

المؤسسة الوطنية لحقوق الإنسان
National Institution *for* Human Rights



**Fact-Finding Report of the National
Institution for Human Rights on the
Allegations of Torture and Enforced
Disappearance Crimes against a number
of Convicts in the case known as
(1/Terrorism/2017)**



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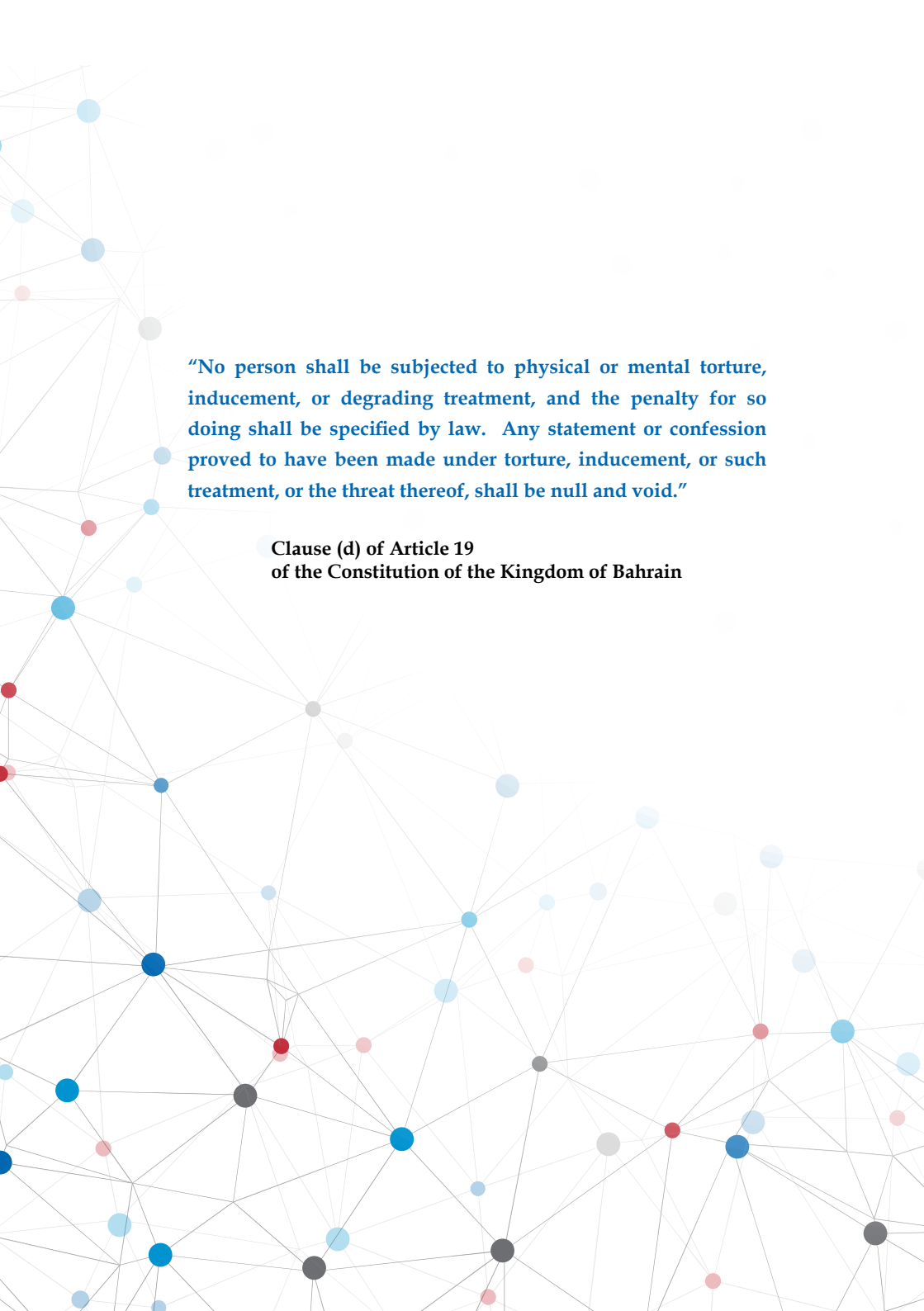


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NIHR Bahrain





“No person shall be subjected to physical or mental torture, inducement, or degrading treatment, and the penalty for so doing shall be specified by law. Any statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void.”

**Clause (d) of Article 19
of the Constitution of the Kingdom of Bahrain**



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Introduction

Pursuant to the Law Establishing the National Institution for Human Rights (NIHR) No. 26 of 2014, amended by Law No. 20 of 2016, Clause (e) of Article 12 provides that: **“NIHR has the power to monitor violations of human rights instances, conduct the necessary investigations, draw the attention of the competent authorities and provide them with proposals on initiatives to put an end to such violations and, where necessary, to express an opinion on the reactions and positions of the competent authorities”**.

Clause (a) of Article 14 of the abovementioned Law provides that: **“NIHR may request any information, reports or documents which it considers necessary for the attainment of its goals or the performance of its mandates from the ministries and relevant bodies in the Kingdom. These ministries and bodies shall cooperate with NIHR in the pursuit of its tasks, facilitate the conduct of its mandates and provide it with its requests in this regard in accordance with the laws and regulations applicable by these bodies”**.

Clause (l) of Article 12 of the abovementioned Law provides that: **“NIHR may issue newsletters, publications, data and special reports, and upload them on NIHR website. NIHR shall be entitled to address the public opinion directly or through any of the media outlets”**.

NIHR, through social media, as well as correspondence from international human rights organizations, received allegations that a number of convicts in case known as (1/Terrorism/2017), who were involved in the formation of a terrorist cell, to carry on number of terrorist crimes against the Bahrain Defence Force and a number of other terrorist offenses, were subjected to enforced disappearance, torture and other cruel, inhuman or degrading treatment or punishment.

