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### **Written statement\* submitted by the Americans for Democracy & Human Rights in Bahrain Inc, 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.

[18 August 2017]

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

GE.17-15284(E)



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## **The National Security Agency and Systematic Counter-terror Abuses in Bahrain**

Americans for Democracy & Human Rights in Bahrain takes this opportunity at the 36<sup>th</sup> Session of the United Nations Human Rights Council (HRC) to raise serious concern over Bahrain's failure to observe human rights while combating violent extremism. Since the beginning of 2017, the Government of Bahrain has taken several unprecedented moves away from counter-terror and criminal justice reforms, including the king's decision to restore law enforcement authority to the country's chief intelligence organ, the National Security Agency (NSA).

### **1. The Anti-Terror Law**

In 2006, the government promulgated the Law of Protecting Society from Terrorist Acts, commonly known as the anti-terror law, which prohibits any action determined to be "infringing public security or endangering the safety and security of the kingdom or of damaging national unity ... [by harming] the environment, public health, the national economy, or public property, institutions, or facilities ... or prevents or impedes public authorities, houses of worship, or institutes of learning from exercising their functions." This excessively broad definition of terrorism – which does not require intent to commit violence – criminalizes basic freedoms of expression, assembly, and association. The law additionally empowers the authorities to circumvent standard due process protections. Article 29 stipulates that the Public Prosecution Office (PPO) "acquires the additional authority of the judge of [the] Lower Court provided in the Law on Penal Procedure, and the consultative authority of the Higher Court...when investigating" terrorist crimes. This means that, when pursuing a terror case, the PPO can directly authorize activities that typically require the approval of a judge, such as seizing private property, issuing additional search warrants, and censoring or surveilling personal telecommunications.

In 2013 and 2014, amendments to the law explicitly banned peaceful assembly in Bahrain's capital of Manama, increased the penalties for terror offenses, and extended pre-charge and pre-trial detention periods for terror suspects, among other problematic provisions. The 2013 amendment specifically enables courts to revoke the citizenship of individuals convicted of terror crimes, while its 2014 counterpart introduced a separate terror prosecution office, creating a distinct detention procedure that allows suspects to be held for six months without trial. In its current form, the anti-terror law also enhances the penalties for offenses already included under "other Laws"; for example, any terror crime that would previously have received a maximum sentence of life imprisonment under the penal code is now punishable by the death penalty. In January 2017, the government ended a seven-year *de facto* moratorium on capital punishment when it executed three prisoners tortured into confessing to terror offenses.

### **2. Bahrain's Secret Police**

The NSA was first established by Royal Decree No. 14 of 2002 with a mandate "to detect and uncover all activities that undermine the national security of the kingdom, its institutions and its [ruling system], or that threaten the security and stability of the nation, or its interests or accomplishments." Replacing the Ministry of Interior (MOI)'s General Directorate of State Security as Bahrain's chief intelligence and counter-terror body, the NSA is formally independent and reports directly to the Prime Minister. In 2008, Decree No. 117 conferred domestic law enforcement authority to the NSA, including powers of arrest, search and seizure, and interrogation.

Working closely with the MOI, the NSA has abused its authority to target human rights defenders and activists for surveillance, arbitrary prosecution, and extrajudicial reprisal. During the 2011 pro-democracy protests, the NSA effectively operated as secret police, becoming notorious for forcibly disappearing dissidents in unannounced home raids. The Bahrain Independent Commission of Inquiry (BICI) found that throughout the State of National Safety that lasted from March to June 2011, the NSA arrested more than 200 people and engaged in widespread torture. At least one individual, Karim Fakhawi – cofounder of the now-closed *Al-Wasat* newspaper – was tortured to death in NSA custody. In conjunction with other security forces, the NSA referred hundreds of detainees to the National Safety Courts

(NSC), military tribunals established to try individuals accused of offenses related to the uprising. Activists and human rights defenders like the Bahrain 13 were sentenced to life in prison.

