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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.

[07 February 2017]

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

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Trial of Shiite Leader in Bahrain Ayatollah Sheikh Isa Qassim*

An official in the Bahraini judiciary declared, on 30/1/2017, that the court adjourned the trial of Shiite Leader in Bahrain Ayatollah Sheikh Isa Qassim to 27/2/2017, based on a Public Prosecution's petition. The following is a rights reading on the matter, which displays a sectarian oppression on Shiism in Bahrain that consists of more than 60% of the religious demographic in the state. It also explain that the trial is that of the Khums tax.

Introduction:

Khums (literally "one-fifth"): is a basic cornerstone of Islam. Muslims of the Jaafari sect (i.e. Shiites) follow this religious duty, wherein religious ordinances obliges every legally competent Shiite to pay the specified percentage (one-fifth 1/5) of the excess of a person's possessions once a year, with its pertinent detailed ordinances. Shiites in Bahrain are not exempted of this duty, and in fact perform this obligation in a sense that all other religious duties cannot be truly fulfilled without it.

Shiite religious scholars have agents all over the world who are assigned with collecting these monies as stated by Shiite religious ordinances and handling them also according to specific and recognized guidelines.

Ayatollah Sheikh Isa Ahmed Qassim is an Islamic jurist with authority to collect Khums on behalf of religious spiritual leader Supreme Ayatollah Sayed Ali Sistani. For more than ten years, Sheikh Isa Qassim has a bank account to deposit money and preserve it from any risks. He performs bank transactions as required.

The Bahraini government is aware of these transactions, because the Central Bank of Bahrain supervises such dealings over local banks.

Therefore, we face an exclusivity of the Jaafari sect (Shiism) being an Islamic duty for every Muslim. It is warranted by article 22 of the Kingdom of Bahrain's constitution of 2002, and also warranted by International Covenants (Article 18 of the International Declaration of Human Rights, article 5, paragraph D subsection 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, and article 2 of the International Covenant on Civil and Political Rights.)

The Public Prosecution based the charges on the following punitive articles:

- 1- Articles 64 and 111 of the Bahraini Penal Code.
- 2- Article 1; article 2 paragraph 2 clauses a, b, c; article 3 paragraph 2 clause c; and article 3 paragraph 3 of the Legislative Decree on prohibition of and combat of money laundering.
- 3- Article 1, 2, and 14 clauses 2 and 4 of the Legislative Decree on organizing money collects for public purposes.
- 4- Article 1 paragraph 2 and article 2 paragraph 1 on the law of raising funds for charity.

Legal Commentaries:

If the legal principle that a suspect is innocent until proven guilty in a legal trial provides the necessary assurances to practice the right to defense at all levels of inquiries and prosecution as stated by the law, the Bahraini law of Criminal Procedures declared the grounds for a criminal lawsuit the presence of evidence and proof that presumes there is a crime punishable by law. By following the case findings, we notice that the act of collecting Khums money is a duty performed by Shiite Muslims for a thousand years, and that Sheikh Isa Ahmed Qassim being a jurist and legitimate representative had received Khums money for ten years and has a special bank account for these amounts of money. In addition, his procedures are legally sound and do not contain any criminal suspicion.

The criminal lawsuit was preceded by a decree issued by the Minister of Interior Affairs and ratified by the Prime Minister and the King of Bahrain to revoke Sheikh Isa Qassim's Bahraini nationality with no objective legal

justification for this decree. This made this decision internationally condemned and denounced rights and politically speaking, which caused the Bahraini authorities to be at fault.

After this bundle of procedures, the authorities resorted to filing a lawsuit on charges of money laundering by collecting and handling Khums money on Sheikh Isa Ahmed Qassim. Peculiarly, this type of crime needs concrete evidence the Public Prosecution failed to present, because all of Sheikh Isa's documentations were legally sound and specifies the amounts of money and how it was handled with according to the Islamic and Shiite law. Despite all this, the Prosecution referred the case to trial urgently.

