

Bahrain: Reaching a Threshold

Project on Freedom of Association in the Middle East
and North Africa



Edward Burke

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Preface

Associations are indispensable to the very survival of democracy and societal progress. Non-governmental organisations (NGOs) defending human rights at local, national or international level are the guardians of fundamental liberties, and often constitute the only framework through which minorities and other vulnerable segments of the population can ensure that their voices are heard, their rights respected and their participation guaranteed. The degree of effective use of freedom of association therefore constitutes an important barometer in judging the factual situation of democracy, human rights and participation in a country.

In addition to being a fundamental right in itself, freedom of association is also a precondition and safeguard for the defence of collective rights, freedom of conscience and religion, and therefore deserves special attention and vigilance. With the rise of transnational terrorism, recent years have witnessed the suppression of freedom of association in many countries in the name of national security. Obligations that expose the founders of associations to arbitrary admission criteria, pedantic verifications and unnecessary administrative hindrances are indicators of government efforts to exert political control. This may happen formally – via the adoption of laws that allow inappropriate limitations on freedom of association – or informally – through a lack of application of the law in practice and the predominance of informal rules that replace the rule of law.

Recognising the fundamental significance of freedom of association and a vibrant, active civil society for citizen participation and the dynamics of

democratisation, the Club of Madrid, an independent non-governmental organisation of 70 former heads of state and government dedicated to democratic practice, embarked in February 2007 on a project aimed at strengthening dialogue on freedom of association across the Middle East and North Africa region. With the support of the European Commission's European Initiative for Democracy and Human Rights (EIDHR) and the United Nations Democracy Fund, the objective of the project has been to improve the capacity of both civil society and the authorities to construct a shared vision on the promotion of freedom of association. In cooperation with FRIDE and local partners, the Club of Madrid (CoM) has been engaging in efforts to strengthen dialogue between civil society and government, aiming to contribute, based on the CoM members' own leadership experience, to fostering the inclusion of civil society. With this end in mind, the project hopes to propose constructive legal and policy reforms that contribute to advancing citizen participation in national political debates on freedom of association, and more broadly, on democratic reform.

This report is one of a series of six country reports that provide independent analysis of the state of freedom of association and civil society in Morocco, Jordan, Bahrain, Egypt, Tunisia and Saudi Arabia, respectively. The reports are intended to accompany and support the aforementioned project led by the Club of Madrid by identifying both outstanding challenges and civil society's ideas on how to resolve them. Each report is based on a substantial number of consultations and interviews among local civil society stakeholders, government representatives across all levels, parliamentarians, political party representatives, journalists, union activists, women's and human rights activists, and lawyers and political analysts, conducted throughout 2007 and 2008. The independent analysis aims at facilitating public debate and furthering societal dialogue on freedom of association in the respective countries. The main findings and recommendations summarise the views expressed by the numerous local stakeholders who kindly granted us their time for an interview.

¹ "Reaching a Threshold" refers to a FRIDE interview with Sadig al-Mahdi, former Prime Minister of Sudan, who traveled to Bahrain as a leader of the Club of Madrid's project "Strengthening dialogue and democratic discourse through freedom of association in the Mediterranean and the Middle East region": *"The process of political reform is coming towards a threshold. What needs to be done now is to go beyond the general slogans of reform to the specific such as the separation of powers and the need to guarantee human rights..."* Interview with Sadig al-Mahdi, Madrid, April 11 2008.

Executive Summary

Bahrain's top-down reforms, initiated by King Hamad bin Isa al-Khalifa in 2001, were a welcome respite for a population weary of the violence and state repression that had characterised much of the preceding decade. To the surprise of many, King Hamad granted considerable space for civil society organisations (CSOs) to operate, abolished the hated State Security laws and provided an amnesty to opposition exiles. King Hamad's relatively benign treatment of CSOs and his tolerance for a wider degree of freedom of expression has won international praise, most effusively from the United States. The lack of legislative and judicial reform, however, means that Bahrain's political societies, CSOs, journalists and trade unions continue to operate under flawed and inconsistently applied legislation. Restrictive legislation such as the associations' law, the public gatherings law and those laws governing trade unions and the media urgently require amendment to concretely secure the rights that Bahrain is required to observe under its international obligations, including the International Covenant on Civil and Political Rights (ICCPR).

After the publication of a programme for reform in 2001, many Bahrainis hoped that the King would grant significant powers to an elected parliament, ending decades of discrimination against the Shia majority, and act in the interests of all Bahraini citizens. These hopes were dashed, however, with the promulgation by King Hamad of the 2002 Constitution creating an elected lower house, the Majlis al-Nuwwab, which lacks significant powers in the governing of Bahrain's affairs. Bahrain's parliament has been consistently hindered by a lack of trust between the Majlis al-Nuwwab and the government, resulting in a frequent deadlock in the passing of legislation. The inability of parliament to hold the government to account has only served to heighten suspicions that while the King has granted a considerable, albeit ill-defined, space for civil society to function, he is unwilling to devolve power over government affairs to elected representatives at both

the national and municipal level. The King continues to appoint ministers without any parliamentary vetting procedures or the realistic possibility of the Majlis al-Nuwwab overturning his appointments. Consequently, some ministers feel that they are under no obligation to account for their activities to parliament.

The recent efforts by the government to redraft legislation regulating the activities of CSOs and the media, especially the consultative approach pursued by the Ministry for Social Development, are welcome, and the draft legislation constitutes a significant improvement on previous laws. Concerns remain, however, over the excessive interference of the government in civil society and the media without sufficient judicial oversight. The public gatherings law should be amended to ease restrictions on the location of public meetings and penalties for the vague offence of "any speech or discussion infringing on public order or morals" should be removed. Anti-terrorism legislation that allows for prolonged incarceration without trial is a grave infringement of citizens' rights and should be scrapped. To date Bahrain has only ratified four of the eight core International Labour Organisation (ILO) conventions and the right to strike remains severely limited, as does the ability of public sector workers to form unions. While Bahrain has shown a recent willingness to provide legislation to protect workers' rights, in reality foreign workers, who make up the majority of Bahrain's private sector workforce, continue to suffer from inadequate protection and exploitation.

Bahrain faces a series of grave challenges if it is to avoid an increase in the recent violence that has shaken the country. The introduction of laws governing freedom of association and expression must go hand-in-hand with a determined effort to end sectarian discrimination, as the government is currently perceived as being part of the problem rather than being at the forefront of efforts to end it. To reverse this trend, the protections provided by the constitution must be applied by an independent judiciary, and a more open dialogue led by civil society to build understanding between Bahrain's communities should

be encouraged. Ultimately, as the 10th year of his reign approaches, King Hamad will face a complex set of decisions in deciding how to balance the interests of the royal family while also addressing calls for further reform, or whether he should resist these demands by trying to manage growing dissent in the hope that Bahrain's economic growth will eventually assuage unrest among its citizens.

Bahraini civil society is both robust and diverse, a strength the country will increasingly rely upon to

ease tensions between its communities and between Islamists and secularists. CSOs will be equally important if reform efforts are to regain momentum. This report, intended to accompany the Club of Madrid's efforts² to strengthen freedom of association in North Africa and the Middle East, provides an independent analysis of democratic reform and civil society in Bahrain. The findings and recommendations are based on interviews among governmental and non-governmental Bahraini stakeholders.

² The Club of Madrid Project "Strengthening dialogue and democratic discourse through freedom of association in the Mediterranean and the Middle East region", of which this report forms part, is supported by the European Commission's European Initiative for Democracy and Human Rights (EIDHR) and the UN Democracy Fund. More information on the project is available at: www.clubmadrid.org

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Political context: the democratic reform process to date

Bahrain, an archipelago state situated in the strategically vital Persian Gulf, has a population of approximately 1 million, including 350,000 foreign residents. Approximately 60 percent of Bahrain's citizens are members of the Shia Twelver faith, although the country is ruled by a Sunni dynasty, the al-Khalifa family.³ At the tip of the "Shia crescent", a concept crudely outlined by King Abdullah of Jordan in 2004, Bahrain has been viewed as a key test for reforms to ease sectarian tensions in the region, encourage shared values and build a common Bahraini identity to overcome discrimination on religious lines.⁴ The reforms begun by King Hamad bin Isa al-Khalifa upon his accession to the throne in 1999 were greeted with relief by a Bahraini population weary of the systematic repression practiced during the latter years of the reign of his father, Sheikh Isa. The political and social space opened up in Bahrain has been filled with debate over the future direction of the country, not least upon the division of powers between the elected parliament, the Majlis al-Nuwwab and the royal family. Bahrain's experience is being observed with interest and a certain degree of wariness by other countries in the Gulf Cooperation Council (GCC), who are concerned

lest Bahrain act as a template for demands for reform elsewhere.⁵

As well as allowing some much-needed breathing space for civil society in Bahrain, the top-down, managed process of reform in Bahrain has also had significantly positive consequences for the consolidation of power by King Hamad.⁶ After the economic stagnation and social unrest of the 1990s, King Hamad's reform programme has provided a valuable opportunity for the ruling al-Khalifa family to allow for the "decompression" of the tense atmosphere of the 1990s, a situation that came close to spiralling into all-out insurgency, while ultimately retaining complete executive power. As Gerd Nonneman has observed, liberalisation may not only reduce pressures on the regime but also essentially function as a "divide and rule" tactic, under which former opposition leaders are given access to limited parliamentary institutions, become stakeholders in state structures and seek the favour of the King to implement their differing objectives.⁷ By successfully persuading the largest, and pre-dominantly Shia, opposition party, al-Wefaq, to participate in seriously flawed elections to a parliament with weak legislative and oversight powers, the al-Khalifa family have made significant progress in legitimising structures devised in the 2002 Constitution that allows them to contain the opposition and appease Western sensitivities. This apparent stability is then employed to encourage vital external investment in Bahrain's emerging post-oil economy. Given the disharmony between the Sunni and Shia Islamist parties in the elected lower house of parliament, both the al-Khalifa family and the royally appointed upper-house of parliament have moved to

³ The overwhelming majority of Bahrain's Shia population follows the Twelver branch and the Jafari School of Islamic jurisprudence or *fiqh*. The Bahraini Shia populace can be sub-divided into *Baharna* and *Ajam*, with the *Ajam* in the minority and identified as being of Persian origin. Sunni citizens follow both the Malik and Shafi'i schools of *fiqh*, the latter traditionally associated with the *Huwala* or those who had historic associations with Persia while the former is the *fiqh* practiced by the ruling al-Khalifa family. The al-Khalifa trace their origins to the al-Najd central region of Saudi Arabia, from where they migrated to Kuwait in the 18th century before laying claim to Bahrain in 1783 after a turbulent two centuries of Portuguese, Persian and Omani rule. While the al-Khalifa later ceded much of their sovereignty to the United Kingdom, beginning in the early 19th century and continuing until independence in 1971, their astute pragmatism has ensured their survival as the most powerful dynasty in Bahrain for over two centuries.

⁴ "Fears of a Shia Full Moon", *The Guardian*, 26 January 2007.

⁵ Saudi Arabia's influence over Bahraini affairs is extensive, not only through its effective granting to Bahrain of much of its current oil fields and pumping oil to Bahraini refineries, but also through Saudi investment in the Bahraini financial sector. While revenues from oil and gas currently account for only 11 percent of GDP, this constitutes 76 percent of government income. "Country Report 2007: Bahrain", Economist Intelligence Unit. London: December 2007, p. 4.

⁶ Under the 2002 Constitution, Bahrain was formally declared a Kingdom rather than an Emirate. Therefore King Hamad's father's title was that of Emir and King Hamad initially ruled Bahrain as Emir from 1999 to 2002.

