168 and 169 of the Penal Code also restrict opinion and expression by criminalizing incitement to hatred towards the regime or damaging public interest, without requiring any material act that causes social or individual harm. They have been applied to repress legitimate criticism of the GoB." This applies to many cases.

RECOMMENDATIONS

- To repeal the arbitrary sentences and release and compensate prisoners of conscience immediately and unconditionally.
- The Special Rapporteur on the Independence of Judges and Lawyers to submit a request to visit Bahrain, and to pressure the Bahraini authorities to accept the visit request.
- To amend the mechanisms of appointing the Supreme Judicial Council in order to allow the people to have the power to control the judiciary's work.
- To establish a clear and transparent mechanism through which those who have the required competence, from all groups of society, are allowed to engage in judicial work.
- To establish legislative guarantees so that no other authorities can interfere in the work of the judiciary.

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