By examining the files in the Khums case Ayatollah Sheikh Isa Qassim was accused of, it is evident how the case was engineered and how the Khums money was targeted since the case was built against him. The matter of revoking Ayatollah Sheikh Isa Qassim's nationality was in bad faith, apparent through the inquiries of security authorities of a reason to justify the revocation. When one reads the case file, the result is that the Financial Intelligence Directorate, through criminal investigations, was fully aware that the money allegedly being laundered was Khums money. This is evident when one inspects the investigations report of the Financial Intelligence Directorate on May 19, 2016 and on June 2, 2016. However, knowing that Khums is categorized under the exclusivity of the Jaafari sect, the Prosecution incriminated him by the law on collecting money for public purposes. In this sense, collecting Khums money would be incriminating for being collected without a license, then the money would be illegal and any transaction that uses Khums would be considered money laundering.

Through analysis, we have reached the following comments:

1. Investigations report of the Financial Intelligence Directorate on May 19, 2016:
 - a. In line 8, the officer indicates in the report that the money collected is Khums.
 - b. In the principle of criminal procedures and investigations, the suspect's ID number must be noted so the suspect could be accurately identified. However, when Ayatollah Sheikh Isa Qassim's name was mentioned, his ID number was not written, although it was specified for other suspects in the same report. This indicates that the matter of nationality revocation was in bad faith.
 - c. The lieutenant relied on confidential sources in his investigations and petitioned the Public Prosecution for a warrant to inspect the Sheikh's accounts. Although the Prosecution did not hear the testimony of the confidential sources to check its reliability, the Prosecution gave him permission anyway.

On this basis, we have reached the following outcome:

First: Prosecution for accusations with no legal grounds that punishes Khums duty, its money and its handling. Bahraini laws do not specify the organization or punishment on Khums neither primarily nor secondarily. If we look into the laws that the Prosecution based its grounds for prosecuting Ayatollah Sheikh Isa Qassim on charges of collecting and handling Khums money, there is no clause that incriminates this. The religious foundation of the action of Khums cannot possibly be shaped to be incriminating. The whole matter is that the Public Prosecution blatantly broke the law by adjusting lawful acts as being convicting.

Among the steadfast legal principles is that there is no crime nor punishment but through the clauses of law. We have a legal project and no law incriminates these actions. On the contrary, the Bahraini Constitution stipulates in article 22 of 2002 of ensuring Islamic rituals completely. If Khums duty is a distinctive act of the Jaafari sect, then the constitutional legislator banned a regular law established by a regular legislator to touch Islamic rituals or religious rituals and their practice.

Second: When the Public Prosecution initially adapted the accusations Ayatollah Sheikh Isa Qassim and two others were charged on regarding Khums money, it fell into error when it inspected a legal action and a religious duty with no criminal implications. In other words, no one is harming or being harmed by this action. On the other hand, the Public Prosecution did not base its actions on a law that allowed it to investigate a matter of no criminal suspicions, but it rather went beyond that to describe collecting and handling Khums money as a crime punishable by law. The Prosecution was cunning to base its charges on laws that do not incriminate the action as they claim.

Third: The Khums duty is not categorized under the concept of collecting money for public purposes that certain laws stipulate (law of raising fund for charities, law of collecting money for public purposes, and law of prohibition of and

combat of money laundering). All these laws do not mention the Khums, but rather deals with public money being gathered without knowledge of its resources and sources and how it's handled. The Khums, on the other hand, has a known source, its resources specified according to Islamic law, and is spent according to the regulations of the Sharia.

Fourth: Legal adaptation and amendments is the court's duty not its authorization. A judge must provide the right adaptation to the incident, and adaptation has no consideration in referral unless the judge deems adaptation fit. In that sense, the judge would have given the legal adaptation, not the Public Prosecution.

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