⁷ Nonneman, Gerd., "Political Reform in the Gulf Monarchies – From Liberalisation to Democratisation? A Comparative Perspective". Durham University: Sir William Luce Paper No. 6, 2006, p. 13.

present themselves as mediators between the Islamist parties and guardians of a more secular, tolerant form of government.

For now at least, King Hamad may have answered Huntington's "*King's Dilemma*" – consolidating the dominant position of the al-Khalifa family by carefully managing top-down reforms that pay homage to the rhetoric of democracy but do not extend to empowering the elected parliament. This royally instigated process has succeeded in fracturing the opposition and aims at establishing the royal family as a benevolent court of appeal that will arbitrate between the sectarian parties that characterise the Bahraini political landscape and occasionally grant their demands as an act of royal favour.⁸

Historical Background

After declaring independence from the United Kingdom in 1971, Bahrain underwent a period of fervent political activity as disparate groups came together to advise King Hamad's father, Sheikh Isa bin Salman al-Khalifa, on drafting the new state's first constitution, which was promulgated in 1973. This established a one-chamber legislature, the Constituent Council. This body was granted extensive powers, including the right to enact legislation, which the Emir could only delay, and the right to dismiss ministers. The 1973 Constitution established that, of the 42 members, 22 would be directly elected by the populace, 12 would be appointed by Emiri decree and 10 ministers would also have Council seats (though Sheikh Isa opted to appoint only 8 ministers so as to maintain a majority of democratically elected representatives).⁹

The unwillingness of the elected representatives to obey Shiekh Isa's wishes, an assertiveness that may have caught the royal family off-guard, resulted in the suspension of the Constituent Council by the Emir in

1975, as he was entitled to do under Article 65 of the Constitution. The Emir was also constitutionally obliged, however, to hold elections within two months of the dissolution.¹⁰ This obligation was ignored and, invoking the recently promulgated State Security Measures Law of 1974, the Bahraini state began a crackdown on opposition activists that saw thousands imprisoned during a 25-year period, of whom a significant number were tortured.¹¹ Prime Minister Khalifa bin Salman al-Khalifa was perceived during this time as the key executive authority, rather than Sheikh Isa, and it was he, through his control of the activities of the Interior Ministry, who became a resented figure among opposition activists. This legacy continues to have repercussions today as he approaches his 40th year in office.

The 1990s saw a campaign of violent protest against the regime, including several bombings perpetrated by the Islamic Front for the Liberation of Bahrain. A broad coalition of opposition activists known as the Bahrain Freedom Movement (BFM) was established in London.¹² As a means to try and assuage rising opposition to the government, Sheikh Isa established a consultative body, the Majlis al-Shura in 1992, but this lacked any real legislative authority. Protests intensified and peaked between 1994 and 1996, when Bahrain was rocked by a series of riots and occasional bombings. Armed resistance to the regime was incoherent, however, and the vast majority of opposition activists were unwilling to support a sustained armed insurgency against the regime.¹³

¹⁰ "Legal Opinion Concerning the Constitutional Matter in Bahrein" p.10.

¹¹ For an account of human rights abuses committed in Bahrain during the 1990s, see the Human Rights Watch Report compiled in 1997 entitled "Routine Abuse, Routine Denial". <http://www.hrw.org/reports/1997/bahrain/>

¹² This BFM should not be confused with that which exists today, under the leadership of Said Shehabi.

¹³ The Bahraini government remained convinced that the Revolutionary Guards in Iran were conspiring to support a coup attempt, and accused Iran of arming Shia militants and facilitating training in Lebanese Hezbollah camps. Bahrain subsequently expelled an Iranian diplomat in 1996 for alleged links with insurgents and these accusations played a significant role in the souring of GCC-Iranian relations in the 1990s. For an account of allegations against Iran and of the violence of the 1990s see Peterson, J.E., *Bahrain: The 1994-1999 Uprising*, www.jepeterson.net/sitebuildercontent/sitebuilderfiles/apbn-002_bahrain_1994-1999_uprising.pdf

⁸ Khalaf, Abdulhadi., "The King's Dilemma: Obstacles to Political Reforms in Bahrain", Fourth Mediterranean Social and Political Research Meeting, Lund University: March 2003.

⁹ "Legal Opinion Concerning the Constitutional Matter in Bahrein", prepared by Hassan Radhi, Jalila al-Sayed, Mohamed Ahmed and Essa Ebrahim. p.2 (Document in author's possession).

Upon his accession in 1999, Sheikh Hamad bin Isa al-Khalifa, recognising a need to distance his rule from the abuses committed under his father since the dissolution of the Constituent Council, established a Supreme National Committee for Drafting a National Action Charter in order to begin a process of reconciliation and reform. On 14 and 15 February 2002, of a turnout of 90 percent of eligible voters, 98 percent voted to support a National Action Charter which outlined a reform path for Bahrain, including an imprecise proposal for a bi-cameral parliament. The Charter also precipitated the dissolution of the State Security Courts and the amendment of the State Security Law, thus removing the most repressive state legal architecture.¹⁴

The high turnout and overwhelming support of Bahrainis for the National Charter was greatly helped by the visit of King Hamad to the home of Sayyid Abdullah al-Ghurayfi, where he met with Sheikh Abd al-Amir al-Jamri, a leading Shia cleric, and agreed that legislative power would rest with a democratically elected chamber – the Majlis al Nuwwab – and that the Majlis al-Shura would have only an advisory role. These powers were to be enshrined in Bahrain's constitution. The King also signed a document agreeing to these recommendations, which was widely circulated as an assurance that he would keep his word in the future.¹⁵

The initial period of Bahrain's reform process appears to have been modelled on the Jordanian experience. Essentially it called for a National Charter to define a course for the country, while also facilitating the return of exiles, the release of political prisoners, the reinstatement of employees who were dismissed from their jobs as a consequence of their political activities and the repeal of repressive state security laws. In February 2002, King Hamad used the overwhelming endorsement of the vaguely worded National Charter as a mandate to promulgate a constitution which fell

short of most Bahrainis' aspirations, consolidating power once again around the royal family, with the Constitution misleadingly citing Bahrain as a constitutional monarchy and changing the country from an Emirate to a Kingdom.¹⁶ The King also reneged upon his public declaration that the democratically elected Majlis al-Nuwwab would be the principal legislative chamber, dividing legislative authority between the two houses of the Majlis al-Watani (National Assembly), the Majlis al-Shura with 40 members appointed directly by the King, and the Majlis al Nuwwab with an equivalent number of representatives directly elected by the populace. Given that the Majlis al-Shura maintained a deciding vote in the case of deadlock between the two houses, and the subsequent gerrymandering that characterised the 2002 and 2006 elections, the King was perceived to have betrayed the trust placed in him to empower a truly democratic legislature.¹⁷

If the opposition viewed the new Constitution as a breach of faith on the part of the King, preparations for the 2002 elections convinced them that the government was embarking on a strategy to provide a veneer of democracy while denying Bahrainis the opportunity to participate in fair and transparent elections.¹⁸ The electoral districts of Bahrain for the 2002 elections, which remain substantially unaltered today, are a gross example of gerrymandering. In 2003 the Bahrain Human Rights Society (BHRS) pointed to the imbalance of constituents in the electoral districts, with one predominantly Sunni district containing barely 400 voters while a Shia district could have up to 14,000.

In protest at the promulgation of the new constitution

¹⁶ ICG, p. 5.

¹⁷ Ehteshami, Anoushiravan, and Wright, Steven, "Political Change in the Arab Oil Monarchies: From Liberalization to Enfranchisement", *International Affairs* (83:5, 2007). London: Chatham House, p. 919.

¹⁸ "Opposition" is a relative term in Bahrain which generally applies to those groups who oppose the current system of government and seek to expand the powers of the elected lower house. These groups are careful not to overtly criticise the King personally. Any criticism of the Prime Minister is usually offered indirectly, reflecting the pronounced degree of caution exercised by the opposition in relation to the royal family – the more senior a royal the less room for direct criticism.

¹⁴ "Bahrain's Sectarian Challenge", Brussels: The International Crisis Group (ICG), Middle East Report No. 40, 2005, p. 5.

¹⁵ Peterson, J.E., "The Promise and Reality of Bahraini Reforms", www.jepeterson.net/sitebuildercontent/sitebuilderfiles/Promise_of_Bahrain_Reforms.pdf

and the fixing of boundaries to limit the impact of the Shia vote, the main Shia party, al-Wefaq, together with several secular opposition parties such as al-Waad, refused to participate in the 2002 elections to the Majlis al-Nuwwab. Shia clerics encouraged a boycott of the polls and national turnout for the second round of voting was low, registering barely 43 percent of eligible voters. The reversal of this decision in 2006 and subsequent participation of al-Wefaq in elections led to a split in their ranks, with a relatively small minority of members leaving to form the al-Haq movement, which continues to advocate non-participation in elections. Nevertheless, al-Wefaq, under the leadership of Sheikh Ali Salman, a learned and widely respected scholar, together with the support of the highest Shia religious authority in Bahrain, Sheikh Isa Qassim, and the blessing of significant marjas, including Ayatollahs al-Sistani and Fadlallah, retained the support of the majority of the Shia electorate and won 17 seats in the 40-seat Majlis al-Nuwwab in 2006.¹⁹

During the elections al-Wefaq avoided overt sectarian references and in some cases offered support to liberal Sunni candidates. However, gerrymandering, combined with a disappointing vote for the al-Waad movement, ensured that the opposition did not secure a majority of seats in the Majlis al-Nuwwab. Generally, the government can continue to rely on the support of the Sunni Islamist parties, al-Minbar and al-Asalah. Together with the support of most of the independent members of the Majlis al-Nuwwab they form a majority that is broadly supportive of the government.

Undoubtedly the most divisive issue of the 2006 campaign were the revelations published by a British-Sudanese adviser to the Bahraini Government, Salah al-Bandar, who alleged that the government had established a task force headed by the Minister for Cabinet Affairs, Sheikh Ahmed bin Attiyatallah al-Khalifa, to undermine the Shia community, and

implicated senior Sunni politicians including those from the al-Minbar and al-Asalah parties as having received clandestine payments from the government. The allegations included a plan to increase naturalisation of Sunnis from other countries, the infiltration of Shia civil society organisations (CSOs) and the setting up of fake non-governmental organisations (NGOs). These allegations, combined with the perceived reluctance of the government to investigate the claims properly, and the banning of any discussion of the “Bandar report” in the media, led to increased mistrust and indirectly damaged al-Wefaq for its engagement with the government. The government made an appeal for national unity in the wake of the Bandar Report controversy, but as one prominent Shia leader observed, national unity was exactly what the government was perceived to have betrayed. In response to domestic and international controversy, the King moved to make some conciliatory gestures including the appointment of a Shia Deputy Prime Minister – Dr. Jawad al-Arayed.

The government has done little to allay mounting fears over its naturalisation practices with regard to foreign Sunni citizens, which for many confirms that there is indeed a deliberate policy to engineer a Sunni majority.²⁰ The number of Shia participants in top government positions remains woefully unrepresentative, with opposition leaders alleging that Shia representation may be as low as seven percent of the top 500 government posts. Shia citizens are also totally excluded from any positions of command in the security services, which is a profound demonstration of the state’s lack of trust in the loyalty of the majority of its citizens. There are also serious allegations of Shia not being able to buy land in certain areas which have not been adequately addressed. This is exacerbated by a lack of transparency over land acquisitions or transactions made by senior royals. It is also widely believed that the royal family currently owns the

¹⁹ The external influence of foreign Marjas is frequently used as a means to question the national loyalty of Bahraini Shia. However, alleging external control of al-Wefaq ignores the more significant influence of Sheikh Isa Qassim and other spiritual leaders in issuing guidance on political questions, and diminishes the internal debate that takes place within the Shia *ulama* of Bahrain.