Under the broad mandate granted to NIHR and based on its legal position and national responsibility for protection of human rights in the Kingdom of Bahrain, NIHR initiated the necessary investigation in the abovementioned allegations against individuals and directly communicated with the Bahrain Defence Force through the Military Justice, being the legal authority entrusted with the consideration of the above case.

NIHR was keen to be provided by the Military Justice with copies of the minutes of the investigation by terrorist crimes prosecution and the Military Prosecution with the convicts, requests for their examination by forensic medicine and forensic reports received by the terrorist crimes prosecution and the military prosecution in this regard, in addition to the forensic reports received by the court that is legally competent to consider the case.

Moreover, NIHR received from the Military Justice, in addition to the above, the communications submitted by the relatives and lawyers of the convicts to the Public Prosecution or Military Prosecution, and records of visits and communications that were made between them and their relatives in a very detailed manner.

NIHR's concern with obtaining copies of these records, medical reports, communications lists and visits is based on revealing the facts about these allegations. NIHR also fulfils its duties in the promotion and protection of human rights, and enhancing and ensuring the exercise of these rights, as affirmed by the Constitution of the Kingdom of Bahrain and international and regional standards related to human rights.

For this purpose, NIHR has prepared this report divided into five main themes. The first theme includes a brief statement on the broad mandate of NIHR in the promotion and protection of human rights. The second theme defines the crimes of torture and enforced disappearance

according to the provisions of national law and the International Human Rights Law. The third theme includes a summary of the facts of the present case. The fourth theme is devoted to determining the legal basis for the jurisdiction of the Military Justice to consider in the present case. The fifth and final theme indicates NIHR's efforts in investigating these allegations and to indicate their accuracy.

Section 1

Broad mandate of NIHR in the promotion and protection of human rights

1. Paris Principles on the Status of National Institutions for the Promotion and Protection of Human Rights affirmed that **“National institutions have the competence to promote and protect human rights”** and **“National institutions will have a wide mandate as is expressly provided in a constitutional and legislative provision”**¹ This meaning is referred to in the general observations of the Subcommittee on Accreditation (SCA), which emphasized that the establishment law should entrust specific functions to national institutions to “promote” and “protect” human rights.
2. SCA² recognizes that the concept of “promotion” includes the functions that national institutions are seeking to undertake in the dissemination of information, knowledge, training, education and advice on human rights to the general public or to specific target groups for the purpose of cultivating a community culture that is based on the transformation of human rights knowledge into practical skills on the ground.
3. The concept of “protection” pertains to its quasi-judicial authority to receive complaints of human rights, to monitor any violation of the right of individuals to enjoy their prescribed rights and public freedoms, and to conduct field visits to places where human rights violations are likely to occur. The mandate of the national institution should be interpreted broadly, freely and clearly to promote a progressive definition of human rights that guarantees all the rights enshrined in international, regional and national human rights instruments.

¹ Paris Principles on the Status of National Institutions for the Promotion and Protection of Human Rights - Mandates and Responsibilities - paragraphs (1) and (2).

² General observation of the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions: (1-2) The mandate of human rights, adopted on 6 March 2017.

4. With reference to the provisions of Law No. 26 of 2014, amended by the Decree Law No. 20 of 2016, it is noted that it granted NIHR a broad mandate in the field of human rights, through Article 2, which provides that **“An independent institution called the “National Institution for Human Rights” shall be established. The institution shall be in charge of promoting, developing, and safeguarding human rights, fostering human rights values, raising awareness on human rights, and ensuring the exercise of human rights. NIHR shall have a corporate personality that is financially and administratively independent, and shall conduct its mandates freely, objectively, and with complete independence”**.
5. Article 12 of the said Law grants NIHR, to fulfill its objectives, the freedom to comment on any any human rights issue and to address any human rights cases, as it deems appropriate. NIHR has the following powers:
 - a. To participate in the production and implementation of a national plan for the promotion and protection of Human Rights in the Kingdom.
 - b. To Study legislation and regulations enforced in the Kingdom which come under the human rights areas together with recommending amendments it deems fit in this respect particularly those consistent with such legislations and the Kingdom’s international obligations in the human rights field. The Institution shall be empowered to recommend issuing new legislation related to human rights.
 - c. To study the conformity of legislation and organization of regional and international treaties related to human right, submit proposals and recommendations to concerned authorities in any matter that reinforces and protect human rights, support and develop to a better level including recommendations to join regional and international conventions and treaties concerned with human rights.

- d. To submit parallel reports, and participate in the drafting and discussion of the reports which the Kingdom is obliged to periodically submit for the implementation of regional and international conventions concerning human rights together with notifying about such reports in the proper media means.
- e. To monitor violation of human rights, conduct the necessary investigation, draw the attention of the competent authorities and provide them with proposals on initiatives to put an end to such violations and, where necessary, to express an opinion on the reactions and positions of the competent authorities.
- f. To receive, examine and research complaints related to human rights and refer them, if necessary, to the relevant authorities with effective follow-up, or enlightening those concerned with most-follow procedures and help them to implement them, or assist in the settlement with relevant authorities.
- g. To perform announced and unannounced field visits, to monitor human rights situation in Correction institutions, detention centres, labour calls gathering, health and education centres, or any other public place in which it is suspected that human rights violations are taking place.
- h. To cooperate with competence authorities concerned with cultural, media and educational affairs, to submit proposals and recommendations in any matter in order to spread, propagate and strengthen a culture of awareness and respect for human rights.
- i. To cooperate with national bodies and regional and international organizations, as well as relevant institutions in other countries that work for the promotion and protection of human rights.
- j. Holding meetings and joint activities, cooperation, coordination and consultation with civil society and non-governmental organizations

and various other groups and human rights defenders, and communicate directly with the claims of exposure to any form of abuse, and to report back to the Council of Commissioners.

k. To host conferences and to organize training and educational events in the field of human rights and conduct related research and studies.

l. To participate in national and international forums, as well as in meetings of regional and international bodies concerned with human rights issues.

m. To issue newsletters, printed material, data and special reports, and upload them on the Institution website. It is entitled to directly approach the public opinion or through the any of the media.

