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## Human Rights Council

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### **Written statement\* submitted by the Khiam Rehabilitation Center for Victims of Torture, non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2016]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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## Death Penalty in Bahrain: Normative Framework

Although 130 countries around the world have abandoned the death penalty, it is still in practice in Bahrain. The constitution of Bahrain made no reference to this penalty but other laws such as Penal Code and Law of Protecting Society from Terrorist Acts made reference to it.

Since 2011 until now the number of Bahraini citizens and expatriates who have been condemned by courts to death penalty is larger than that of those condemned over last 40 years, i.e. since 1977. It is obvious that all death sentences passed in the last four years were mainly directed against a certain group of people and for political purposes only and have nothing to do with the law, as these cases still ambiguous and evidences were made through confessions taken under torture.

Historical background of death penalty in Bahrain:

Since 1977 the sentences of death penalty have raised considerably in Bahrain, whether those which have been executed or those which have not been executed. In that year three Bahrainis who have been accused of killing the journalist Abdulla Almadani were executed, then in 1996 the Bahraini national Essa Qamber was executed for having condemned for killing a security man during the political events which took place in 1990s. Although three death sentences were abrogated in 2001 by an Amiri Pardon Decree for three persons accused of killing in the same events of 1990s, three other persons accused of criminal acts were executed in 2006 alone. On 4<sup>th</sup> June 2008 “Maizan Nooralrahman, citizen from Bangladesh was executed, in 2010 two persons from Bangladesh were sentenced to death, as “Jassim Abdulrahman” was executed in June for having condemned by the court for killing another man from Bangladesh in Janosan village in 2005 after the court of Cassation refused the impeachment made by the convict himself and endorsed the death sentence. “Roseel Maizan” was sentenced to death in March 2010, the Appeal Court endorsed the sentence in October 2010, and the case is examined by Court of Cassation.

On 28<sup>th</sup> April 2011 the Primary Court of National Safety sentenced to death “Ali Abdulla Alsanqais, Qasim Hassan Matar, Saeed Abduljalil Saeed, Abdulaziz Abdulredah Ebrahim”, three other convicted persons “Essa Abdulla Khadim, Sadiq Ali Mehdi, Hussain Jaafar Abdulkarim” were sentenced to life prison by the same court for having accused of killing two policemen, “Kashef Ahmed Mandoor”, and “Mohammed Farooq Abdulsamad”, this is a special court created in accordance to Article 7 of Royal Decree No 18 / 2011 related to the State of National Safety.

The “Law of Protecting Society from Terrorist Acts” (No 58/ 2006) and its amendments were issued, some of its articles provide for death penalty for perpetrators of some crimes. Jurists and human rights defenders see in this law as a legal instrument at the hands of the authorities to punish opponents’ under pretext of fighting terrorism, especially Article 3 which gives this law a superiority over all other laws, in addition to the ambiguity of terrorism definition mentioned in Article (1), and the multiplicity of crimes which count for 10 crimes in accordance to Article (2) of this law. Decree No 20/2013 amended Law No 58/2006 by adding Article 24bis to this law which provides: “in addition to penalty already passed, the nationality of person convicted in crimes mentioned in articles 5 to 9 and 12, 17 of this law can be revoked; sentence of nationality revocation can be executed only after the King’s approval”.

Crimes punishable by death:

- Aggravated murder:

Murder of the perpetrator’s close relatives or of a public official, and murder using poisonous or explosive materials are all-punishable by death.<sup>1</sup>

- Murder:

Murder is punishable by death<sup>2</sup>

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<sup>1</sup>Bahrain Penal Code 1976, art. 333

- Other offenses resulting in death:

Calumniation – or falsely reporting information to judicial officials – is punishable by death if it results in a death sentence that is carried out.<sup>3</sup>

The following crimes, when they result in death, are also death-eligible: kidnapping, especially under aggravating circumstances;<sup>4</sup>rape, sexual assault or statutory rape, especially under aggravating circumstances;<sup>5</sup>assault;<sup>6</sup>arson;<sup>7</sup>the use of force in theft;<sup>8</sup> drug trafficking;<sup>9</sup>deliberately obstructing funerals or memorial services;<sup>10</sup>and certain crimes against property, transportation or agriculture under aggravating circumstances

- Terrorism-related offenses not resulting in death:

Forming or leading an armed gang which uses force to occupy or destroy a public or Government building,<sup>11</sup>which has attacked the local population, which uses arms to resist public authority,<sup>12</sup>or which aims to expropriate property or land are punishable by death.<sup>13</sup>Also, the king signed into law the “Protecting Society from Terrorist Acts” bill in August 2006; Article 6 of the law prescribes the death penalty for acts that “disrupt the provisions of the Constitution or laws, or prevent state enterprises or public authorities from exercising their duties.”<sup>14</sup>According to this law, committing or planning terrorist acts is punishable by death.<sup>15</sup>

- Rape of child not resulting in death:

Sexual assault of a girl under the age of 16, without her consent, is punishable by death even when it does not result in death.<sup>16</sup>The non-consent of the victim (statutory rape) is presumed if she is less than 14 years of age.<sup>17</sup>

- Arson not resulting in death:

Arson of a public or Government building, even if it does not result in death, is punishable by death, but only if it is carried out against the state or civil servants.<sup>18</sup>

- Treason:

Deliberately committing an act which affects the country’s independence, unity, or territorial integrity;<sup>19</sup>taking up arms against Bahrain; assisting the enemy in weakening the Armed Forces; inciting service in a hostile armed

<sup>2</sup>Bahrain Penal Code 1976, art. 333

<sup>3</sup>Bahrain Penal Code 1976, art. 234

<sup>4</sup>Bahrain Penal Code 1976, arts. 357-359

<sup>5</sup>Bahrain Penal Code 1976, arts. 148, 279

<sup>6</sup>Bahrain Penal Code 1976, arts. 344, 349

<sup>7</sup>Bahrain Penal Code 1976, art. 346,

<sup>8</sup>Bahrain Penal Code 1976, art. 349 amended by Legislative Decree No. 1 of 1986 With Respect to Amending Certain Provisions of the Penal Code, art. 1

<sup>9</sup>Bahrain Penal Code 1976, art. 277

<sup>10</sup>Bahrain Penal Code 1976, art. 376

<sup>11</sup>Bahrain Penal Code 1976, art. 315

<sup>12</sup>Bahrain Penal Code 1976, art. 349

<sup>13</sup>Bahrain Penal Code 1976, arts. 409, 414,

<sup>14</sup>Bahrain Penal Code 1976, arts. 410, 414

<sup>15</sup>Bahrain Penal Code 1976, arts. 411, 414

<sup>16</sup>Bahrain Penal Code 1976, arts. 413-414

<sup>17</sup>Bahrain Penal Code 1976, art. 155

<sup>18</sup>Bahrain Penal Code 1976, arts. 284,

<sup>19</sup>Bahrain Penal Code 1976, art. 279

force;<sup>20</sup> facilitating enemy entry into Bahrain or surrendering State property intended for defense using explosives to overthrow the state; <sup>21</sup>making attempts on the life or freedom of the Amir or Crown Prince; or cooperating with a foreign power or leading or forming an armed gang in an attempt to overthrow the Constitution, or with ruler, system of government <sup>22</sup>are punishable by death. The death sentence may also be handed down for any felony committed in wartime with the intent of helping the enemy, if the felony contributes to realizing this purpose.

- Espionage:

Surrendering or destroying defense secrets or intending to do so; <sup>23</sup>or 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, <sup>24</sup>are all punishable by death Military offenses not resulting in death:

Deliberately damaging weapons or other items used to defend the country during wartime is punishable by death. <sup>25</sup>If a person with authority to give orders to the armed forces or police personnel asks or instructs the latter to oppose government orders for an illegal purpose and is successful in doing so, this crime is punishable by death. <sup>26</sup>

Methods of Execution:

Shooting by firing squad.<sup>27</sup>

Death by firing squad is stipulated by Bahrain's Penal Code. <sup>27</sup>In June 2008, Mizan Noor Al Rahman Ayoub Mia was executed by shooting. <sup>28</sup>

Country Developments:

Bahrain took a positive step when it moved its vote from "opposition" to "abstention" during the UN General Assembly vote on a resolution on the use of the death penalty

No executions were carried out in Bahrain five death sentences were imposed on five men, four Bahraini nationals and one Yemeni national, while one commutation was granted.

Then the Court of Appeal upheld the death sentence of Maher Abbas Ahmad (also known as Maher al Khabbaz). His lawyer had stated that the court accepted his "confession", which was taken under torture, as evidence against him, furthermore, on 7<sup>th</sup> December 2015, the Cassation Court has rejected the death penalty and it was submitted to the appeal court again.