²⁰ Population statistics have been woefully inadequate in Bahrain for many years with a glaring lack of transparency over the naturalisation of foreign citizens. On 14 May 2008, Bahrain’s Opposition walked out of parliament in protest at a 42 percent jump in official population statistics from 740,000 to 1.05 million. “Bahrain Shia MPs walk out over population row”, Reuters, May 14th 2008.

majority of land in Bahrain and are distributing it both to reward supporters and for personal economic gain.

The UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD) has recently criticised Bahrain for the lack of economic social and cultural rights accorded to the Shia population and the UN Committee on the Rights of the Child (CRC) has also noted significant disparities between social services provided in Sunni and Shia areas.²¹ In addition to widespread anger over a lack of transparency over land transactions, there is also significant frustration that the reclamation of land from the sea is being treated as a personal project of the royal family.²²

Executive

The constitutional powers of King Hamad are extensive and include the power to dissolve parliament, impose martial law, alter the constitution, veto laws passed by the National Assembly, along with the power of appointment and removal of ministers and judges. However, royal decrees must ultimately be ratified by parliament and can be overturned by a majority of both houses, although attempts by the Majlis al-Nuwwab to amend legislation introduced unilaterally by the King prior to 2002 have consistently met with failure. The Family Council of the al-Khalifa also plays an important role in deciding the distribution of resources, but although it has been in existence since 1932 and was made a formal state body in 1973, its relationship with other state institutions is not codified. Ministers and senior officials are frequently directed by members of the ruling family, an informal system of royal command and patronage highly detrimental to the transparent functioning of government. The relationship between the King and his uncle, Prime Minister Sheikh Khalifa bin Salman al-Khalifa, is not straightforward, but it is believed the Prime Minister

was initially sceptical about the ability of the King to limit or control the reform process. The influence of the Prime Minister is highly significant, and is not merely restricted to those senior officials whom he has personally appointed and instructs, but also applies to the courts, the security forces and the economy. The Crown Prince wields increasing influence over Bahrain's economy due to his control of the Economic Development Board (EDB).

Bahrain's Cabinet of Ministers normally consists of 24 ministers, including the Prime Minister and three Deputy Prime Ministers. Approximately half of the current cabinet is derived from the al-Khalifa family. Ministers are not selected by parliament and therefore their position is based entirely upon the favour of the royal family. While some ministers, most notably those not of the al-Khalifa family, have proved willing to cooperate with the Majlis al-Nuwwab, MPs complain that legislation agreed with ministers can often be revoked under instruction from the Prime Minister or another senior member of the royal family.

At a local level the government exercises its authority through five local governorates, which take precedence over the elected municipal councils. The Ministry for the Majlis al-Shura, municipalities and agriculture is the relevant ministry for local authorities. The municipal councils frequently complain that they have little or no influence over local policy and expenditure.

Legislative

Under the Constitution legislative authority is divided between the King and the National Assembly. The upper house - the Majlis al-Shura is appointed by the King, while the lower house - the Majlis al-Nuwwab, is elected by the popular vote.²³ Both houses consist of 40 members and, according to the Constitution, legislation must be passed by the King and the legislature. The King may veto laws passed by both the Majlis al-Shura and Majlis al-Nuwwab, but this may

²¹ "Compilation Prepared by the Office of the High Commissioner for Human Rights", Doc. No. A/HRC/WG.6/1/BHR/2, Human Rights Council, Working Group on the Universal Periodic Review, First Session, 7-18 April 2008. Geneva: 25th February, 2008.

²² Khalaf, Abdulhadi, "The King's Dilemma: Obstacles to Political Reforms in Bahrain", Fourth Mediterranean Social and Political Research Meeting, Lund University: March 2003, p. 6.

²³ The Carnegie Endowment for International Peace, *Arab Political Systems: Baseline Information and Reforms – Bahrain*, Washington DC: 2008, p.5.
http://www.carnegieendowment.org/files/Bahrain_APS.doc

be overturned if both houses, meeting in a joint session of the Majlis al-Watani, vote by a two-thirds majority to reverse the King's veto, an event that is highly unlikely given the gerrymandering of constituencies by the government and the royal appointment of all members of the Majlis al-Shura.

While both the Majlis al-Shura and the Majlis al-Nuwwab can propose legislation, the official text of the legislation must be prepared by the Cabinet Office of Legal Affairs, which is overseen by the Ministry for Justice and Islamic Affairs. There is a consistent trend whereby the government rejects bills originating from the parliament, delays legislation indefinitely and/or makes substantial changes to the original bill before sending it back for ratification by parliament. As a consequence the legislative process suffers from frequent and prolonged deadlock, which is a source of frustration for ministers and parliamentarians. Both houses of parliament also suffer from a lack of legal advice when trying to initiate legislation.²⁴ Under Article 66 of the Constitution a two-thirds majority of the Majlis al-Nuwwab can pass a vote of no-confidence in a minister, except for the Prime Minister. This has not happened to date due to the lack of cooperation between al-Wefaq, the Sunni parties and independents, with the Sunni parties being sympathetic, to varying degrees, to the government, and it remains to be seen whether this power can indeed be exercised.

The Majlis al-Nuwwab does have the right to question ministers, although this is frequently frustrated by the current Speaker, who refuses to assert the right of the Majlis al-Nuwwab to question certain ministers, including the unpopular Minister for Cabinet Affairs, Ahmed bin Attiyatallah.²⁵ Even when agreeing to be questioned, some ministers have treated the elected house with contempt, with the Finance Minister, Ahmed bin Mohammed al-Khalifa, walking out of a

session of parliament and the Minister for Municipalities and Agriculture ignoring calls for his resignation on corruption charges stating: "Why should I bow down to their demand when I have been appointed by the Kingdom's leadership and not by parliament?"²⁶

The Majlis al-Nuwwab does not audit the state finances, although some ministers have volunteered financial statistics when requested. Other ministries are apparently exempt from financial oversight, such as the Ministry for the Interior, Defence and the Prime Minister's office. According to royal decree, the Financial Control Bureau reports directly to the King and the parliament similarly has no oversight over the activities of the highly influential Economic Development Board (EDB) and the Supreme Council for Women.

Bahrain is a regional leader in extending the franchise to women and allowing women to run for public office. In the legislative elections of 2006, 18 women campaigned for election to the Majlis al-Nuwwab, and five ran in the municipal elections. One woman, a prominent supporter of the government, Latifa al-Qa'oud, was unopposed in her district and became Bahrain's first elected female MP. A recent trend in Bahrain, however, has been the rejection of some of the more secular initiatives of the government by the political societies of the Majlis al-Nuwwab, including opposition to the introduction of a personal status law. To date sectarian mistrust has prevented bi-partisan cooperation between the Islamist parties but the potential for a coherent common Islamist agenda in the Majlis al-Nuwwab has alarmed Bahraini liberals. The conservative Sunni political society, al-Asalah, advocates the strict observance of a narrow interpretation of Sharia law and often finds itself in broad agreement with leading figures from Al-Wefaq in their opposition to the more secular instincts of the royally-appointed Majlis al-Shura. The other Sunni

²⁴ The recent resignation of a legal adviser to the Majlis al-Nuwwab in March 2008 has further exacerbated the lack of legal expertise available to the Majlis al-Nuwwab. "Grant right to Grill Ministers", *The Bahrain Tribune*, 13 March 2008.

²⁵ In March 2008 this precipitated a walk-out of parliament by al-Wefaq in protest at their inability to question certain ministers. "Grant us the right to grill Ministers", *The Bahrain Tribune*, March 13th 2008.

²⁶ "I am only answerable to the leadership: Bahraini Minister", *The Bahrain Tribune*, May 15th 2008. and "Al Wefaq Chief Warns Deputies", *Bahrain Tribune*, 16 May 2008.

political society in the Majlis al-Nuwwab, al-Minbar, led opposition to the government's signing of the International Covenant on Political and Civil Rights (ICPCR), citing their rejection of the freedom to convert to another religion, an offence against Islam which in the opinion of their President should carry the death penalty.²⁷ The Sunni Islamist parties have also stated their support for restrictive media laws that would allow a broader interpretation of offences against Islam. The Islamist success in the 2002 and 2006 elections has allowed the government to sow seeds of doubt as to whether many of Bahrain's civil liberties could paradoxically be lost through the empowerment of its elected institutions.

There is currently a grave lack of cooperation between the political societies of the Majlis al-Nuwwab along sectarian lines.²⁸ The Sunni parties seem to be especially reluctant to work with al-Wefaq and, indeed, those who have proposed to do so have suffered politically, most strikingly in 2005, when the leader of al-Asalah, Adel al-Mouwda, was replaced because of his perceived closeness to Shia Islamists.²⁹ Some political leaders have cited the need for external interlocutors to stimulate dialogue between the political societies as indicative of the glaring lack of trust and cooperation between the different factions of the Majlis al-Nuwwab. The work of parliamentary committees flounders along sectarian lines and a lack of defined powers and staffing resources. Relations and cooperation between the Majlis al-Shura and the Majlis al-Nuwwab remain poor and occasionally acrimonious. Al-Wefaq particularly is coming under increasing pressure from its Shia constituency to demonstrate tangible benefits at the national and

municipal level for its participation in the elections of 2006. The International Institute for Democracy and Electoral Assistance (IDEA) has observed that the principal reason for the dissolution of the 1973 parliament was the increasing frustration of parliamentarians in their efforts to draft and pass laws, which inevitably led to conflict with the government. It remains to be seen whether the current parliament can avoid a similar fate.³⁰

Judiciary

Bahrain's legal system derives from laws inherited from British Common Law, Sharia law and tribal precedents.³¹ The higher civil and criminal courts are presided over by three judges, whose decisions can be referred to a court of cassation which is the final appellate court. Bahraini law does not allow for trial by jury. The application of Sharia law is divided into parallel courts for Shia and Sunni citizens, which rule on personal status cases. Rulings by Sharia courts can be appealed to the High Sharia court of appeal. The decisions of the Sharia courts are frequently criticised by women's groups, including the Supreme Council of Women, the Women's Union and the Women's Petition Committee, which have aimed at securing a codified personal status law to protect women's rights. Bahrain's Constitutional Court has jurisdiction over interpreting the constitutionality of laws and statutes and its president and six members are directly appointed by the King.

While the constitution established the nominal independence of the Bahraini courts, in practice there is extensive interference from the executive. The King continues to chair the Higher Judicial Council, appoints judges by decree and many members of the judiciary are members of the al-Khalifa family. There are an insufficient number of judges to hear the amount of cases before the courts, resulting in significant delays in hearings. The government also employs judges from abroad, who do not have a deep knowledge of Bahraini

²⁷ "MPs refuse to ratify rights law", *Gulf Daily News*, 22 February 2006. However, Al Minbar are generally perceived as the less conservative of the two Sunni Islamist parties represented in the Majlis al-Nuwwab and were the only elected political society to support the introduction of a personal status law which would have regulated women's rights.

²⁸ An honourable exception to the lack of cooperation in the Majlis al-Nuwwab is Dr. Abdul Aziz Abul who, although elected with support from al-Wefaq, is seen as a leading advocate of building common ground between parliamentarians.

²⁹ Zweiri, Mohammed Zahid Mahjoob, "The victory of Al Wefaq: The Rise of Shiite Politics in Bahrain", Research Paper No. 108. Athens: Research Institute for European and American Studies, April 2007.

³⁰ Mohamoud, A.A., "The Role of Constitution-Building Processes in Democratization – Case Study: Bahrain", International IDEA: Stockholm, 2005 www.idea.int/conflict/cbp/.

³¹ Carnegie Endowment, p. 6.

law and may bring malpractice from other court systems to Bahrain. The Constitutional Court has been subjected to particularly sharp criticism from civil society activists for its lack of expertise and is widely perceived as a tool to protect the King and the Cabinet rather than as a safeguard of citizens' rights.³² The Office of the Public Prosecutor (OPP) is similarly viewed as a tool of government policy rather than an independent state agency.