6. Accordingly, the National Human Rights Institution, under its Establishment Law No. 26 of 2014, as amended by Decree Law No. 20 of 2016, has a broad mandate in the field of human rights, including civil, political, economic, social and cultural rights. These mandates are related to the promotion and protection of human rights, whether they are citizens or residents in the territory of the Kingdom, and regardless of their legal positions within the state system. This is in line with relevant national, regional and international decisions.

Section 2

Torture and enforced disappearance crimes in light of national legislation and international human rights law

1. Torture crime in light of national legislation and international human rights law

- 1.1 The right to life and the right to physical and moral integrity are fundamental pillars of human survival. The first right is the most sublime and intimate right because it is a natural right derived from human existence. The absence of this right means the absence of the human entity from existence. The absence of the other right consists of physical or moral assault against the individual in such a way as to inflict severe pain or suffering on him, such as by torture and other inhuman, degrading or humiliating treatment or punishment, in a manner that impairs the exercise of his other rights and freedoms.
- 1.2 The Constitution of the Kingdom of Bahrain, in Article 19, paragraph (d), provides for the right to physical and moral integrity, as it states that: “No person shall be subjected to physical or mental torture, inducement, or undignified treatment, and the penalty for so doing shall be specified by law. Any statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void”.
- 1.3 The Penal Code promulgated by Decree Law No. 15 of 1976, as amended, includes provisions that ensure the legal cover for the protection of the human right to life and the right to physical and moral integrity. The legislator added more protection by promulgating Law No. 52 of 2012 amending certain provisions of the Penal Code promulgated by Decree-Law No. 15 of 1976. The criminalization circle extended to include any person, public official or public service officer who intentionally inflicts

severe pain or suffering, whether physically or mentally, on a person who was detained or under his control for the purpose of obtaining information from him or another person or confession, punishment for an act committed or suspected to be committed by him or another person, intimidating or forcing him or any other person for any reason based on discrimination of any kind. In this amendment, the legislator excludes these crimes from statutory limitation period for crimes of torture, and considers the crimes against the right to physical and moral integrity as felonies rather than misdemeanours.

- 1.4 Law No. 49 of 2012 amending Article 81 of the Public Security Forces Law was promulgated by Decree Law No. (3) of 1981, under which crimes related to allegations of torture, inhuman or degrading treatment or death related to military crimes are excluded. Therefore, the jurisdiction to consider these crimes lies with ordinary courts, as this is a legislative approach in line with the relevant international standards.
- 1.5 In the context of international human rights instruments, the International Covenant on Civil and Political Rights, to which the Government of the Kingdom of Bahrain has acceded under Law No. 56 of 2006, affirms in Article 6 that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. In countries which have not abolished the death penalty, death penalty may be imposed only for the most serious crimes in accordance with the law in force pursuant to a final judgment rendered by a competent court. Article 7 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and no one shall be subjected without his free consent to medical or scientific experimentation.
- 1.6 The accession of the Government of the Kingdom of Bahrain to the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment by the Decree-Law No. 8 of 1998 has probably led the legislature to amend the Penal Code in line with the purposes of the Convention. In addition, the General Assembly of the United Nations, pursuant to Resolution No. 57/199, adopted an optional protocol to the Convention aimed at establishing a system of regular monitoring through visits by international and national bodies to places where individuals are deprived of their liberty in order to prevent torture and other forms of ill-treatment.

- 1.7 Although the Government of the Kingdom of Bahrain has not yet acceded to the Optional Protocol to the Convention to date, it has established and defined the mandates of the Committee on the Rights of Prisoners and Detainees under Decree No. 61 of 2013. This in line with the government's commitments to the recommendations of the report of Bahrain Independent Commission of Inquiry and its voluntary pledges before the Human Rights Council in its comprehensive periodic review. The establishment of the Commissioner gives it the right to monitor prisons, detention centres, juvenile and detention care centres, and other places where it detainees may be placed, e.g. hospitals and mental clinics, in order to verify the conditions and treatment of inmates and to ensure that they are not subjected to torture or inhuman or degrading treatment.
- 1.8 With regard to the right to physical and moral integrity and in accordance with recommendation 1716 of the report of Bahrain Independent Commission of Fact Inquiry, which provides for **“Developing an independent and impartial mechanism to hold accountable government officials who have committed unlawful acts or caused by negligence cases of murder, torture and ill-treatment of civilians, in order to take legal and disciplinary action against such persons, including those with leadership positions, whether civilian or military personnel, to whom the principle of command responsibility is proven**

to apply in accordance with international standards”, the Attorney-General Decision No. 8 of 2012 was issued to establish the Special Investigation Unit. The decision grants it the mandate to investigate and act upon any claims of torture and other types of ill-treatment. In accordance with its establishment decision, the unit operates independently under the supervision of the Attorney-General. It is headed by a Chief Prosecutor who is assisted by a number of experienced investigators. The unit is provided with the necessary support to carry out its functions.

2. Enforced disappearance crime in light of national legislation and international human rights Law

- 2.1 Enforced disappearance is a crime that directly affects civil, political, economic, social and cultural rights. The essence of this crime is the deprivation of the individual liberty through his arrest, detention or abduction without providing procedural and other substantive safeguards and judicial oversight that prevents public authorities or those assigned by it from committing such crime.

