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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.

[17 August 2017]

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

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Bahrain: The Military judiciary in comparison with the standards and guarantees of fair trials*

The trials of civilians in the military judiciary lacks all standards and guarantees of fair trials.

Human rights introduction:

The right to a fair trial is one of the fundamental human rights that should be universally applied all over the world. It was established by the Universal Declaration of Human Rights, which has been adopted by the governments of the world since more than 57 years ago and placed at the top of the universal and international human rights system. Since 1948, this right enshrined in the Universal Declaration of Human Rights has become a legal obligation incumbent on all States as part of the international customary law. The right to a fair trial, which has been identified in details since 1948, has been reaffirmed in a set of legally binding treaties such as the International Covenant on Civil and Political Rights, which was adopted by the United Nations General Assembly in 1966. This right and other standards have also been recognized and provided for in many treaties that do not fall under the international and regional treaties adopted by the United Nations and regional and international governmental bodies. These standards have been designed to be applied in all judicial systems in the world and to take into account the enormous diversity of legal and judicial processes, since they state the minimum guarantees that all systems should provide. These international human rights standards represent, in terms of fair trials, a consensus reached by the nations of the world on the criteria for assessing the manner in which governments treat persons accused of crimes of any kind and with any motives.

Since the Kingdom of Bahrain is a member of the United Nations and has ratified the International Bill of Human Rights, in accordance with Article 37 of the Constitution of the Kingdom of Bahrain, the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and other international treaties have become part of the national legislation and as an applicable law, except for the parts that Bahrain declared it has partial reservations about, which does not disrupt their essence. Therefore, Bahrain is obliged to harmonize its domestic legislation with the international law. Denying this obligation makes its ratification of the International Bill a formality that lacks the guarantees of the core of the rights ensured by the charters and treaties.

Legal and human rights observations on the Bahraini Military Judiciary Law:

With regard to the trial of civilians in military courts:

1. The Military Judiciary Law does not expressly establish the right of the accused to seek counsel from the moment of arrest onwards, during interrogation sessions, and in court hearings.
2. The Military Judiciary Law gives those accused of felonies only the right to have a lawyer with them in court hearings.
3. Article 2 of the Military Judiciary Law provides that a criminal action shall not be abated, contrary to article 18 of the Code of Criminal Procedure, which stipulates that “A criminal action involving felonies shall abate upon the lapse of 10 years, in case of misdemeanours shall abate upon the lapse of 3 years and in case of offences upon the lapse of one year [...]”

Article 3 of the Military Judiciary Law stipulates that any person accused of initiating a crime shall be subject to the penalty prescribed for the perpetrator of the original crime, in violation of Article 37 of the Penal Code, which reduces the penalty inflicted upon the person who is found guilty of initiating the crime without completing it.

5. Article 11 (b) of the Military Judiciary Law stipulates that, based on the suggestion of the Director of the Judiciary, a decision shall be made by the Commander-in-Chief to determine the conditions and procedures for the appointment and discipline of members of the military judiciary, the organization of their duties, and the judicial inspection of them. This is contrary to Article 69 of the Judicial Authority Law, which grants this authority to the Supreme Council, which is composed of the President of the Court of Cassation, the Attorney General, and five members of the judiciary. Here lies the danger of the lack of independence of the Military Judiciary and its submission to the will of an individual, which violates the standards of an independent judiciary.

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6. The Military Judiciary Law does not expressly determine the duration of remand and does not set time limits, which makes this issue extremely dangerous.
 7. Article 18 of the Military Judiciary Law stipulates that the Military Prosecution shall carry out confinement, detention, arrest and imprisonment in military prisons. As civilians became targeted by this law after the amendment, it is possible that this article shall be applied and they may not be sent to civil prisons such as the Reform and Rehabilitation institution (Jaw Prison).
 8. Article 53 of the Military Judiciary Law stipulates that the trial shall be public, but gives the court the right to make the trial secret whenever it deems appropriate and with broad authority under the pretexts of public order, moralities and preservation of secrets.
 9. Article 58 of the Military Judiciary Law stipulates that only a person accused of a felony may be assigned a lawyer if he didn't have one. This article grants the right to a counsel only in court proceedings because the president of the court is the one who decides to assign a lawyer, thus, the law does not expressly grant the right to a counsel during interrogation sessions.
 10. Article 72 of the Military Judiciary Law stipulates that the rulings for crimes set forth in section 2 thereof cannot be appealed against, and these articles target both civilians and military personnel after the last amendment. Incidentally, article 105 of this Law was used in one of the charges against the Secretary-General of Al-Wefaq Society.
 11. The recent amendment to the Military Judiciary Law (article 17 bis 1) has granted the military judiciary the power to apply the Law on Protecting Society from Terrorist Acts, although this is within the jurisdiction of civil criminal courts, thus a contradiction of jurisdictions is created. In addition, under the Law on Protecting Society from Terrorist Acts, political activity and peaceful opposition are being tried.
 12. Article (17 bis 1) also gave the military judiciary jurisdiction over the prosecution of civilians (opposition and human rights activists) under Chapters 1 and 2 of the special section of the Penal Code, which could lead to tightening and intensifying sanctions against peaceful dissidents.
 13. The death penalty in the Penal Code, the Military Penal Code, and the Law on Protecting Society from Terrorist Acts, with a total of 61 articles and clauses, has become in the hands of the military judiciary, thus increasing the danger of the sentences against the opposition and political and human rights activists.

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