The judiciary has proved unwilling or unable to rigorously uphold citizens' rights in challenging sectarian practices whereas, paradoxically, when allegations of sectarianism have been the subject of discussion in the media, the judiciary has not hesitated to invoke anti-sectarian legislation to censor newspapers and close websites in the name of protecting the unity of Bahrain. Civil society activists frequently express their concerns regarding the futility of legislating to protect citizens' rights unless the judiciary, Courts Secretariat and the Office of the Public Prosecutor are granted the requisite independence and expertise to interpret the law fairly and consistently. The government has recognised the need to improve the capacity of the judiciary, especially with regard to commercial law, given its obvious repercussions on the country's economy, and has begun to work more intensively towards judicial reform with agencies such as the United Nations Development Programme (UNDP) and the American Bar Association (ABA), as well as expanding the Institute for Legal Studies. It is doubtful, however, that the King and other senior royals are willing to allow a truly independent judiciary to emerge in Bahrain.

Associations landscape

There are currently just over 460 CSOs operating in Bahrain, most of which have only become operational in the last few years. The inexperience of many of the leaders of these organisations, together with an internal debate in the Bahraini government on the extent to which CSOs should be monitored and regulated, has led to significant incoherence and mistrust between the government and civil society. Although the proliferation of CSOs in Bahrain is a reflection of the increased freedoms enjoyed by Bahrainis since the succession of King Hamad, there also remain considerable restrictions that limit their activities. Nevertheless, there are signs of a willingness of the Ministry for Social Development to substantially alter existing legislation and the Minister has, in consultation with CSOs, introduced a draft bill which allows for a much more permissive civil society environment – legislation which still has to be ratified by the King and parliament. The Minister, Fatima bint Mohammed al-Beloushi, has also established a fund of 50,000 BD for civil society training over the next two years. A positive step would be for this consultative approach to be replicated by other government ministries, most pertinently by the Ministry for Labour and the Ministry for Information.

Political parties/associations

Political parties are officially illegal in Bahrain, although political societies, as defined and regulated by Political Societies Law No. 25 of 2005, assume very much the same role. While some parties such as al-Waad regularly complain about the banning of political parties, others do not see the legalisation of the Arabic term for party, *hizb*, as a key issue, with some even regarding it as an overly divisive term which has more negative connotations than the English word "party". There are currently 15 political societies in Bahrain, three of which are represented in the Majlis al-Nuwwab. All of these three are Islamist: the mainly

³² US State Department Country Report on Human Rights Practices – Bahrain 2007.
www.state.gov/g/drl/rls/hrrpt/2007/100593.htm

Shia al-Wefaq society and the predominantly Sunni societies, al-Asalah and al-Minbar. Al-Asalah defies easy categorisation as a “pro-government” political society however. Their Salafist ideology has precluded close cooperation with al-Wefaq, but they have shown an increasing frustration with what they view as government mismanagement and corruption and in May 2008 led a campaign to censure the Minister for Municipalities and Agriculture, Mansour Hassan bin Rajab, and refused to accept a parliamentary committee verdict which cleared him of corruption charges. Ironically, and indicative of the lack of cooperation in the Majlis al-Nuwwab, this effort to censure a minister suffered from the absence of al-Wefaq, whose members have increasingly boycotted parliament in protest at what they see as a lack of government cooperation and their limited ability to seek information and question ministers.³³ A lack of consensus on strengthening the power of the Majlis al-Nuwwab has damaged the credibility of parliament in the eyes of many Bahrainis who have become increasingly frustrated with the inability of their elected representatives to deliver meaningful change. Within the Shia community this has led to a trend of growing support for the non-participatory al-Haq movement.

While the activities of registered political societies do not encounter overt harassment by the government, restrictions such as the public gatherings laws, which oblige societies to notify the government 72 hours prior to a public meeting, as well as constraints on freedom of expression, fundraising and publications imposed by current legislation, continue to frustrate political activity in Bahrain. None of the Islamist parties have fielded a female candidate to date, with al-Asalah even going so far as to oppose women’s right to vote, although al-Wefaq has previously supported women candidates from al-Waad and has its own internal women’s committee.

Professional associations

Professional associations are an influential part of civil society in Bahrain, although this influence is often

exercised discreetly. While in the past professionals have come together to found clubs, such as the Engineers Society or the Bahrain Bar Society, professional associations have tended not to become engaged on overtly political issues, and they have been careful not to offend the government or the judiciary. The Bahraini Journalists Association (BJA) was finally granted legal status by the government in 2000, although since then the government has been unwilling to allow more than one media association. The BJA has become more assertive in recent years in highlighting censorship issues but its activities are hampered by the reluctance of many journalists to ostracise themselves from the Ministry for Information or their editors. Of key importance to the Bahraini economy is the Bahrain Chamber of Commerce and Industry (BCCI), which represents employers’ interests and has played a prominent role in advising the government on economic policy. While the BCCI generally enjoys a good relationship with the government, there have been increasing complaints from prominent business leaders with regard to the lack of competence within the government and the courts to oversee Bahrain’s economy, in addition to the practice of some members of the royal family of circumventing standard corporate and financial practice.

Historically, the al-Khalifa family’s oil wealth has encouraged a system of patronage that pervades Bahraini society and its institutions. In 2007, however, Bahrain introduced its first income tax, which, although currently standing at barely one percent, and condemned as un-Islamic by senior Shia and Sunni clerics, may be seen as a recognition of a need to adjust to a post-oil reality.³⁴ The erosion of oil revenues has led to senior figures within the royal family such as the Prime Minister and the Crown Prince engaging in increased economic activity in alternative sectors, not least in construction and in the financial sector. This has led to calls for oversight and transparency with regard to the business dealings and trading in state assets by senior members of the al-Khalifa family. The

³³ “I am only answerable to the leadership: Bahraini Minister”, *The Bahrain Tribune*, 15 May 2008.

³⁴ “Country Report 2007: Bahrain”, Economist Intelligence Unit. London: December 2007, p. 4.

Crown Prince, Salman bin Hamad al-Khalifa, has also recognised that reforming Bahrain's economy is key to the al-Khalifa family's perceived legitimacy to rule and there are significant hopes that his Economic Development Board (EDB), although beyond the scrutiny of the elected Majlis al-Nuwwab, will mitigate social tensions among Bahrain's populace.

As well as raising questions on the need to regulate new economic developments, the BCCI has also been frustrated in its recent efforts, in cooperation with Bahrain's trade unions, to draft a new labour law, its recommendations being all but ignored by the government. A likely outcome of the Bahraini government's attempts to diversify the economy is that the private sector will play an enhanced role in influencing government policy.

Labour unions

Trade unions were legalised for the first time in 2002 and there are now approximately 40 trade unions active in Bahrain. Most workers, however, remain unaffiliated to any trade union - in 2005, it was estimated that only four percent of all Bahraini workers were members of a trade union.³⁵ Public sector workers are generally not permitted to unionise, although the Bahraini government, in its submission to the UN Human Rights Council in March 2008, has committed to reviewing this restriction under Article 10 of the Trade Union Law in order to comply with international labour standards.³⁶ There was a marked increase in strike action in 2007, with public sector workers particularly aggrieved at the lack of commensurate wage increases to meet rising prices. Clashes have resulted in trade union activists being dismissed for organising strikes without government permission, including, most recently, the dismissal of the Vice President of the Bahrain Postal Workers Union for unsanctioned trade union activity.

Unions are currently restricted by law in publishing their own newspapers, which restricts the dissemination of information on workers' rights. The General Federation of Bahraini Trade Unions (GFBTU) was established to serve as an umbrella organisation for the interests of Bahraini private sector workers. The GFBTU currently has a membership of 25,000. Representation of migrants in Bahraini trade unions remains negligible as many foreign workers assume they will be expelled from Bahrain for engaging in union activity. Recourse to the judicial system by migrants is almost unheard of and labour cases often take over a year to process, during which time an employee is frequently suspended without pay. Approximately 50,000 foreign housemaids fall outside any labour law and their interests are not represented by any trade union. In 2007 the Embassy of the Philippines reported that 749 of their nationals sought refuge from their employers due to abusive working conditions.³⁷

Human rights organisations

Bahrain has several vocal and vibrant human rights organisations. The Bahrain Centre for Human Rights (BCHR) is widely known across the region and in Europe and North America for its outspoken criticism of the al-Khalifa family's rule. The BCHR was established with state support in 2002 but quickly came into conflict with the government who revoked their licence in 2004 after the director of the BCHR, Abdul Hadi al-Khawaja, publicly accused the Prime Minister of corruption, an offence for which he was briefly imprisoned. The UN Special Representative on the Situation of Human Rights Defenders expressed her concern that the closure of the BCHR was designed to prevent the organisation carrying out legitimate human rights work. The government justified the closure of the Centre on the basis that the organisation was more focused on political agitation than legitimate human rights activities.³⁸ Despite its current illegal status, the BCHR continues to run a highly effective

³⁵ Bahrain Labor Rights Report, Bureau of International Labor Affairs, US Department of Labor. Washington DC: 2005.

³⁶ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, <http://www.mofa.gov.bh/mofa/en/upr.htm>, p. 14.

³⁷ US State Department Country Report on Human Rights Practices: Bahrain 2007.

³⁸ "Compilation Prepared by the Office of the High Commissioner for Human Rights", Human Rights Council. Geneva: February 2008.

international campaign, having adopted a confrontational approach in its relations with the government rather than one of engagement. They have been criticised for this by some opposition activists, who accuse the BCHR of irresponsibly exaggerating government abuses for an external audience. The BCHR also works closely with the Bahrain Human Rights Society (BHRS), Bahrain's other significant human rights organisation. The BHRS has succeeded in winning the respect of a broad range of representatives from government, opposition parties and civil society.

After the violent protests in December 2007, which resulted in the incarceration of over 20 protestors without charge for a period of several weeks, during which time allegations of torture were made, the BHRS acted as an intermediary between the government and civil society, requesting unconditional access to the prisoners in order to allow an independent medical examination of them and, when this was not granted, focused international attention on the lack of cooperation forthcoming from the government. The Bahrain Human Rights Watch Society (BHRWS) has been widely dismissed as a government stooge, in part due to the allegations made against its director in the Bandar report, which details payments to the BHRWS. Such a dismissal of the organisation may be unfair as it has played an important role in calling for electoral reform and highlighting problems of poverty in Bahrain.

The Bahrain Youth Society for Human Rights (BYSHR) is a relatively new and increasingly popular organisation which ostensibly serves as a human rights organisation, but essentially aims to mobilise political opposition to government on a wide range of political, social and economic issues. The BYSHR is led by the charismatic Mohamed al-Maskati, who has of late convened a number of youth workshops to advocate peaceful methods of opposing the regime. While the BYSHR adopts a highly critical and confrontational approach, excluding the use of violence, this in itself hardly warrants the tactics of the government, who have refused to register the BYSHR on questionable grounds, citing the age of its members. The government

also seems to have had a hand in al-Maskati's recent deportation from Egypt where he travelled to attend a conference, and in late 2007 it charged him with operating an illegal organisation. These actions have seen his profile soar both domestically and internationally.