- 2.2 Although the Constitution of the Kingdom of Bahrain does not expressly refer in its provisions to the crime of enforced disappearance, it includes a provision that includes acts that might be described as enforced disappearance under certain circumstances. Article 19 of the Constitution provides that: **“Personal freedom is guaranteed under the law. b. A person cannot be arrested, detained, imprisoned or searched, or his place of residence specified or his freedom of residence or movement restricted, except under the provisions of the law and under judicial supervision. c. A person cannot be detained or imprisoned in locations other than those designated in the prison regulations covered by health and social care and subject to control by the judicial authority.**

- 2.3 In terms of national legislation, Decree-Law No. 46 of 2002 promulgating the Code of Criminal Procedure, as amended, includes provisions prohibiting acts that may be described as enforced disappearance under certain circumstances. Article 61 of this Law provides that: **“No person may be arrested except by order of the authorities that have competence under the law. He shall also be treated in a manner that protects human dignity and he shall not be subjected to physical or moral harm. Any person arrested shall be informed of the reasons for his arrest and he shall be entitled to contact any member of his family he deems fit to inform them of what happened and appoint an attorney”**. Article 62 of the abovementioned Law states that: **“No person may be imprisoned except in the prisons designated for this purpose”**.
- 2.4 In terms of international human rights instruments, Article 9 of the International Covenant on Civil and Political Rights, to which the Government of the Kingdom of Bahrain has acceded under Law No. 56 of 2006, states that no one may be arbitrarily arrested or detained, or deprived of his freedom, except for the reasons stipulated in the law. It stresses that any person arrested must be informed of the reasons for his arrest and the charge against him, while ensuring that he is promptly brought to a judicial body within a reasonable period of time or released. It further confirms that every person who has been arrested or detained illegally is entitled to adequate compensation.
- 2.5 The Penal Code issued by Decree Law No. 15/1976 also criminalised acts of enforced disappearance, particularly those committed by civil servants. Article (357) stipulated that imprisonment for a period of three years for anyone who unlawfully arrests or detains a person, and imprisonment for 15 years in the case of unlawful arrest or detention by a civil servant on account of or on the performance of his or her duties. On the other hand, article (358) of the aforementioned Decree

Law furthermore to criminalised (Kidnapping) by any means, and the penalty can reach imprisonment for (fifteen years) in the case of whether the kidnaping occurred by a civil servant during or because of the performance of his or her job.

- 2.6 In view of the grave importance of the crime of enforced disappearance, as it involves direct violation of human rights and fundamental freedoms, the International Human Rights Law has dedicated a binding international legal instrument to deal with all matters related to this crime. This is represented in the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the General Assembly of the United Nations in its resolution 61/177 of 20 December 2006. The International Convention is divided into three main parts: The first part deals with the substantive provisions of this crime by stating its concept and the obligations of the state parties arising therefrom. The second part of the International Convention addresses the establishment of the Committee on Enforced Disappearances and issues related to its work, while the latter part deals with the statement of the procedural requirements related to the signature, ratification and accession to it, and the relationship between it and the provisions of international humanitarian law.
- 2.7 Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance defines enforced disappearance as: **“Enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.**

- 2.8 The International Convention also requires the state party to take all necessary measures to ensure that enforced disappearance constitutes a crime in its national criminal laws by imposing appropriate penalties, which take into account the gravity of this crime, considering that this crime, when committed systematically and on large-scale, becomes a crime against humanity. The Convention confirms that the statute of limitation for such a crime must be long-term and proportionate to its gravity, which should begin at the end of this crime because of its continuing nature. In addition, the State must guarantee the right of victims of this crime to actual remedies during the limitation period.
- 2.9 With regards to criminal liability, the International Convention obliges the state party to take measures against all those who commit, order, recommend, attempt to commit, or be complicit or co-offender of enforced disappearance crime. The Convention states that no order or instructions issued by any public authority in the state, whether civil or military authority, political instability or any other exception justify the commission of enforced disappearance crime.
- 2.10 With regards to jurisdiction, the state party is competent to decide on the enforced disappearance crime upon its occurrence in any territory under its jurisdiction or on board aircraft or ships registered therein, as well as when the perpetrator or victim is one of its nationals. In any event, the State party should ensure that the person who committed the enforced disappearance crime is detained or take the necessary legal measures to ensure that he/she remains in its territory and that the criminal case is referred to its competent judicial authorities for prosecution in accordance with national procedures, unless the person is surrendered or transferred to another State, in accordance with its international obligations, or to an international criminal court whose jurisdiction is recognized by the State.

- 2.11 It is the responsibility of the state party to ensure that a person who claims to be a victim of enforced disappearance has the right to inform the competent authorities of the facts and to investigate this claim without delay, while ensuring that necessary measures are taken to protect the complainant, witnesses and relatives of the disappeared person and his advocate, in addition to those involved in the investigation from any ill-treatment or intimidation on account of this allegation or any testimony made.
- 2.12 The provisions of the International Convention refer to the principle of the inadmissibility of detention in unknown places, and that the national legislation of the State party should include the conditions that permit issuance of orders for deprivation of liberty and the authorities mandated with issuance of such orders. Moreover, it should be ensured that the person deprived of liberty is detained in officially recognized and monitored places and that he is able to communicate with the outside world, including his family, lawyer or any other person of his choice, and allow them to visit him. A foreigner detainee should be granted the permission to contact the consular authorities of the state of which he is a national.
- 2.13 The International Convention also requires the State party to ensure that its legislation provides that every competent authority and institution under the law has access to places of detention, where necessary, with prior authorization by a judicial authority. The provisions of the Convention further indicate that the State party should ensure the right of every person deprived of his liberty, through his family, to appeal to a judicial body to promptly decide on the legality of depriving him of his liberty and to order his release if it is proved that such detention is illegal.

- 2.14 In this regard, a State party should create one or more records of the names of persons deprived of their liberty and keep these records up-to-date with information. These records should be immediately placed at the disposal of any judicial or other authority or competent institution. The records should at least indicate the identity of the person deprived of liberty, the date, hour, and place where he was arrested, the authority that arrested him, the authority that decided to deprive him of liberty, reasons for deprivation of his liberty, the health status of the person deprived of his liberty, the date and time of his release or transfer to another place of detention, the place to which he was transferred and the authority responsible for his transfer.
- 2.15 The International Convention defines the victim of enforced disappearance as a disappeared person and every natural person who has been directly harmed by this enforced disappearance. The Convention grants him the right to know the truth of his disappearance, and the proceedings, outcomes, and outcome of investigation. The Convention indicates that the state party must ensure that the victim has the right to prompt, fair, and appropriate compensation, in addition to rehabilitation and to ensure non-recurrence of the incident.