Following the release of the BICI report, the king issued Royal Decrees No. 115 of 2011 and No. 28 of 2012 to rescind the NSA's law enforcement powers and establish a dedicated Ombudsman Office to address allegations of abuse. Despite these reforms, the NSA retained the authority to "detect[...] and uncover[...] harmful activities related to spying, communications, and terrorism, to safeguard national security in the kingdom, its institutions, and organizations" and to refer cases to the MOI for arrest and interrogation. Between November 2011 and January 2017, ADHRB received repeated reports that NSA personnel continued to participate in the interrogation and torture of detainees.

The NSA operated under these nominal restrictions until 5 January 2017, when the first decree of the year re-authorized "officers and members of the NSA...to order detention in terrorism crimes." The king's decision reversed one of the only BICI recommendations that the government had so far implemented, and reinstated the NSA as Bahrain's chief counter-terror organ.

### **3. The Return of the NSA and Recent Counter-terror Abuses**

Almost immediately following its re-empowerment, the NSA was implicated in severe human rights abuses. On 26 January 2017, masked security personnel attacked a peaceful sit-in in the village of Diraz, firing live ammunition into the crowd and killing 18-year-old Mustafa Hamdan. Though the government has not confirmed the identity of the assailants, witness accounts are consistent with those of past NSA raids. Moreover, following the shooting, NSA personnel arrested a paramedic for treating Hamdan at the scene. The sit-in was permanently dispersed on 23 May when security forces again raided Diraz, this time arresting hundreds and killing five, including Hamdan's older brother.

On 9 February 2017, the MOI announced it had conducted a joint operation with the NSA that intercepted a boat containing ten "escapees from Jau prison." According to the MOI, security forces killed three suspects in an exchange of gunfire, but there are significant inconsistencies in the government's account. Though the authorities declined to release pictures of the deceased or allow for independent autopsies, leaked photos appeared to indicate that at least one corpse lacked a bullet wound and showed signs of torture. The burial was restricted and the government reportedly prevented family members from attending. Furthermore, following the operation, an Instagram account allegedly belonging to an MOI officer claimed that the deceased had been abused and threatened to retaliate against activists for reporting human rights violations.

In addition to conducting violent raids, the NSA has specifically intensified a campaign of reprisals against peaceful civil society actors. Over just the last several months, the NSA twice detained and tortured woman human rights defender Ebtisam al-Saegh; forcibly disappeared activist Mohamed Khalil al-Shakhoori; and repeatedly summoned and tortured Mohamed Hasan Ali Mohamed Juma Sultan, the son of a former opposition parliamentarian. Officials explicitly told al-Saegh they were targeting her in retaliation for her human rights work, including at the HRC, and they attempted to force Sultan into informing on his father and other political figures. On 18 July, after two weeks of detention, the authorities charged al-Saegh with "using human rights work as a cover to ... [spread] fake news about the situation in Bahrain to undermine its status abroad" under the anti-terror law. At time of writing, al-Saegh is on hunger strike in protest of continued abuse, such as prolonged solitary confinement and religious discrimination.

The Bahraini government has also amplified the impact of the NSA's abuses by removing constitutional protections preventing the military judiciary from trying civilians accused of terror offenses. On 3 April 2017, the king approved an amendment that expanded the jurisdiction of military courts to civilians "accused of threatening the security of the state." With its authority to enforce the anti-terror law, the NSA is now empowered to refer cases directly to the military, subjecting civilians to a system that lacks transparency and is even more prone to due process violations than the standard judiciary, as demonstrated by the NSC in 2011.

#### 4. Conclusion

The NSA's return to a central role in Bahraini counter-terror policing is deeply disturbing and underscores the government's disregard for human rights while combating violent extremism. Since the king re-empowered the agency, the NSA has not only resumed the pattern of abuse documented by the BICI in 2011, but also taken full advantage of the expanded anti-terror law to target nonviolent activists for reprisal. We therefore urge the international community to call on the Government of Bahrain to:

- Repeal the 2006 anti-terror law and ensure that any new legislation provides a clear and concise definition of terrorism that meets international standards;
  - Suspend the NSA's law enforcement and surveillance authority pending independent investigation into past and present allegations of abuse;
  - Release all prisoners of conscience facing terror charges stemming from nonviolent human rights work, such as Ebtisam al-Saegh;
  - Restore constitutional protections to prevent military courts from trying civilians;
  - And reinstate the moratorium on the death penalty with a view towards abolition.
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