Despite the proliferation of civil society organisations, few of these attach proportionate importance to campaigning on migrant workers' human rights, with the exception of the BCHR, which helped establish the Migrant Workers Protection Society, an organisation that suffers from a severe lack of funding and is, at best, tolerated by the government. In the case of migrant workers, there is a general consensus among civil society leaders that any agitation for their rights under Bahraini law would likely lead to arbitrary expulsion from the country. Considering that foreign nationals constitute approximately 80 percent of the private sector workforce, this is a grave denial of representation to a significant sector of Bahraini society.³⁹ There also exists a vacuum within the Bahraini civil society landscape for an organisation to represent the rights of Bahraini Farsi speakers, whose language and traditions, rather than being protected, are frequently treated with disdain by government representatives.⁴⁰

Women's organisations

Women have increasingly assumed an important role in Bahrain's civil society landscape. Enthusiasm has not always been matched by administrative know-how or government support, most of which has been channelled to the Supreme Women's Council led by King Hamad's wife, Sheikha Sabeeka. There are currently 12 women's societies, but most of these do not have permanent offices. Many women's organisations, especially those linked to the Islamist movements, tend to be charitable organisations rather than women's rights advocacy groups and work to a community rather than a national agenda. Aside from

³⁹ Economist Intelligence Unit, "Country Report 2008: Bahrain", p. 11.

⁴⁰ Many Bahraini Farsi speakers were previously denied citizenship and were known as the "bidun". Citizenship was finally granted in 2001.

the Supreme Council for Women, other organisations which engage in advocacy on social issues include the Awal Women's Society, the Child and Mother Welfare Society, Bahrain Women's Union and the Young Women's Society, but their activities are restricted by a lack of funding and they rely upon the voluntary work of a few key members. Most of the leading women's organisations rely upon government funding to implement their projects.

The Supreme Council for Women works together with UNDP to run regular gender awareness seminars and host courses on women's rights in the workplace. The Council has riled many of the Islamist parties for its outspoken championing of a personal status law to protect women's rights. Although funded by the state, the Supreme Council for Women cannot be seen as simply a government mouthpiece. Indeed, many of the senior members of the royal family and the government are uncomfortable with their agenda, but it remains protected by the patronage of the King's wife, Shaikha Sabeeka. Other prominent issues for women's groups include reforming procedures to grant equal citizenship rights to the children and spouses of Bahraini women as well as the provision of social benefits to women divorcees. The Bahraini government has of late shown a willingness to improve women's rights, not least through women's enfranchisement and increased representation in the public workforce. While Islamist parliamentarians have been seen by secular women's groups as a primary threat to the furthering of women's rights, in reality these groups, which attract most domestic and international media attention, constitute a minority of Bahraini women's opinion. Indeed, voting trends demonstrate that women generally favour Islamist parties. Prominent secular groups are also relatively inactive in engaging in social work in the majority of Bahraini communities, where local Islamist women's groups tend to be more organised and effective.

Institutions for public support and research centres

The government has established a number of institutions to assist CSOs and the public. Key among these is the Bahrain Institute for Political

Development (BIPD), which works closely with UNDP and other international agencies to provide training for elected representatives and CSOs. It has been criticised, however, for expending more resources on groups seen to be close to the government. The Ministry for Information has also established an extensive training programme for journalists and has stressed that advancing journalistic standards will avoid future confrontations between the government and the media. These training initiatives have been broadly welcomed by journalists but some senior journalists have noted the rather condescending approach adopted by the government to its relations with the media. The government has also committed to establishing a National Human Rights Centre to formulate a national plan for the protection of human rights, in accordance with the Paris principles.⁴¹

There are a range of intergovernmental and non-governmental international organisations working with the Bahraini government, state institutions and civil society. Among the organisations currently engaging in capacity building for political and civil society participation are the National Democratic Institute (NDI), the American Bar Association (ABA), the International Republican Institute (IRI), and a number of UN agencies, including the International Labour Organisation and the United Nations Development Programme (UNDP). The United States, through its Middle East Partnership Initiative (MEPI) programme, and the governments of France, Germany and the UK are also engaged in institutional reform and training initiatives. However, the Bahraini Government retains significant control over the activities of UNDP through its funding of their programmes in Bahrain. NDI's activities were restricted after their representative's visa was not renewed due to government displeasure over his activities in Bahrain.⁴² The 2006 election was notable

⁴¹ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, <http://www.mofa.gov.bh/mofa/en/upr.htm>, p. 11.

⁴² In addition to criticism of the UNDP's perceived closeness to the government, opposition groups were also furious that UN Habitat honoured Prime Minister Shaikh Khalifa bin Salman al Khalifa, with an award for his efforts in reducing poverty. This announcement was greeted with outrage by Human Rights groups, including the BHRS and

for the absence of international election monitoring groups in the country. Foreign associations operating in Bahrain continue to be heavily restricted and any Bahraini CSO that wishes to associate with a foreign association must seek permission from the Ministry for Social Development beforehand.

Truth and Reconciliation Committee

In June 2007, eleven Bahraini human rights organisations and opposition groups formed a truth and reconciliation committee in order to address human rights abuses by the government during the reign of Sheikh Isa.⁴³ The Bahrain Human Rights Society (BHRS) claimed that they had the support of the King in seeking to establish such a body. In 2005 the UN Committee Against Torture (CAT) cited its concern over the controversial Decree 56/2002, which granted security forces immunity from prosecution for abuses committed prior to 2001, and the lack of a process for victims of torture and extra-judicial killings to seek redress. There are increasingly vocal calls for decree 56/2002 to be revoked, which protects many serving members of the security forces from prosecution and also foreign nationals who were allegedly contracted to employ such methods, including a British citizen, Ian Henderson, who held a senior position in Bahrain's security forces for almost 30 years. A move by the government in 2008 to curtail such a truth and reconciliation process could exacerbate pre-existing tensions considerably.

Legal framework

Constitution & international treaties

The Bahraini Constitution explicitly protects the right to free association. Article 27 states that: "The freedom to form associations and unions on national principles, for lawful objectives and by peaceful means is guaranteed. Communications shall not be censored or their confidentiality breached except in exigencies specified by law, provided that the fundamentals of religion and public order are not infringed."⁴⁴ The term "national principles" underlines the government's fear that CSOs will be used for sectarian purposes, but is in reality often applied as a means to block debate on overt sectarian practices. Freedom of expression and media rights are stipulated under Article 23 of the constitution: "Freedom of opinion and research is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or otherwise under the rules and conditions laid down by the law provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced and discord or sectarianism is not aroused."⁴⁵ The nuance between freedom of expression and the prohibition on causing discord is open for interpretation and it has been argued that this article of the Constitution should be permissive rather than establishing over-zealous restrictions which may be applied arbitrarily. The Constitution also establishes the principle of an independent judiciary under Articles 104-106.

Bahrain has moved of late to ratify a number of international conventions protecting citizens rights including the International Convention on the Elimination of All Forms of Racial Discrimination (CERD-1990), the Convention on the Rights of the Child (CRC-1991), the Convention against Torture (CAT-1998), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-

the BCHR, with the latter going so far as to allege corruption by UN officials. "An Investigation into the Award granted to Bahraini Prime Minister by the United Nations Habitat Programme", BCHR, July 2007 <http://www.bahrainrights.org/node/1333>

⁴³ Carnegie Endowment, p. 2.

⁴⁴ Article 27, Bahraini Constitution.

⁴⁵ Article 23, Bahraini Constitution.

2002), the International Covenant on Civil and Political Rights (ICCPR-2006), and the International Covenant on Economic, Social and Cultural Rights (2007). Bahrain has, however, applied reservations to many of its international treaties, including the International Covenant on Civil and Political Rights (ICCPR) in 2007, where it added belated reservations to Articles 3, 18 and 23, which deal principally with equal rights between men and women, religion and the family. The government of Portugal formally objected to Bahrain's reservations on these articles, citing them as "fundamental provisions of the Covenant" and stating that "the first reservation [the recognition of equality between men and women] makes it unclear to what extent the Kingdom of Bahrain considers itself bound by the obligations of the Covenant..."⁴⁶ Bahrain has also applied reservations to CEDAW where it contradicts the application of Sharia law and nationality rights, reservations which the UN Human Rights Council asked Bahrain to remove during its Universal Periodic Review (UPR) of Bahrain's human rights practices in April 2008.

Bahrain added reservations to CERD where it permits the hearing of a dispute by the International Court of Justice (ICJ), and the International Covenant on Economic, Social and Cultural Rights, where Bahrain wishes to maintain a ban on strike action in "vital and important facilities."⁴⁷ In recent years Bahrain has met its reporting obligations under these treaties and has been broadly praised for engaging UN rapporteurs, hosting, among others, visits from the UN High Commissioner for Human Rights in 2001 and the Special Rapporteur on Trafficking in Persons in 2007.

National legislation

The King and the Majlis al-Shura maintain disproportionate influence over the legislative process in comparison to the elected Majlis al-Nuwwab. These

powers are contrary to the Article 25 of the ICCPR which asserts that legislative power should rest with the elected house.

Political Societies Law

The Political Societies Law promulgated by King Hamad in 2005 has been criticised for banning the establishment of parties, its restrictions on societies with regard to fundraising and the vague proviso that parties cannot be established on the basis of class, sectarian, ethnic or professional grounds. Political societies are also opposed to articles in the law which require societies to request permission from the Ministry for Justice and Islamic Affairs (MOJIA) prior to contacting overseas political parties or institutions or travelling abroad to attend an international conference. The law also places a ban on foreign funding or training, raises the required membership age from 18 to 21 and gives the MOJIA discretion over whether to reject an application without clear legal recourse to the courts.⁴⁸ The MOJIA can dissolve a political society with permission from the High Civil Court. Despite being ratified by both houses of parliament, both al-Wefaq and al-Waad asked the King not to sign the law, a request the King ultimately refused.

Associations Law

CSOs in Bahrain operate under the 1989 Law of Associations (21/1989), which allows for significant government interference in their activities. The law specifically prohibits associations from political involvement and grants the Ministry for Social Development intrusive powers over CSOs including the powers to nullify elections, appoint a board of directors, inspect headquarters, confiscate documentation and audit finances. Registration can also be refused if the Ministry for Social Development believes that the aims of the prospective association are already served by an existing body. If 60 days elapse without a response then the application is deemed to have been automatically denied. Funding from foreign sources is prohibited and

⁴⁶ "Portugal: Objection to the Reservation Lodged by Bahrain following its Accession to the Covenant", Office of the Secretary-General of the United Nations.

http://untreaty.un.org/English/CNs/2007/801_900/842E.pdf

⁴⁷ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, <http://www.mofa.gov.bh/mofa/en/upr.htm>, Annex IV.

⁴⁸ US State Department Country Report on Human Rights Practices; Bahrain 2007.

affiliations or membership through an association of a foreign society, union or club are also forbidden, unless special permission from the government is secured. Employees of a society are not permitted to serve on the board of directors. CSO leaders complain that as well as granting overly intrusive powers to government ministries to inspect and regulate their activities, the law also does not provide for sufficient recourse to the courts. In 2005, the UN Committee against Torture expressed its concern regarding serious restrictions placed on CSOs, including those dealing with human rights.⁴⁹

There have been successive attempts to draft a new associations law. In 2006, the government introduced legislation which was heavily criticised for not addressing the concerns of CSOs and imposing further restrictions on their activities, and was withdrawn under public pressure.⁵⁰ The Ministry for Social Development is currently drafting a new associations law in consultation with a broad range of civil society leaders and the International Center for Non-Profit Law (ICNL). The new draft law has been praised for allowing the *de facto* registration of a society if the government does not reply to their application within 60 days. It also proposes to remove the ban on political activities for CSOs, and allow non-nationals to establish CSOs in Bahrain, which would constitute a significant breakthrough for migrant workers. However, the proposed law does not address many of the serious restrictions placed on CSOs, including the obligation to seek ministerial approval for fundraising activities. Under the law, the Minister for Social Development also retains the right to appoint board members and annul elections, and does not sufficiently make reference to judicial oversight with regard to these powers. Furthermore, it imposes the requirement for informal voluntary groups to register with the government, defining such informal organisations as a group of people meeting to discuss issues of public concern or a “special interest”. This is an unnecessary infringement of the right to association, which could be used to curtail

freedom of expression by groups of individuals who do not seek to establish formal associations. The provision for the monitoring of CSOs by federations is also unclear and CSO leaders have recommended its omission in order to avoid confusion.