Section 3

Summary of the proceedings of the Case Known as (1/Terrorism/2017)

1. The proceedings of the case commenced in 2016. As a proactive step, Counter-terrorism security services in Bahrain Defence Force - through the information it received and its intelligence, investigation and surveillance - was able to arrest a terrorist cell that aimed to commit a number of terrorist crimes against the Bahrain Defence Force. Upon conclusion of investigation, the Military Prosecution referred the defendants to the competent military court, according to the statement issued by the Chief Military Justice on 22 October 2017, to the media
2. For the purpose of achieving public interest, preserving the integrity of evidence and ensuring the right of witnesses to legal protection, the Military Court prohibited the publication of any information, statements or news in case No. (1/Terrorism/2017), including the trial of a number of defendants accused of forming a terrorist cell that carried out operations against Bahrain Defence Force, in printed, visual, audio-visual or electronic media, except by the entities authorised by the competent court, as the statement made by the Chief Military Justice on 2 November 2017, to the media.
3. The hearings of the High Military Court deliberated the present case and decided on 25 December 2017 to pronounce its judgment, as follows:

First: Convicting six (6) of the defendants for the charges brought against them, sentencing them by consensus (to death penalty), imprisonment for fifteen (15) years and forfeiture of the Bahraini nationality. The defendants are:

Soldier: Mubarak Adel Mubarak Mahanna	Mohammed Abdulhassan Ahmed Al Metghawi
Fadhel Al Sayed Abbas Hassan Radhi.	Murtada Majeed Ramadan Alawi (Al Sindi).
Al Sayed Alawi Hussain Alawi Hussain.	Habeeb Abdullah Hassan Ali (Al Jamri).

Second: Convicting and sentencing the seven (7) defendants to imprisonment for seven (7) years and forfeiting their Bahraini nationality. They are:

Mohammed Abdulhassan Saleh Al Shehabi.	Mohammed Yousef Marhoon Al Ajmi.
Mohammed Abdulwahid Mohammed Al Najjar.	Hussain Ali Mohsen Baddaw
Hussain Mohammed Ahmed Shehab	Al Sayed Mohammed Qassim Mohammed.
Ali Jaffar Hassan Al Rayes.	

Third: Discharging the following five (5) defendants of the charges brought against them in the indictment:

Ali Ahmed Khalifa Salman (Al Karbabadi).	Muntazhir Fawzi Abdulkareem Mahdi.
Hussain Essam Hussain Al Durazi	Rami Ahmed Ali Al Aryash.
Mohamed Abdullah Ebrahim Abbas	

4. On February 21, 2018, the Supreme Military Court of Appeal issued its ruling on appeals against the preliminary judgment issued in case No. (1/Terrorism/2017), in which the court ruled to uphold the appeal against all the convicts except Hussain Mohammed Ahmed Shehab and Mohammed Yousef Marhoon Al Ajmi. The court decided to reduce the sentence to five years from of seven years.
5. The Court rejected the appeals filed by the Military Prosecution against the convicts in their presence, as well as the appeals of the Military Prosecution against those sentenced in absentia, since their right to challenge the opposition still exists.
6. Accordingly, all the death sentences issued in presence are considered to be subject to the force of the law before the Military Court of Cassation, in accordance with Article 73 of the Military Justice Law No. (34) of 2002, and the rest of the convicts are entitled to appeal the judgment, in accordance with the Civil Court of Cassation Law No. (8) of 1989. Execution of death sentences is subject to the ratification of the King of the Kingdom of Bahrain in accordance with Article 84 of the Military Justice Law of 2002.
7. In accordance with the Military Court of Cassation ruling of 25 April 2018 rejecting the appeals of those sentenced to death and supporting their sentence, His Majesty the King issued a Royal Order to ratify the ruling of the Military Court of Cassation and to commute the death penalty to life imprisonment for the four convicts who have been sentenced.

Section 4

The legal basis for the jurisdiction of the Military Justice of Bahrain Defence Force To consider the case known as (1/Terrorism/2017)

1. Article 105 of the Constitution of the Kingdom of Bahrain, as amended in paragraph (b), stipulates that **“Military Justice shall be regulated by law, and the law shall state the jurisdiction of Defence Force, the National Guard, and the Security Forces”**
2. Accordingly, Decree No. (34) of 2002, promulgated the Military Justice Law, as amended, was enacted. The last amendment was issued under Law No. (12) of 2017, which includes adding two new articles to the Law. Article 1 (17 bis) provides as follows:

“Notwithstanding the provisions of any other law, the military Justice shall consider the following offenses when committed intentionally by a person who is not subject to the provisions of this Law as a perpetrator or accomplice within or abroad the Kingdom:

- a. **Crimes against the national security of the state, as provided for in Chapter I of Part 1 of the Penal Code, whenever they are committed in operations carried out by Bahrain Defence Force or in the case of armed terrorism from abroad.**
- b. **Crimes committed within the jurisdiction of the territories of Bahrain Defence Force or the National Guard, including vessels, aircrafts, vehicles, buildings, camps, facilities, concentration areas, manoeuvres, and areas of progress for troops and operational sites.**
- c. **Crimes against funds, property, equipment, machinery, missions, communications, objects, weapons, ammunition, records, documents, and secrets of the Bahrain Defence Force or**

the National Guard and all their belongings, wherever they may be located.

