



# 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 Kham 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.

[24 January 2017]

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

GE.17-02146(E)



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## **Review on the Amendments to Bahrain's Anti-Terrorism Law\***

On November 26, 2014, the Bahraini authorities issued amendments to Law No. 58 of 2006 on the protection of society from terrorist acts, pursuant to Decree Law No. 68 of 2014. This decree was issued by the Executive Authority due to the exceptional power granted to it in order to exercise the duties of the Legislative Authority while the latter stopped exercising its duties during its reformation elections, and shortly before the Legislative Authority resumed its duties in its new formation by holding its first session on December 14, 2014.

The Legislative Authority discussed the aforementioned Decree Law, and as expected from the formation of this Authority, the Decree Law was passed even though it included a clear violation of international standards.

It should be noted that the authorities in Bahrain constantly describe the popular protests, which began in 2011, as a terrorist activity, and they used this law, in most of the times in which it has been applied, against political dissidents and widely practiced arbitrary detention against them also. The following are the aspects of contradiction of the Decree Law with international standards, according to what this legal study concludes:

First, the amendment to Article 27 of this Law grants the judicial officer the right to arrest individuals suspected of committing one of the crimes stipulated in this law, without obtaining any prior permission from the public prosecution or any other judicial authority, and detaining them, by virtue of this arrest, for up to 28 days before presenting them to the competent prosecution. This amendment does not even stipulate that individuals must be presented to the competent prosecution as quickly as possible without waiting until the 28-days period end, which violates Paragraph (3) of Article (9) of the International Covenant on Civil and Political Rights.

This amendment legalizes arbitrary detention, given that the detention, which violates the rule of rapidness set forth in Paragraph (3) of Article (9) of the International Covenant on Civil and Political Rights, is considered an arbitrary detention; and being applied in accordance with the local law in force does not take away this description.

Second, the amendment to Article (26) thereof, which gives the public prosecution the power to detain the individual accused of committing one of the crimes stipulated in this law for six months without trial. This violates Paragraph (3) of Article (9) of the International Covenant on Civil and Political Rights.

Third, the amendment to Article (28) of this law made all the information provided by security sources on the crimes stipulated in this law absolutely confidential, in a violation of Paragraph (1) of Article (14) of the International Covenant on Civil and Political Rights.

Fourth, the amendment to Article (26) of this law established a special prosecution unit to view, investigate, and act upon the crimes stipulated in this law. For this prosecution, the amendment allocated a mechanism different from the mechanism used in the legislation applied to appoint members of the public prosecution. The old mechanism required that the appointments shall be based on recommendation from the Supreme Judicial Council, but the amendment stated that members of this prosecution shall be appointed away from the Supreme Judicial Council.

The text of Article (26) did not give any guarantees for this mechanism in order to select the members in a manner that ensures their independence and impartiality. This violates Paragraph (1) of Article (14) of the International Covenant on Civil and Political Rights, which obligates the states acceding to the treaty to have legislation which ensures the right of every individual charged with a criminal offense to a fair hearing. According to the guidelines on the role of prosecutors issued by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, "prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice" (guidelines preamble). According to the report of the Special Rapporteur on the independence of judges and lawyers submitted in the 20th session of the Human Rights Council (2012), in which she highlighted the safeguards necessary to ensure an independent, autonomous, objective and impartial functioning of prosecution services, "The roles of judges and prosecutors are distinct, but complementary, and their proper performance is necessary to guarantee a fair, impartial and effective administration of justice."

According to the guidelines presented by the Special Rapporteur in her report, "Admission to the prosecutorial career should be based on objective criteria, through a public competitive selection process." Thus, "A public competitive selection process (an examination) is an objective way to ensure the appointment of qualified candidates to the

profession. Both selection and promotion processes should be transparent in order to avoid undue influence, favoritism or nepotism.”

It is clear that the amendment to Article (26) of this Law, which separated the prosecution that handles the crimes stipulated in this law from the structure of the public prosecution, lacks the abovementioned guidelines. In fact, the practical application demonstrates the purpose of this amendment, particularly since it was issued in urgency; the amendment was issued on November 26, 2014 and entered into force on December 5, 2014. On December 8, 2014, a Royal Order was issued appointing the chief and members of the Terror Crimes Prosecution, i.e. within only days of these amendments coming into force.

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