Furthermore, a Bahraini CSO that wishes to associate with a foreign association must seek permission from the Ministry for Social Development prior to affiliating with foreign organisations. Under the recent draft law foreigners who are members of foreign political organisations will also be banned from joining Bahraini organisations. The proposed law appears to have been based to some degree on legislation introduced in Jordan, where the government has continued to heavily restrict CSO activities, contrary to its obligations under the ICCPR. In drafting a new associations law, the government should not seek to impose specific criminal sanctions against CSOs, where pre-existing penal laws already suffice, including for offences such as fraud or sedition, and punitive measures imposed by the Ministry for Social Development should be subject to judicial oversight.

Electoral Law

The Election Law of 2002 grants the right to vote to all Bahraini citizens over the age of 21. Citizens of GCC countries who are Bahraini residents as well as GCC non-residents who own property in Bahrain are also allowed to vote. Citizens of non-GCC countries are not allowed to vote, although extensive naturalisation of Sunni citizens from non-GCC countries has been a feature of government policy in recent years. Al-Wefaq, al-Waad and other opposition groups are now urging significant reform of the electoral laws including the establishment of an independent electoral commission to curtail gerrymandering and other electoral infringements, the right of international organisations to observe the election and the expansion of the powers of the Majlis al-Nuwwab. Al-Wefaq has also suggested that proportional representation should be considered as an alternative to the current electoral system of single seat constituencies.

More reform-minded senior government representatives recognise that the controversy over the 2006 elections,

⁴⁹ “Compilation Prepared by the Office of the High Commissioner for Human Rights”, Human Rights Council. Geneva: February 2008 p. 9.

⁵⁰ Carnegie Endowment, p. 9.

especially with regard to the gerrymandering of districts and the continued naturalisation of citizens, must be addressed and that transparency through the publication of electoral lists would be a good first step towards achieving this. The possible outcome of such reform, however, would be an al-Wefaq-led majority in the lower house and it is far from certain that the government feels confident enough in their ability to absorb such a shift.

Public Gatherings Law

The Public Gatherings Law, introduced as Law No. 32 of 2006 to amend the Public Gatherings Law of 1973 (Law No. 18), is a continuing source of controversy in Bahrain and was cited by Freedom House as a key reason why Bahrain followed a downward trend on its index of civil liberties in 2007.⁵¹ Currently, the law obliges organisers to seek permission for a public meeting at least 72 hours prior to it taking place and stipulates that a public demonstration cannot be held within 500 metres of certain state institutions, including airports, large commercial areas, schools and health facilities, as well as any locations deemed by the Minister of the Interior to be a sensitive to national security. Funeral processions cannot be used to organise political rallies. The law also imposes prison sentences of up to six months for breaking these regulations. CSO and political leaders argue that the law is too restrictive and can be used to deny permission to hold a meeting or a demonstration on political grounds. There are also occasional complaints of organisations not receiving any communication from the government after they submit such a request. While the government points to its tolerance in not applying the law to those who organise meetings without official consent (in 2007, for example, of 324 marches and gatherings that took place in Bahrain, 104 applied for permission, while 220 did not, with only a fraction of the latter being broken up), this is hardly conducive to confidence and clarity in the application of the law.⁵²

⁵¹ "Freedom House Country Reports 2007: Bahrain". http://www.freedomhouse.org/modules/mod_call_dsp_country-fiw.cfm?year=2007&country=7131

⁵² "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, <http://www.mofa.gov.bh/mofa/en/upr.htm>

The Public Gatherings Law has consequently become another legal grey area in Bahrain, applied selectively rather than impartially. Furthermore, the definition of a public gathering is vague and potentially restrictive – a meeting of more than five persons to discuss an issue of public interest is deemed a public gathering. The organisers of a public gathering can also be held responsible for any "speech or discussion infringing on public order or morals".⁵³ In a submission to the UN Human Rights Council, the Bahraini government defended the application process for holding public meetings on the basis that the authorities needed ample time to prepare to protect the participants in such meetings.⁵⁴ Al-Wefaq introduced a number of amendments to the Public Gatherings Law on 19 September 2007, seeking to reduce the notice period to 24 hours, remove geographical restrictions, and reduce the jail sentence to one month. So far these efforts have made little headway.

Press law

The media is currently regulated by the 2002 Press and Publications Law (Law No. 17/2002) and comes under the supervision of the Ministry for Information. This law has been widely criticised for its excessive restrictions on freedom of expression. As a direct consequence of the introduction of this law in 2002, Bahrain fell from 67th to 143rd in the "Reporters without Borders" international press freedom rankings between 2002 and 2008.⁵⁵ Under the terms of the law, journalists or civil society activists can be sentenced to prison sentences of up to five years for "inciting division, sectarianism and violence and attacking national unity".⁵⁶ The law also allows for fines of up to 2000 BD for other offences including publicising statements by a foreign state or organisation without government permission and making allegations against

⁵³ "Human Rights Watch Country Report 2008: Bahrain". 2007 <http://hrw.org/englishwr2k8/docs/2008/01/31/usint17940.htm>

⁵⁴ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008.

⁵⁵ Reporters without Borders, International Press Freedom Index. http://www.rsf.org/article.php3?id_article=11715

⁵⁶ "Bahrain: Tuning Promises into Reality"- Reporters without Borders, March 2008. http://www.rsf.org/article.php3?id_article=26040

a foreign head of state that has diplomatic relations with Bahrain.⁵⁷ Occasionally the Bahraini courts impose extended injunctions on publishing news stories about prosecutions before the courts, as has been the case with the Bandar Report, where a blanket ban on reporting remains in place. Due to lengthy delays in hearing cases in Bahrain, this ensures that cases alleging abuses by the government may be barred from discussion by the media for months, if not years. The Minister for Information has stated that increased measures taken against journalists in 2007 are a consequence of the irresponsibility of the press and has pointed to increased funding by his Ministry for media training as an attempt to improve standards and avoid further disputes.

Criminal law is generally used with an unwarranted degree of frequency to convict journalists in cases where civil law should apply. The government defence of laws which “make journalists responsible for proving falsehoods portrayed in the press against any person or institution” is appropriate for the courts to decide according to the Bahraini criminal and civil codes, but in reality the Ministry for Information assumes excessive censorship powers.⁵⁸ The Special Representative on the Situation of Human Rights Defenders expressed serious concern that criminal charges made by the Ministry for Information for offences including “encouraging hatred of the state” and “distributing falsehoods and rumours” is an implicit danger to the right of free speech. She was particularly concerned by cases where this was applied to those who alleged human rights violations, and called for the reform of Bahrain’s judiciary.⁵⁹

Journalists and civil society activists have observed that civil law is usually sufficient to deal with libel claims and recourse to criminal law should only be exercised where there is a clear case of sedition or

incitement to hatred. There is therefore no need to impose exceptional laws with regard to libel or sedition if the pre-existing legislation already suffices. Nor is there a need for the Ministry of Information to act as a libel watchdog on behalf of members of the royal family, government or the general citizenry. In a positive development, the government has recognised that civil remedies are an alternative means for citizens to seek redress for libel and has undertaken to increase awareness of such rights.⁶⁰

The government exercises strict control over public broadcasting in Bahrain and all Bahraini television channels remain under the control of the state. Political websites are frequently censored when they discuss allegations of corruption by the government, including the hugely popular *Bahrain online*, which was temporarily shut down in 2005. The authorities previously attempted to block the *Google Earth* website, as it allowed Bahrainis to get a rare view of the extensive palaces and secretive investments of the royal family. The government also actively monitors and censors media broadcasts and publications that offend public morality. The US State Department reported that 22 discussion forums and political websites had been censored by the Ministry for Information in 2007, including the closing of websites of political societies such as al-Waad.⁶¹ The government reported to the UN Human Rights Council that they are reviewing this practice and would refrain from exercising such intrusive censorship over the internet in the future.⁶² However, the subsequent censorship of opposition websites in June 2008 has called this commitment seriously into question.

It is generally acknowledged that the editors-in-chief of Bahrain’s six daily newspapers are appointed with the prior consent of the government and they are

⁵⁷ US State Department Country Report on Human Rights Practices 2007.

⁵⁸ “The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council”, March 2008 <http://www.mofa.gov.bh/mofa/en/upr.htm>

⁵⁹ “Compilation Prepared by the Office of the High Commissioner for Human Rights”, Human Rights Council. Geneva: February 2008 p. 9.

⁶⁰ “The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council”, March 2008 p. 20.

⁶¹ US State Department Country Report on Human Rights Practices 2007.

⁶² “The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council”, March 2008 p. 9.

occasionally summoned to the Ministry for Cabinet Affairs for discussions on their editorial policy. Due to the vagueness of the media laws and a lack of trust in the independence of the judiciary, editors often exercise zealous self-censorship rather than risk prosecution or closure. The process of applying for a publication licence is complex and expensive, with a fee of one million BD being a major disincentive for prospective applicants. Books published in Bahrain also require pre-licensing from the Directorate of Printing and Publication at the Ministry for Information.⁶³

In May 2008 the Ministry for Information published a new draft press law which, if ratified, would decriminalise press offences and ostensibly reduce the power of the Information Ministry to impose sanctions against publications without judicial oversight. There remains some concern over the rather vague offences of offending religion or threatening national unity, which may still carry prison terms imposed at the discretion of the judiciary. Furthermore, the Ministry for Information retains the power under Article 19 of the proposed new law to close a newspaper or a publication and then seek judicial permission retrospectively within three days. The Ministry for Information has also introduced plans to license private broadcasting companies, under which registration of television and radio stations will be approved by the Cabinet of Ministers. This represents an important and overdue step towards improving freedom of expression in the broadcast media.⁶⁴ While improvements in Bahrain's media laws are obviously welcome, the competence of the Bahraini judiciary to protect freedom of expression is in serious doubt.

Labour Law

Labour rights in Bahrain are guaranteed by the constitution and regulated by the Labour Law for the

Private Sector of 1976 and the subsequent Workers Trade Union Law of 2002. The 2002 law was widely praised when it was introduced, including by the International Trade Union Confederation (ITUC), as a step forward in Bahraini labour relations. It allowed for the establishment of the General Federation of Bahraini Trade Unions (GFBTU), which represents approximately 25,000 workers, and provided some procedures for strike action. The law requires arbitration before a vote to strike and a two-week notification from a trade union if it intends to strike, a decision that must be ratified by a simple majority vote of a union's members. The Labour Ministry's Labour Relations Directorate registers and investigates workers' complaints against private sector employers. Investigators are responsible for mediating in disputes and where a solution is not forthcoming, the Ministry refers cases to the courts for arbitration. The fourth High Court has jurisdiction over labour cases. If the Labour Ministry finds an employer has violated the law, for example with regard to occupational safety, then the Ministry can withdraw the employer's licence. Bahrain has also legislated for a 48-hour working week with an optional 12 hours of overtime, which is frequently not enforced in the case of migrant workers. The right to strike is heavily restricted and is denied to workers employed in "vital and important facilities such as security, civil defence, airports, ports, hospitals, transportation, telecommunications, electricity and water."

In October 2006, the King passed a decree prohibiting dismissal for trade union activities. This is not generally enforced, however, and there have been several well-documented instances where workers have been dismissed for union activities, including at Gulf Air and Batelco. The government retains wide-ranging powers to prohibit strikes under Article 21 of the Workers Trade Union Law and the judiciary can also apply a broad interpretation to the existing ban on political activities by trade unions. Furthermore, the law only provides for the establishment of one trade union in the workplace, a restriction the International Labour Organisation (ILO) Committee on Freedom of Association formally objected to in a letter to

⁶³ "Bahrain: Turning Promises into Reality", Reporters without Borders Report, March 2008.