- d. Crimes committed against Bahrain Defence Force personnel or the National Guard if they are committed because of or on the occasion of the performance of their duties.
- e. Crimes against vital or important facilities or official convoys when they are secured or guarded under the responsibility of Bahrain Defence Force or the National Guard.
- f. Crimes related to any of the crimes mentioned in the preceding clauses.

The Military Justice may refer any of the crimes within its jurisdiction in accordance with the preceding provisions to the civil courts or to any competent judicial authority”.

- 3. Article 2 (17 bis 1) of the above Law provides that: **“As an exception from any other law, the Attorney General may, with the approval of the Military Justice, refer to this court any of the crimes set out in the Law of protection of society from terrorist activities or any of the crimes against the external or domestic national security of the state, set out in Chapters I and II of Part I of the relevant section of the Penal Code, and any associated crimes”**. The said Law replaced Article 46 as follows: **“Military courts shall have the jurisdiction to settle any claims that fall within the jurisdiction of the military judiciary, pursuant to the provisions of this Law”**.
- 4. Accordingly, NIHR, having considered the abovementioned legal provisions, believes that the referral of the case to the Military Justice is in accordance with the law. Decree-Law No. 34 of 2002 promulgating the Military Justice Law, according to the amendment enacted under Law No. 12 of 2017, authorizes the military courts of Bahrain Defence Force to consider any of the crimes committed by civilians against

members of Bahrain Defence Force or crimes against their funds or property and crimes against domestic and external security of the State and the crimes set out in the Law of Protection of Society from Terrorist Activities and any other Associated Crimes.

Section 5

NIHR efforts in verifying that a number of convicts in the case known as (1/Terrorism/2017) were subjected to allegations of torture and enforced disappearance crimes

1. NIHR efforts to ensure fair trial guarantees

- 1.1 Pursuant to the broad mandate granted by Law No. (26) of 2014 Establishing the National Human Rights Institution, as amended by Decree Law No. 20 of 2016, for promotion, development, protection, awareness, and ensuring the exercise of human rights, particularly by conducting announced and unannounced field visits in order to monitor the situation of human rights and to attend court hearings to ensure fair trial guarantees, NIHR, since the case known as (1/Terrorism /2017) was referred to the Military Justice in 23 October 2017 until the issuance of the judgment in the 25 December 2017 session, over 8 hearings, were keen to attend and be present in all these hearings to monitor the proceedings of trial and ensure that they conform to national, regional and international standards related to fair trial. In addition, NIHR attended also the hearings of the Supreme Military Court of Appeal, which amounted to five (5) hearings, until the issuance of the judgment on 21 February 2018.
- 1.2 In continuation of this concern, and in order to reassure the public about the proceedings in the present case, NIHR is keen to release public opinion statements on all court hearings it has attended and make any observations regarding fair trial guarantees.
- 1.3 NIHR considers that the referral of the case to the Military Justice of Bahrain Defence Force is consistent with the fact that it is a competent and independent court established by Decree

Law No. 34 of 2002 promulgating the Military Justice Law, as amended by Law No. 12 of 2017.

- 1.4 NIHR noted that the Military Justice, which is competent under the law to consider the present case, has taken into account safeguarding the principle of presumption of innocence and that the accused is innocent until proved guilty under a fair trial in which he has the necessary guarantees to exercise the right to Defence at all stages of investigation and trial. In addition, the defendants against whom decisions have been rendered in presence should have a lawyer to defend them with their consent, and the hearings should be public and in conformity with the provisions of the Constitution, relevant national laws and international and regional human rights instruments.
- 1.5 Before the verdict was pronounced, NIHR addressed the Military Justice for the purpose of close examination and verification in accordance with the legal and administrative procedures in force of the allegation that a number of defendants were at the time subjected to enforced disappearance, torture and other cruel, inhuman or degrading treatment or punishment.

2. NIHR efforts to verify allegations of torture crime

- 2.1 Under the broad mandate granted to NIHR and its legal position and national responsibility for protection of human rights in the Kingdom of Bahrain, it initiated the necessary investigation of these allegations against persons deprived of their liberty, and directly contacted the Military Justice as the legal body entrusted with considering the above case.
- 2.2 NIHR is totally keen to be provided by the Military Justice with copies of the minutes of investigation with the convicts of terrorist crimes prosecution and the military prosecution and the requests for their referral to forensic medicine, the forensic

reports received by terrorist crimes prosecution and the military prosecution in this regard, in addition to the forensic reports received by the court that has the competence under the law to consider the case.

- 2.3 Accordingly, NIHR examined the minutes of the Public Prosecution investigation on October 25, 2016, regarding the convict: Fadhel Al Sayed Abbas Hassan Radhi, and the forensic report of 30 October 2016, which found that there were no apparent or non-apparent injuries. The forensic report confirmed that there were no signs of criminal violence, resistance, tight-fisting or restriction. The convict complained of pain in his lower back and right hands. According to the report, there were no injury traces and the movements of the thighs were within range without disabilities. In addition, back movements are carried out in their natural and normal range.
- 2.4 NIHR also received the minutes of the investigation before the Public Prosecution dated 21 November 2016 regarding the convict: Al Sayed Alawi Hussain Alawi Hussain, and the forensic report of 28 December 2016, which found that there were no apparent or non-apparent injuries, upon his interrogation, except that he reported suffering from pain in the right knee for which he underwent surgery about five years ago. The forensic report also found that there were no apparent signs of disability or mobile disabilities and that his central nervous system was normal.
- 2.5 In the same context, NIHR was keen to examine the minutes of the investigation before the Military Prosecution of the convict soldier: Mubarak Adel Mubarak Mahanna, Fadhel Al Sayed Abbas Hassan Radhi, Al Sayed Alawi Hussain Alawi Hussain, Mohammed Abdulhassan Saleh Al Shehabi, and Mohammed Abdulhassan Ahmed Al Metghawi. All of them had no apparent injuries. Upon inquiring them if they have any (invisible) internal injuries, they answered negatively.

