



# General Assembly

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## Human Rights Council

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Agenda item 3

**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]

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

GE.17-02462(E)



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## **Unjust Trials in Bahrain\***

The judicial authority in Bahrain faces the disapproval of the majority of people and criticisms of human rights organizations and others. This is due to the belief that it is not independent from the powers of the Executive authority, because of the practices witnessed by that authority and of the absence of legislative assurances that give the King the supreme power in assigning judges without any genuine guarantee that the people is the source of authority.

Article 33 of the Bahrain Constitution stipulates that “The King chairs the Higher Judicial Council. The King appoints judges by Royal Order, as proposed by the Higher Judicial Council.”

Also, article 69 of the Judicial law stipulates “The King shall chair the Supreme Judicial Council (SJC) which shall consist of the following:

- (a) President of the Court of Cassation.
- (b) Public Prosecutor.
- (c) President of the High Civil Court of Appeal.
- (d) The most senior two puisne justices of the High Civil Court of Appeal.
- (e) President of the High Shariaa Court of Appeal (Sunni Department).
- (f) President of the High Shariaa Court of Appeal (Jaafari Department).

The King of Bahrain maintains wide authority in the Bahraini constitution. He is head of all authorities and has vast power in contradiction to what the constitution states of separation of powers. The king and the royal family also maintain vast power in the judiciary, therefore people’s censorship over the judiciary is entirely absent.

In addition, the representation of all classes of society in the judicial authority is almost absent. The ratio of Shiite judges and District Attorneys in comparison to other groups of society, is very small. It is noteworthy to mention that Shiites in Bahrain comprise of more than 70% according to international statistics. This sheds light on the lack of objectivity in the mechanism of assigning judges and District Attorneys. The disease of discrimination infests in the judiciary sector when assigning judges, district attorneys and others in Bahrain. This discrimination casts its shadow on justice in society.

Between 2011 and 2016, the Bahraini courts issued many rights and politically-influenced rulings, after trials that were described as lacking the standards of a fair trial. Many of these standards were mentioned in the law that protects the society from terrorism.

Despite the rights and political demands of an impartial investigation into some of the events that the Bahraini government described as terrorist incidents, the Bahraini judiciary ignores such demands and tries defendants in many cases under this law. These events cannot be linked to terrorism, such as criminal arson and use of violence during protests.

The law is being adapted in many cases, where defendants are being tried according to the law on terrorism, not according to the Bahraini Penal Code. For example, article 178 of the Penal Code states that “Every person who takes part in a demonstration in a public place where at least five persons are assembled with the aim of committing crimes or acts intended to prepare or facilitate the commission of such crimes or aimed at undermining public security, even though for the realization of a legitimate objective, shall be liable for imprisonment for a period of no more than two years and a fine not exceeding BD200, or either penalty.”

Article 179 of the same law stipulates, “If one demonstrator or several demonstrators attempt to use violence for the realization of the purpose for which they have assembled, their action shall be deemed as a riot. The penalty for each person who knowingly takes part in such riot shall be a prison sentence and a fine not exceeding BD 500, or either penalty.”

Moreover, despite criticisms from rights activists towards articles that constrict the practice of rights and freedoms, such as the two articles mentioned above, Bahraini courts neglect articles of the Penal Code regardless of its direct link with a lot of cases related to assemblies and protests. The courts alternatively apply the law on terrorism in numerous cases while the accusations were not in accordance with the said law. This is through the adaptation and interpretation of the law in a loose sense with the use of terms such as “intention or purpose or pretext of terrorism.” Protests are turned into an act of terrorism, in order to sentence strict rulings against protesters and their supporters.

This is in light of the escalation of the protests in Bahrain. Trials coincided with the events of 2011 started, trying most protesters by categorizing the cases as felonies. These legal cases are being dealt with under the law of assemblies and the Penal Code as being: unlicensed processions, car tire arson, blockage of roads, and use of inflammable bottles etc. In general, this kind of cases was the bigger percentage of cases that protesters in Bahrain are being tried with. However, due to the large amount of such cases in criminal courts, the number of Minor Courts increased from 6 courts before the events of 2011 to 11 at the end of the same year.

With the flow of the events mentioned above, aimed at ruling stricter sentences against all forms of protests and political opposition, the Bahraini judiciary along with different laws were applied to punish political movement in Bahrain. On this basis, many politicians, rights activists and media people were prosecuted.

Before presenting some cases pertinent to the targeting of activists and protests, we must mention some of the principles that guides the acts of judiciary, the legal description and adaptation of the crime. For example, the constitutional principle “No penalty without the law” bans the judge to establish crimes and consequent punishments by himself. His job is limited to apply the law specified by the legislator on the incident being presented to him.

This constitutional principle is directly linked to another constitutional principle, i.e. separation of powers. Every kind of authority is specialized with a specific job. The legislative authority is specialized with placing laws, the executive power executes the laws, while the judicial authority applies the laws that the legislative law placed. The significance of separation of powers and that of the independence of judiciary become distinct.

In Bahrain, the executive power intervenes in all other powers. Many facts and witnesses state that the executive authority in Bahrain interferes in the work of the judicial power, even when it comes to the adaptation of the law. At the time where the judge should adapt the law stipulated by the legislator on the incident being presented to him and specify the appropriate law for the punishment, we find that the judiciary in Bahrain adapts the law on Protecting Society from Terrorists Acts with crimes that do not include the acts and facts considered terrorist which might require a punishment under the law of terrorism. The legal specification of the crime is absent and the legal adaptation of the crime does not fit with the legislation applied, especially that the law on Protecting Society from Terrorists Acts is loose regarding the specification of terrorist acts that can be accurately incriminating.

#### Recommendations:

- The Special Rapporteur on the Independence of Judges and Lawyers must petition to visit Bahrain and pressure the Bahraini authorities to accept the visit.
- The mechanisms of assigning the Higher Judicial Council must be amended in order to leave space for the people’s authority to censor the actions of judiciary.
- A clear and transparent mechanism must be placed to give space for all factions of society who are legible for practicing judiciary.
- Legislative assurances must be placed so other authorities would not interfere in the judiciary.

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