⁶⁴ "New Bahrain press law ends jail for most offences", Reuters, May 6th 2008.

And "Bahrain plans to give television and radio stations full freedom", *Khaleej Times*, 13 April 2008.

Bahrain.⁶⁵ Perhaps the most significant flaw in current legislation, however, is the inability of public sector workers to form trade unions.⁶⁶ When public sector workers do engage in union activities, they can often face immediate dismissal or demotion.

Although they constitute up to 80 percent of the Bahraini private sector workforce, representation of migrants at the union level remains negligible. The Bahraini government has moved towards addressing migrant worker rights in recent months, prompted to some degree by the recent review of Bahrain by the UN Human Rights Council. In January 2008, the King issued Decree No. 1 as an anti-trafficking measure to tighten the law on the exploitation of migrants. The Ministry for Foreign Affairs also leads a government task force to combat human trafficking.⁶⁷ In contrast, the response by Bahrain's parliament to migrant abuse has been muted, reflective of a populist attitude that blames migrant workers for criminal activities and taking jobs from local Bahrainis.⁶⁸

Bahrain has been slow to ratify international treaties regulating workers' rights, and to date has only ratified four of the eight core ILO labour standards, including ILO Conventions 87 and 98, which protect freedom of association and collective bargaining.⁶⁹ However, the government has recently recognised the need to ratify these conventions.⁷⁰ Bahrain entered into a Free Trade Agreement (FTA) with the United States in 2004, which came into force in 2006, under which Bahrain

agreed to continue to improve labour standards in accordance with ILO standards. In 2007 a senior US trade union official called for the US government to vigorously apply the clause in the FTA referring to labour standards.⁷¹ Relations between trade unions and the government deteriorated in 2007 however, as public sector workers became more assertive in resisting new restrictions placed on trade union rights and demanded wage increases to meet inflated living costs. The government has been reluctant to make any concessions that reduce its control over the civil service and state enterprises.

Anti-Terrorism Law

In 2006, in apparent contradiction to constitutional protections against arbitrary arrest and detention, King Hamad signed a new anti-terrorism bill that allows for up to 90 days of pre-trial detention without judicial oversight.⁷² The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the UN Committee against Torture expressed their concern regarding certain provisions of the bill, most particularly the transfer from the judiciary to the public prosecutor of the authority to arrest and detain, including the authority to extend pre-trial detention. The Committee against Torture expressed its concern that the law could allow for a repeat of abuses committed under the notorious State Security Law.⁷³ The government responded that its actions were consistent with international legislation and met the definition of terrorism defined under the Arab Convention for the Suppression of Terrorism.⁷⁴ The anti-terrorism law identifies several offences that are highly nebulous, including Article 1 of the law which forbids any act that would "damage national unity" and Article 6, which legislates for the potential use of

⁶⁵ "Internationally-recognised core labour standards in Bahrain", Report for the WTO General Council Review of the Trade Policies of the Kingdom of Bahrain. International Trade Union Confederation (ITUC). Geneva: July 2007 p. 3.

⁶⁶ "Bahrain Labor Rights Report", Bureau of International Labor Affairs, US Department of Labor. Washington DC: 2005.

⁶⁷ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008. <http://www.mofa.gov.bh/mofa/en/upr.htm>

⁶⁸ There are occasional demands in parliament for the widespread expulsion of migrants, particularly the 106,000 Bangladeshis working in Bahrain. "Bahraini Islamist wants Bangladeshis expelled", *The Daily Star*, 26 May 2008.

⁶⁹ "Internationally-recognised core labour standards in Bahrain", Report for the WTO General Council Review of the Trade Policies of the Kingdom of Bahrain. International Trade Union Confederation (ITUC). Geneva: July 2007, p. 1.

⁷⁰ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, p. 14.

⁷¹ "Free Trade Agreement supports Bahrain's Labour Reforms", Office of the United States Trade Representative. Washington DC: March 2005. "New call to end workers' abuse", *Gulf Daily News*, 31 March 2007.

⁷² International Commission of Jurists (ICJ), E-Bulletin No. 12, 2006. <http://www.icj.org/IMG/ICJBulletinJune06.pdf>

⁷³ "Compilation Prepared by the Office of the High Commissioner for Human Rights", Human Rights Council. Geneva: February 2008, p.10.

⁷⁴ "Compilation Prepared by the Office of the High Commissioner for Human Rights", p. 7.

the death penalty for crimes that “disrupt the provisions of the Constitution or laws, or prevent state enterprises or public authorities from exercising their duties”.⁷⁵

In 2005, prior to the introduction of this legislation, the UN Committee against Torture welcomed reports that systematic torture no longer occurred in Bahrain but remained concerned that persons detained by the state were not protected by sufficient legal safeguards and oversight.⁷⁶ This echoes the concerns of many civil society leaders who believe that the end of systematic torture has been achieved by the wish of King Hamad, but had not been followed up with legislation to ensure that the torture of the 1990s would never be repeated. Torture allegations made by several leading human rights organisations in Bahrain following the detention of protestors in December 2007 have underlined these concerns and the fear that anti-terrorism legislation could serve as cover to reintroduce abuses practiced under the infamous state security laws of Sheikh Isa’s reign.

Key obstacles

Registration

The Law of Associations (Decree No. 21/1989) provides for a restrictive registration process, whereby the Ministry for Social Development can refuse an application with no obligation to publish or inform the prospective founders of their reasons for doing so and there are no procedures in place to appeal such a decision. In the past, the Ministry could also refuse an application on the grounds that a pre-existing society already met that need, although the government has of late stopped refusing applications on these grounds. The failure to adequately inform the Bahrain Youth Human Rights Society, chaired by Mohammed al-Maskati, of the government’s reasons for refusal of

registration is an example of excessive government restrictions on societies who are opposed to its policies. The government subsequently raised the legal age for membership of an association from 18 to 21 ostensibly to reduce the risk of youth indoctrination. The Committee of the Unemployed was refused the right to register because of the alleged political nature of its activities.

The proposed new law, drafted in late 2007 by the Ministry for Social Development in consultation with civil society representatives, would constitute a significant improvement upon existing legislation, mandating that an association be registered automatically if the government does not respond within 60 days. This is in contrast to the current law under which an application is automatically rejected if the government does not reply after the same period. However, the new law does impose restrictions on vaguely defined informal groups which meet to discuss or pursue a “special interest” or “seek to fulfil an urgent demand”, including the need to notify the Ministry of their existence and follow the Ministry’s instructions thereafter. This proviso, if introduced, would be open to significant abuse of the informal right to assembly of small groups of individuals and is contrary to Bahrain’s Constitution and obligations under the ICCPR.⁷⁷

Recognition of the 2002 Constitution is a prerequisite to successful registration for a political society, which creates significant problems for those activists who view the Constitution as an imposed document, which lacks popular legitimacy. The process for submitting an application to register as a political society has been standardised, involving the submission of three copies of all by-laws, a list of the by-laws signed by all members and a financial statement with specific information on the prospective party’s funding sources. The Ministry for Justice and Islamic Affairs then has 45 days to seek clarifications and 60 days to approve or reject the application. The government has generally

⁷⁵ “World Report 2007”, Human Rights Watch, p. 452.

⁷⁶ “Compilation Prepared by the Office of the High Commissioner for Human Rights”, p. 7.

⁷⁷ “Comments on the Draft Law on Not-for-Profit Organisations and Foundations of Bahrain”, International Center for Not-for-Profit Law. Washington DC: December 2007.

not hindered the registration of political societies in the past. The law regarding the establishment of trade unions is more unclear and a standard, transparent procedure has yet to be put in place. The government has generally preferred to limit the number of trade unions that may be registered, citing the impossibility of dealing with a multiplicity of unions and the representation already provided by the GFBTU.

Oversight

There are extensive oversight powers available to the state in its regulation of CSOs including a range of criminal sanctions, ranging from fines to imprisonment. Article 94 of the proposed new Law of Associations allows for imprisonment where financial penalties would suffice for administrative failures. Meanwhile, Article 18 of the existing Law of Associations does not allow for CSOs to become involved in political activity and, although seldom enforced, criticism of the government was the main reason for the closing down of the BCHR in 2004. Existing legislation also allows for intrusive and frequent inspections by the Ministry for Social Development. CSO leaders have argued that government inspections should be carried out only where there is good reason to believe that a criminal act has taken place in an organisation's premises, that they should be carried out by the appropriate investigative agencies and that they should be subject to judicial oversight. Political societies are regulated by the 2005 Political Societies Law, which prohibits training or funding from abroad and obliges political societies to inform the Ministry for Justice and Islamic Affairs of any contact with political groupings outside Bahrain. In certain exceptional cases the government does permit training for political societies, usually along bi-partisan lines. Since 2006, political societies receive state funding, weighted in accordance with parliamentary representation. This has helped political societies increase the scope of their operation as well as, conversely, making them more dependent upon the government for the management of their respective organisations. The oversight powers exercised by the government over the media and trade unions are considerable and have already been outlined.

Dissolution and suspension

The government can choose to dissolve associations for a variety of offences specified under current legislation, including a society's inability to achieve its stated objectives, for using funds for purposes unrelated to its core activity or for any violation of the law. The permanent dissolution of an association must be ratified by an administrative court, but the government can temporarily close a society for 60 days and impose a new board of directors for up to a year. CSOs contend that this provision, which goes beyond existing legislation that can be used to shut down organisations for fraud, embezzlement or conspiracy to commit violence, is unnecessary and should be removed from any future legislation.

Funding

CSOs face severe government restrictions in raising funds. In the proposed new law of associations, Article 16 explicitly prohibits all fundraising activities without prior permission from the government. CSOs had hoped that the burdensome obligation to seek permission to raise funds would be lifted in the new legislation. Government representatives frequently complain that CSOs are too dependent upon government funding for their activities, but this culture of looking to the state for assistance rather than seeking support from private donors can only be overcome if there is a more permissive environment for fundraising. Existing legislation governing fraud and ensuring transparency in financial transactions is sufficient to guard against possible abuses.

CSOs also suffer from over-regulation with regard to expenditure of funds, including having to seek governmental permission to invest in or extend property. The consequence of these regulations is that while professional associations and labour unions have an obvious source of funding from membership fees, many CSOs that are not favoured by the government are unable to raise sufficient revenue within Bahrain. The government, through the Ministry of the Interior and the Ministry for Social Development, has very intrusive powers to monitor the finances of associations, including inspection powers and

discretion over the transfer of funds to organisations. CSO leaders complain that these powers are unnecessary and were put in place to allow the government to discriminate against certain CSOs whose activities they disagree with.

Targeted/excluded groups

During the turbulent 1990s, the Bahraini state practised systematic repression of opposition activity and groups, resulting in the imprisonment, torture and exile of thousands of political and civil society activists. King Hamad finally put an end to this traumatic and brutal era and there is now a limited political and social sphere within which the activities of the opposition, both legal and illegal, are tolerated. Social groups such as those advocating women's rights often meet more stringent opposition from the Islamist political societies than from the government, which nevertheless continues to restrict the activities of certain women's rights activists.

While the vast majority of Bahraini exiles have now returned home, and some have even accepted positions in government, including the Minister for Labour, Majid al-Allawi, external opposition remains in the form of the Bahrain Freedom Movement (BFM), which is based in London but has little support from either the Bahraini diaspora or the citizenry within the country. The most significant and organised illegal CSO is the Bahrain Centre for Human Rights (BCHR), led by its President Abdulhadi al-Khawaja and Vice-President Nabeel Rajab. According to leading members of the BCHR, a large part of their activity is directed towards winning external support to pressurise for change within Bahrain.