- 2.6 NIHR also reviewed the forensic reports on the convict soldier: Mubarak Adel Mubarak Mahanna, Fadhel Al Sayed Abbas Hassan Radhi, and Al Sayed Alawi Hussain Alawi Hussain dated 21 May 2017, which concluded that there were no signs of injuries or mobile disabilities and that their central nervous systems were in a normal condition.
- 2.7 With regards to forensic report on convict: Mohammed Abdulhassan Saleh Al Shehabi, dated 3 July 2017, it concluded that there were no general traces or mobile disability, his central nervous system was normal, and that there were no apparent injuries or secretions in his left ear, which he earlier claimed was injured.
- 2.8 As regards the convict: Mohammed Abdulhassan Ahmed Al Metghawi, according to the forensic report dated July 3, 2017, there were multiple healing effects in his body that were not accompanied by complications from gunshot wounds. The report indicated that they are contemporary injuries to the date of dismissing the protest.
- 2.9 In spite of what was mentioned in the aforementioned records and reports, the High Military Court, during its consideration of the present case, was concerned to conduct medical examination of some of the convicts on 6 December 2017. The forensic report on Fadhel Al Sayed Abbas Hassan Radhi indicated that there are no indications or consequences of inhumane treatment, related to provision of food, hygiene and medical care. There is no clinical evidence of repeated abuse or a torture pattern.
- 2.10 As regards the convict: Mohammed Abdulhassan Ahmed Al Metghawi, the forensic report concluded that the circular scar in his body is a healing effect of old wounds sustained by shotgun, which did not cause any permanent consequences or disability. Skin discoloration is attributed to old healing traces, which

are not possible to be identified. There are no signs of recent intentional injuries throughout his body or any consequences of inhumane treatment related to provision of food, hygiene and medical care. There is no clinical evidence of repeated abuse or torture pattern.

- 2.11 In light of the above, and reference to the definition of “torture” according to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, under Decree-Law No. 8 of 1998, which is the same definition set out in the Penal Code promulgated by Decree Law No. 15 of 1976, as amended, the minutes of investigation of the Public Prosecution and the Military Prosecution and the forensic reports at the investigation and trial stages lack any evidence that there are cases of torture in relation to the aforementioned. These are medical reports issued by two different specialized medical agencies, with which NIHR is satisfied. Therefore, claims of the crime of torture against the aforementioned persons are contrary to the relevant medical reports.

3. NIHR efforts in verifying allegations of enforced disappearance crime

- 3.1 On the other hand, NIHR has examined the applications filed by the relatives or legal representatives of some of the convicts to the Public Prosecution. These applications indicated that the applicants are aware of the whereabouts of the convicts and they requested allowing them or their representatives to visit. These applications can be summarized as follows:

Name of Convict	Applicant	Application Date
Fadhel Al Sayed Abbas Hassan Radhi	Relatives of the convict	26 October 2016
	Attorney Abdul Aziz Mousa	4 December 2016
Al Sayed Alawi Hussain Alawi Hussain	Attorney Wafa Marhoun	23 November 2016
		1 December 2016
		4 December 2016
		7 December 2016
	Relatives of the convict	4 December 2016

3.2 In this context, NIHR has examined the applications filed by the relatives or legal representatives of some of the convicts to the Military Prosecution. These applications indicated that the applicants are aware of the whereabouts of the convicts and they requested allowing them or their representatives to visit them. These applications can be summarized as follows:

Name of Convict	Applicant	Application Date
Mohammed Abdulhassan Saleh Al Shehabi	Relatives of the convicts	13 June 2017
		15 June 2017
		6 July 2017
		8 October 2017
	Attorney Zahra Hasan	19 June 2017
		21 June 2017
		22 June 2017
		19 July 2017
Fadhel Al Sayed Abbas Hassan Radhi	Relatives of the convict	25 September 2017
		21 May 2017
		26 July 2017
		27 July 2017
Al Sayed Alawi Hussain Alawi Hussain	Relatives of the convict	9 October 2017
		24 July 2017
		2 August 2017
		26 September 2017

3.3 By reference to the log of visits between the convicts and their families, we conclude that these visits were as follows:

Name of Convict	Visit Date
Soldier: Mubarak Adel Mubarak Mahanna	3 November 2017
	20 November 2017
	23 November 2017
	11 December 2017
	10 January 2018
	22 January 2018
Al Sayed Alawi Hussain Alawi Hussain	2 November 2017
	13 November 2017
	20 November 2017
	23 November 2017
	11 December 2017
	10 January 2018
	14 January 2018
Mohammed Abdulhassan Saleh Al Shehabi	2 November 2017
	13 November 2017
	20 November 2017
	23 November 2017
	11 December 2017
	10 January 2018
	14 January 2018
	22 January 2018

