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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Khiam Rehabilitation Center for Victims of Torture, a 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.

[13 February 2017]

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

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Bahrain: Unfair Trial – Case of Prisoner of Conscience, Opposition Leader Sheikh Ali Salman an Example*

Introduction

Bahrain's High Appeals Court upheld on Monday (December 12, 2016) a nine-year jail sentence handed down to opposition leader and Al-Wefaq Secretary-General Sheikh Ali Salman.

The court said that it accepted, in consensus, the two appeals in form. It sentenced Sheikh Salman to 7 years in prison over the first, second and third charges and upheld 2-year jail term over the fourth charge brought against him. Thus, the total sentences against Sheikh Salman became 9 years.

The cassation court had overturned the previous appeals verdict that sentenced Sheikh Salman to 9 years and returned the case to the appeals court that confirmed the same sentence.

Arrest and Trial

Sheikh Ali Salman was arbitrarily held in custody since his detention on December 28, 2014, until the date of his unfair trial, to which he was subjected due to political speeches he had delivered since 2011, in which he demanded democratic, political, and economic reforms, in addition to fair division of wealth. Sheikh Salman criticized (in his speeches) the government's policy in relation to various files, like the state's financial and administration corruption, discrimination against citizens, human rights violations committed by security personnel against citizens.

The evidence used to direct all these accusations were a group of speeches and statement, which Sheikh Salman delivered between 2012 and 2014. They were interpreted, and distorted to punish him over his political activism opposing the government, in a way that restricts freedom of opinion and expression. Nothing in evidence shows actual practices or any criminal act that could be deemed a crime punishable by law.

The speeches and statements that have been employed (in the case) as criminal evidence, and in addition to the fact that they are not suitable to be evidence, were cut and distorted to give false evidence to be exploited as evidence for charges raised by the Public Prosecution against Sheikh Ali Salman.

The detention and judicial harassments are arbitrary, as it is clear that these came because of his practice of political affairs and human rights recognized by international law and the Bahraini legislations.

When we review legal articles from the Bahraini law and constitutions, the Universal Declaration for Human Rights, the International Covenant on Civil and Political Rights, and international law principles, we would establish that the real aim behind Salman's detention and indictment is to punish him for his political activities opposing the government, and to prevent him from carrying them out.

We conclude by viewing the statements on which the indictment was based, with taking into account the marring, distortion, interpretation in ways that cannot be inflicted upon it, and contradiction with explicit phrases in the speech text.

Therefore, it is an indictment with no legal basis, and very far from human rights and legal standards; it is rather a violation of rights and freedoms.

1. Human Rights Violations Related to Arbitrary Detention

What Sheikh Ali Salman was subjected to, if taking into account all rights and legal considerations in accordance with international and Bahraini law, is an arbitrary detention that violates articles (9, 10, 11, 18, 19, 20, 21) of the Universal Declaration of Human Rights, and articles (9, 14, 18, 21, 19, 22, 25) of the International Covenant on Civil and Political Rights. It is also a violation of Bahrain's Code of Criminal Procedures.

Bahrain's violation of the aforementioned article, in relation to the detention of Sheikh Ali Salman, followed by his trial, is a violation of human rights principles and general rules. For example, the Public Prosecution, followed by the court, insisted on extending the detention of Sheikh Ali Salman, despite him being a public political figure. This issue, in addition to violating many principles, is a blatant violation of the concept stating, "It shall not be the general rule that persons awaiting trial shall be detained in custody (...)." ¹

The Working Group on Arbitrary Detention has confirmed that depriving al-Wefaq Secretary General Sheikh Ali Salman from his freedom is an arbitrary detention, for violating the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. ²

The Working Group on Arbitrary Detentions requested from the government in a report issued September 2015, to adopt necessary measures to fix the situation of Sheikh Ali Salman immediately, making it compatible with the principles contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. ³

On the other hand, and from the follow-up on Sheikh Ali's detention, it is clear that the internationally and domestically ensured guarantees of a fair trial, were absent in the pre-trial. For example:

1. The right to liberty: With the absence of the clear legal justification for the continued detention of Sheikh Ali Salman, it was deemed a restriction of freedom. This comes especially with the consensus of the international community's human rights opinions, on top of which is UN Secretary General and the UN High Commissioner for Human Rights, who dubbed Sheikh Ali Salman's arrest an arbitrary arrest, and demanded his immediate release.
2. The detainee's right to attain and view information on his case: This was an absent right, with lawyers confirming that they were denied access to the investigations minutes and pre-trial case file, despite the fact that this right is stipulated in the Bahraini Code of Criminal Procedures. This is something the Public Prosecution neglected, although lawyers repeatedly requested to have access them, before and after each hearing. The decision was only announced in the last investigations session, that was over new documents, that were also not examined or viewed.
3. The defendant's right to a lawyer before the trial: Although the Public Prosecution confirmed that this right was provided to Sheikh Ali Salman, yet in fact it was absent. The defense team was only allowed to meet Sheikh Ali Salman 10 minutes before each hearing, in places that do not guarantee the privacy needed in a lawyer-client relation, and without granting lawyers access to case documents. In these circumstances, the "defendant's right to a lawyer before trial" is not provided.
4. Rights and guarantees during investigations: Among the rights and guarantees that were absent during the investigation, are the right to a time space, sufficient facilities to prepare the defense, right to appeal the legitimacy of detention, the right to a fair trial in a reasonable time period, or the release of a detained individual (...) among many others. The Public Prosecution interrogated Sheikh Ali Salman for long hours, once reaching 8 hours without taking into account the fatigue underwent by Sheikh Ali and his lawyers. The Public Prosecution looked into criminal evidences in political speeches and statements, and ignored patent evidences exhibited in the same evidence.

Most importantly, there was an absence for the principle of identifying irregularities by law, before, during, and after the trial, previously mentioned.

¹See Article (9) of the International Covenant on Civil and Political Rights

²Spokesperson for the UN High Commissioner for Human Rights. Press briefing note on Bahrain., Geneva, 30 December 2014

³Bahrain, UN rights experts urge release of opposition politician detained for peaceful expression, GENEVA (4 FEBRUARY 2015)

2. The Court's violation of Human Rights and Standards of Fair Trial

In addition to pre-trial guarantees, which were absent during the investigations period, it could be noted that Sheikh Ali Salman's trial did not depict international standards of fair trials. Among the absent guarantees during the trial:

- The right to equality before the law and the courts.
- The right to be tried before an independent and impartial court of competent jurisdiction.
- The right to the equitable consideration of the cases.
- The right to the public consideration of the cases.
- The presumption of innocence of the accused.
- The right to trial without undue delay.
- The individual's right to defend himself, or through a lawyer pleading for him.
- The right to attend trials and appeals hearings.
- The right to call witnesses and hold discussions with them.

Recommendations:

- The UN Special Rapporteur on the Rights of Peaceful Assembly and of Association, Mr. Maina Kiai, along with the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and the Special Rapporteur on the Independence of Judges and Lawyers, ought to petition again to visit Bahrain. UN HRC member states ought to pressure Bahrain to allow the UN Special Rapporteurs to visit Bahrain.
- The immediate release of Sheikh Ali Salman, and all prisoners of conscience.
- The guarantee of independent and fair judiciary, through adopting a mechanism that ensures Bahraini courts abide by international standards for fair trials.
- The amendment of laws restricting freedom of opinion and expression, so that they are compatible with the International Bill of Human Rights.
- The halt of practices and procedures that restrict freedom of opinion, expression, and peaceful assembly.

*Bahrain Forum for Human Rights (BFHR), NGO without consultative status, also shares the views expressed in this statement.