Since February 2011 Bahrain's court has issued a number of death sentences, some in military courts and others in criminal courts, in contravention to Article 10 from the Universal Declaration of Human Rights, and Article 6 of the International Covenant on Civil and Political Rights. While these same courts have brushed aside cases of Bahraini security forces accused of killing citizens, as well as practices of torture in detention centres, and the firing of live ammunition on peaceful protests.

The following have been sentenced to death in Bahrain since the popular 2011 uprising:

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<sup>20</sup>Human Rights Watch, World Report 2009 – Bahrain, <http://www.unhcr.org/refworld/docid/49705fac85.html>,

<sup>21</sup>Bahrain Penal Code 1976, art. 344

<sup>22</sup>Bahrain Penal Code 1976, art. 279

<sup>23</sup>Bahrain Penal Code 1976, art. 113

<sup>24</sup>Bahrain Penal Code 1976, art. 114

<sup>25</sup>Bahrain Penal Code 1976, art. 115

<sup>26</sup>Bahrain Penal Code 1976, art. 116

<sup>27</sup>Bahrain Penal Code 1976, art. 51

<sup>28</sup>Capital Punishment UK, Executions in June 2008, <http://www.capitalpunishmentuk.org/june08.html>

Mohammed Isa (32 years-old) – sentenced in 2014

Hussain Moosa (28 years-old) – sentenced in 2014

The latest group of Bahrainis to be given the death penalty came on 26 February 2015, and they are:

Abbas AlSamea,

Sami Mushaima,

Ali AlSingace.

the appeal court has confirmed their death sentences on 31<sup>st</sup> May 2016

Salman Essa who been sentenced to death on 29<sup>th</sup> April 2015.

Whilst one of them will also have his citizenship stripped for alleged involvement in the killing of an Emirati police officer, Tariq Al-Shihi, in 2014.

In the same case, the court also sentenced 7 other Bahrainis to citizenship stripping.

As such, the total number of Bahrainis on death row has risen to 6 including a sentence on 31st December 2015 which the government withheld the name; all coming from politically- related backgrounds following the uprising in 2011.

Conditions of Detention:

Defendants: “The cases are fabricated, the torture is brutal, and death penalty sentence too severe”

All those sentenced to death have complained of the same or similar treatments and processes, such as arbitrary arrests, severe torture and obscure and questionable evidences. These all strongly indicate and illustrate a political scheme. The typical practices endured by death row inmates include:

- Blindfolding
- Long periods of forced standing
- Electrocution
- Beatings with hose pipe and metal sticks
- Insults
- Threats that a family member will be targeted
- Sleep deprivation
- Food deprivation
- Prayer deprivation
- Toilet deprivation
- Beatings in sensitive areas, such as the genitalia
- Cold water splashing
- Forced stay in cold rooms
- Suspension from ceiling (falaqa)
- Stripping of clothes
- Sexual assaults
- Solitary confinement

Death row prisoner, Abbas AlSamea, confirmed such practices after his sentencing on 26 February 2015, stating:

“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.”

Recommendations:

1 – Urge the UN Human Rights Council and concerned bodies to prevent countries like Bahrain, which lack justice and fairness and have a history of trial manipulation, from issuing and carrying out death penalties, specifically against political and human rights activists.

2 –the international community should act to oppose and restrain death sentences lacking conditions of fairness, transparency and fair litigation, and compel the Government of Bahrain to abolish the death penalty against political opponents and human rights activists who exercise their right to freedom of expression.

3– Oblige the Government of Bahrain to set a date for Special Rapporteurs to visit, communicate and meet with death row prisoners.

4– Urge the Government of Bahrain to find alternative sentences for prisoners found to be guilty by an independent and fair judiciary.

5- Implementing recommendations of UN HRC and BICI.

6- Abrogate all articles related to death penalty in Bahraini laws, especially Penal Code and Law of Protecting Society from Terrorist Acts.

7- As stipulated by International Law “innocence must be presumed”, this legal principle must not be violated by disclosing publically any information on accused persons prior to legal proceedings.

8- To set up a committee to review Penal Code, Law of Criminal Procedures, Law of Protecting Society from Terrorist Acts and other laws by introducing amendments to articles of these laws in order to make them compatible with international legal standards.

9- Request the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Bahrain.

10- Special Rapporteur on Independence of Judges and lawyers must be allowed to visit Bahrain.

11- Special Rapporteur on Torture must be allowed to visit the country.

12- Special Rapporteur on Freedom of Peaceful Assembly and Associations must be allowed to visit the country.

LuaLua Center for Human Rights Gulf Civil Society Associations Forum, an NGO without consultative status, also shares the views expressed in this statement.