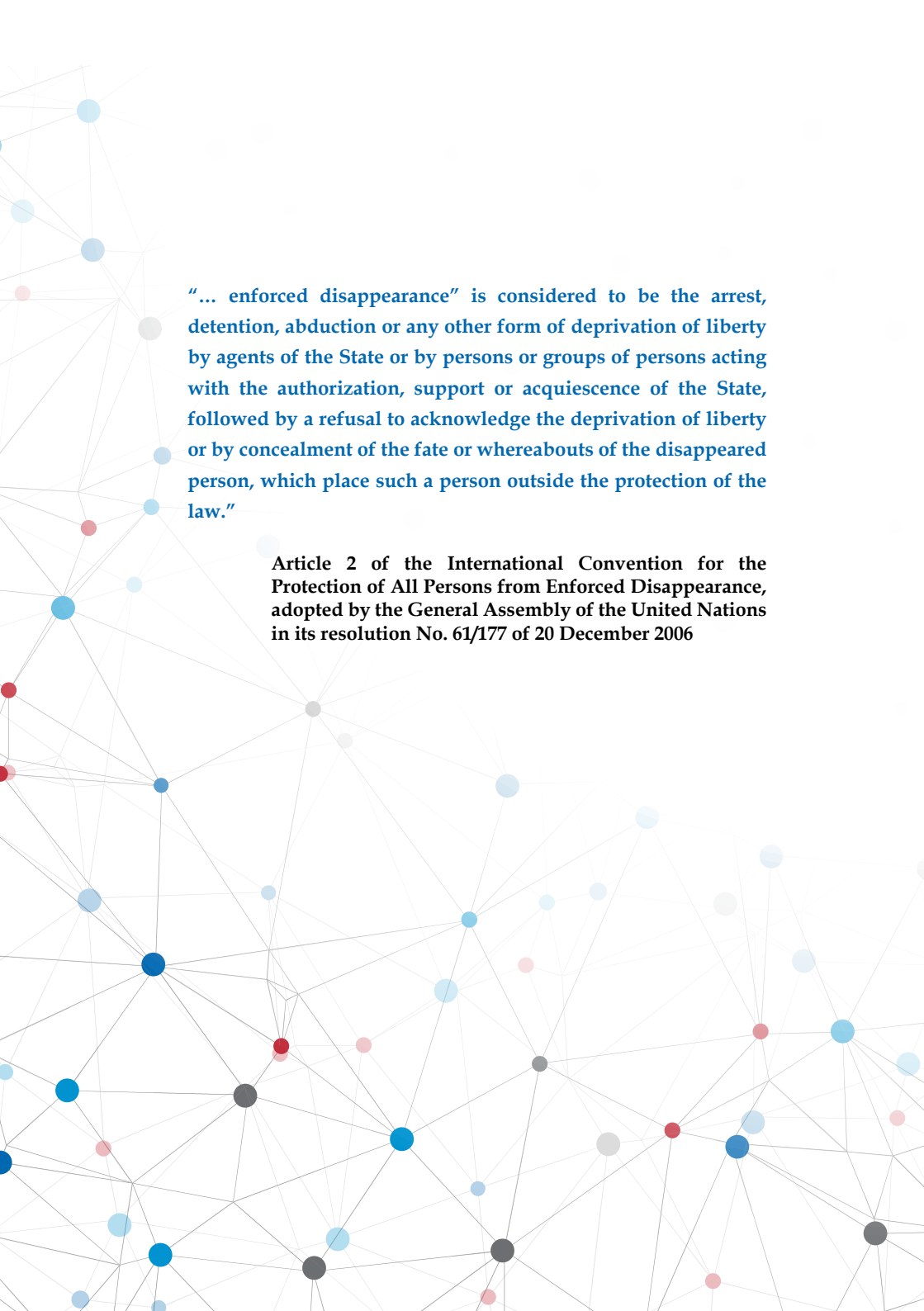
Mohammed Abdulhassan Ahmed Al Metghawi	2 November 2017
	13 November 2017
	20 November 2017
	23 November 2017
	11 December 2017
	10 January 2018
	14 January 2018
	22 January 2018
Fadhel Al Sayed Abbas Hassan Radhi	2 November 2017
	13 November 2017
	20 November 2017
	23 November 2017
	11 December 2017
	10 January 2018
	14 January 2018
	22 January 2018
Mohammed Abdulwahid Mohammed Al Najjar	11 December 2017
	10 January 2018
	14 January 2018
Hussain Essam Hussain Al Durazi	11 December 2017
	10 January 2018
	14 January 2018
Hussain Mohammed Ahmed Shehab	11 December 2017
	10 January 2018
	14 January 2018
	31 January 2018

- 3.4 With regards to the log of phone calls between some of the convicts and their relatives, we conclude that these calls were as follows:

Name of Convict	Call Date
Soldier: Mubarak Adel Mubarak Mahann	18 May 2017
	27 July 2017
	23 October 2017
Al Sayed Alawi Hussain Alawi Hussain	9 January 2018
	18 January 2018
	28 January 2018
Mohammed Abdulhassan Saleh Al Shehabi	27 July 2017
	23 October 2017
	9 January 2018
	18 January 2018
	28 January 2018
Mohammed Abdulhassan Ahmed Al Metghawi	27 July 2017
	23 October 2017
	9 January 2018
	18 January 2018
	28 January 2018
Fadhel Al Sayed Abbas Hassan Radhi	27 July 2017
	23 October 2017
	9 January 2018
	18 January 2018
	28 January 2018

- 3.5 Upon NIHR review of the requests submitted by the relatives or legal representatives of the convicts to the Public Prosecution or the Military Prosecution, the records of their visits and the communications made between them, and by reference to the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations in its resolution 61/177 of 20 December 2006, in particular the crime of “enforced disappearance”, it appears that the provisions of the International Convention do not apply in any way to the actions taken with respect to the convicts in the present case, as confirmed by the relatives of the convicts in the aforementioned applications to the investigation authorities, as well as the log of contacts and visits that were made between the convicts and their relatives. As such, NIHR considers that the reported allegations of “enforced disappearances” crime related to the convicts in the present case are not consistent with international, regional and national human rights standards.
- 3.6 NIHR commends the cooperation of the Military Justice for NIHR attendance of the hearings before the High Military Court, The Supreme Military Court of Appeal and the Military Court of Cassation which reflects the fact that all fair trial guarantees are available before the military or ordinary criminal courts.
- 3.7 NIHR appreciates the response of the Military Justice in record time to requests for copies of the minutes of the investigation by the Public Prosecution and the Military Prosecution with the convicts and requests for their presentation to forensic medicine, forensic reports received by Terrorist Crimes Prosecution and the Military Prosecution, in addition to the forensic reports received by the court that are legally competent to hear the case, the communications provided by the relatives and lawyers of the convicts to the Public Prosecution or the Military Prosecution, and the record of visits and communications between them and

their relatives, which reflects the role of the Military Justice in the realization of justice and the promotion and protection of human rights in the Kingdom of Bahrain.



“... enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations in its resolution No. 61/177 of 20 December 2006