The BCHR issues more frequent allegations of torture and mistreatment of prisoners than alleged by other human rights groups and it has undoubtedly played a leading role in highlighting abuses taking place within Bahrain. Its ability to operate is in itself indicative of the support it enjoys domestically but also, and perhaps even more importantly, is a reflection of its international profile, including its strong links with international human rights organisations, such the

International Federation for Human Rights (FIDH), Human Rights Watch (HRW) and Front Line Defenders, as well as support from parliamentarians such as Lord Avebury in the United Kingdom. The Bahraini government alleges that the BCHR has ties with the Iranian regime, pointing to statements by its president affirming his admiration for Ayatollah al-Khomeini, which clearly underlines the government's discomfort regarding the Shia population's high spiritual regard for *marjas*, both in Iran and more broadly in the Shia world. Alleviating an Iranian link to Shia leaders is also a strategic means of obfuscating the government's obvious reluctance to cede more executive or legislative power to the Shia majority.

Strongly linked to the activities of the BCHR is the Women's Petition Committee led by Ghada Jamsheer, which is highly critical of the application of Sharia law, and in contrast to other women's groups, does not see a possibility for constructive engagement with the government. Confrontational demonstrations and appeals to Western audiences have become a hallmark of the group's activities and, while its advocacy of a personal status law for women is not in accordance with some Islamists in the BCHR, they are a useful addition to the broader coalition of radical opposition groups, which seeks to maximise international condemnation of the government.

The Committee of the Unemployed, established in 2005 to draw attention to the economic plight of many Bahrainis, is mainly representative of the Shia youth who are disenchanted with the mainstream politics of al-Wefaq and have increasingly taken a more confrontational approach in their public demonstrations against the government. Together with the Committee for Martyrs and Victims of Torture, a group which seeks retrospective justice for abuses committed in the 1990s, they have staged illegal protests that have sometimes spiralled into violent confrontation. There is increasing bitterness among Shia citizens that non-national Sunnis, in addition to receiving Bahraini citizenship arbitrarily, are receiving economic benefits such as better housing and salaries, and hold government posts from which the Shia are

excluded. This is leading to rising ethnic and religious tensions in Bahrain, which could spill over into serious violence in the near future. There are already signs that radical opposition to the government is becoming more violent, with attacks on the property of members of the government and royal family and the murder of a policeman in April 2008.⁷⁸ In response to mounting social pressures, the Crown Prince introduced a policy of “Bahrainisation” – replacing foreign workers with Bahraini citizens – and the Government has levied a tax on employers for every foreign worker they employ. While this scheme met with resistance from the employers association, the Bahrain Chamber of Commerce and Industry (BCCI), it has proved popular, not least because of the use of this tax revenue for the training of Bahraini nationals.

Of the banned political groups in Bahrain, the most significant is the al-Haq movement led by Hasan Mushaima, which refuses to recognise the legitimacy of the 2002 Constitution and by extension the Political Societies Law. Al-Haq operate a sophisticated domestic and foreign public relations campaign but so far have relied upon the support of disaffected Shia youth rather than securing the support of the Shia mainstream, including the Shia ulama who remain broadly supportive of al-Wefaq. They have also been condemned by other opposition groups for statements advocating the use of violence if peaceful efforts to reform fail.⁷⁹ The government has so far avoided a heavy crackdown upon al-Haq, most likely for fear of a destabilising violent backlash, but continues to restrict their activities through other means including infiltration, censorship and breaking up public meetings.

Electoral

There is increasing frustration with the gerrymandering of electoral districts and the lack of an impartial electoral commission to oversee voting. CSO

leaders advocate providing more independent oversight powers to the Electoral Commission in order to reduce the current misallocation of electoral districts and for international monitors to observe future elections. There have been renewed calls for a national dialogue in order to address the fears of the Sunni community regarding a Shia majority in Majlis al-Nuwwab and conclude an agreed reform agenda that will help turn the tide of rising mistrust and violence.

State-civil society relations

The reform process to date has signalled an unprecedented growth in civil society activity in Bahrain and the recognition by the state of the right of CSOs to have a consultative role in the drafting of legislation. The work of certain ministries such as the Ministry for Social Development in reaching out to civil society is laudable and an encouraging sign of a shift in attitudes by the government. What is principally undermining reform efforts, however, is the poor working relationship between key members of government and civil society, not least the Prime Minister and the Minister for Cabinet Affairs, and the effective veto power that the royal family has over any legislation which it disagrees with. While some ministers in the government wish to engage with civil society and introduce further reforms, the unwillingness of the ruling family to clearly outline the next steps of the reform process (if they indeed exist) seriously hinders meaningful progress in Bahrain. Bahraini civil society’s relations with the state have yet to move beyond the current tendency towards appealing to royal favour, especially the King, rather than the rule of law as a means of protecting civil and political freedoms.

⁷⁸ See the *Gulf Daily News*, “Arson attack reported at senior Bahrain official’s farm”, 8 March 2008 and “Policeman killed in Petrol Bombing”, AFP, 10 April 2008.

⁷⁹ “Political Leader’s call to take up arms against authorities draws flak”, *Gulf News*, 16th July 2006.

Local calls for reform

Most political and civil society leaders agree that Bahrain's reform process urgently requires renewed momentum, but disagree on the substance of these reforms as significant differences exist between Islamist leaders and those activists who seek more secular reforms and suspect that a majority of the MPs of the Majlis al-Nuwwab wish to roll back some existing rights. The following recommendations are a reflection of the most persistent demands for reform, which were articulated by a broad representation of Bahraini society encountered by FRIDE during visits to Bahrain in 2007 and 2008:

Constitutional reform to ensure balance of powers

- The King should convene a national dialogue to reflect upon the successes and remaining obstacles to be overcome since the publication of the National Charter. After consulting with parliamentarians and civil society leaders the King should outline further steps for reform to be implemented within a fixed period.
- There is considerable disagreement within Bahraini society as to whether the Majlis al-Nuwwab should eventually assume sole legislative power. Some civil society leaders fear Islamist influence and view the democratically elected Majlis al-Nuwwab as a threat rather than a guardian of their rights. Nevertheless, most civil society leaders agree that the current lack of powers of the Majlis al-Nuwwab is unsustainable and an accommodation through dialogue between the Shia and Sunni communities should be found in order to begin a transfer of legislative power to the lower house of parliament. The Majlis al-Shura should ultimately become a consultative upper house without the power to block legislation.
- The elected municipal councils should be reformed to allow local authorities more local legislative and budgetary power. The division of power between the governorates and the municipal councils should be made more coherent, and the appointment system for governors rewritten to allow for parliamentary oversight of appointments.

- The judicial appointment system should be reformulated to limit the influence of the royal family over the judiciary. Judicial training should also be extended.

National Legislation

- Bahrain's laws should reflect the constitution and its obligations under international conventions.
- Parliament should be provided with further training on the drafting of legislation, additional legal staff provided to advise on the drafting process and a closer working relationship established between the government and the Majlis al-Nuwwab.
- Promulgation of the draft associations law with amendments, eliminating clauses which allow for overly intrusive powers of inspection, unnecessary restrictions on fundraising and criminal sanctions already covered by existing legislation.
- Remove anti-terrorism legislation introduced in 2006.
- The Public Gatherings Law is contrary to Bahrain's obligations under Article 21 of the ICCPR and should be amended.
- The independence of the Office of the Public Prosecutor (OPP) should be protected in accordance with international best practice.
- Introduce legislation obliging the government to publish transparent information on government spending, the naturalisation of foreign citizens and land transactions.

Elections

- Ensure the independence and transparency of the Electoral Commission.
- Allow the international monitoring of elections.

Political parties

- Allow the formal establishment of political parties rather than societies.
- Ease restrictions on foreign training and travel permits for political representatives.

Civil society

- Remove the ban on political activities.
- Ease restrictions on fundraising.

- Remove the right of the Ministry for Social Development to annul elections and replace an association's board. Penalties should only be applied under judicial direction.
- Eliminate the requirement for informal groups to register with the Ministry for Social Development.

Media

- Promulgation of a new press law to replace the restrictive Law No. 47, removing vague clauses such as the threat of imprisonment for "inciting division", and eliminating the power of the Ministry for Information to censure journalists for allegations in the press that relate to government representatives, foreign leaders and the general citizenry. Penalties against journalists in the case of alleged libel or crimes against the state should be applied by the courts and not by the Ministry for Information
- The Ministry for Information should not try to duplicate the work of the Office of the Public Prosecutor (OPP) in deciding whether to bring a case against a newspaper and the application of penalties such as the closing down of a publication should be a matter for the judiciary. In the case of libel, the Ministry for Information should not intrude where existing procedures allow the Bahraini citizen recourse to the court system.

Labour

- Ratify ILO Conventions 87 and 98 to protect trade union rights and Conventions 100 and 138 providing safeguards on a minimum wage and child labour.
- Equal rights for migrant workers should be applied in accordance with the law. Safeguards should be put in place to allow migrant workers the opportunity to exercise their labour rights without fear of imminent deportation or dismissal.
- Domestic workers should not be excluded from existing labour legislation. Exceptions to the law, that allow housemaids to be described as "family guests" rather than legitimate employees, should be revised in order to close loopholes that leaves thousands of vulnerable workers without adequate legal protection.
- Remove restrictions on public sector workers to form and engage in union activities. Exceptions on labour

- rights with regard to the security forces should not be applied to other areas of the public and private sector.
- Remove government discretion over whether to permit strike activity by trade unions.

Conclusion

Bahrain aims to please. Leading Bahrainis envisage their island state as a financial centre for the Gulf region. The growth in Bahrain's economy is linked to the perception of Bahrain as a relatively liberal and stable haven in a troubled but economically and strategically vital region. This favourable view of Bahrain has encouraged investment from the Gulf region, from Europe and the United States, and increasingly from East Asia. There is an almost total absence of international pressure to reform - in January 2008, President Bush praised Bahrain as a reforming role model for the region and the US has come to view Bahrain as a key ally in a vital area of US military commitment, not least due to its hosting of the US Fifth Fleet.⁸⁰ Bahrain has excelled at portraying itself as a country of moderation and reform, easily securing election to the UN Human Rights Council for a second time in May 2008 with the support of 142 out of 191 votes cast by UN Member States.⁸¹ This lack of international pressure has hampered efforts to persuade the government to progress beyond a tendency to over-legislate and interfere in the activities of civil society. While King Hamad is respected for his relatively benign attitude towards freedom of expression and association, these rights must be protected by more concrete legislation and judicial application rather than by royal favour.

Bahrain can be justifiably proud of its transformation since the turbulent years of the mid-1990s, but it is

⁸⁰ White House Press Release – "President Bush Visits Bahrain", 13 January 2008.

<http://www.whitehouse.gov/news/releases/2008/01/20080112-5.html>

⁸¹ "Bahrain Wins Seat on UN Rights Panel", *Khaleej Times*, 23 May 2008.

http://www.gulfintimedia.com/index.php?id=404182&news_type=Top&lang=en

becoming increasingly obvious that Bahrain's reform process has reached a precarious impasse. The wave of optimism which swept through Bahrain in 2001 after the publication of the National Charter is now remembered bitterly as a period of unfulfilled promises by many Bahrainis, who claim that although the royal family is willing to allow a degree of dissent, it remains above the law of which it is the ultimate authority. In late April 2008, the Prime Minister ridiculed any suggestion that sectarianism exists within Bahrain and refused to acknowledge that discrimination needed to be addressed.⁸² This failure of the government to address institutionalised discrimination against Shia citizens in Bahrain is leading to the increasing perception that the royal family and the government of Bahrain are not representative of the interests of the majority of Bahraini citizens. The almost total exclusion of Shia citizens from serving in the security forces, their conspicuous absence from other positions of public service, the glaring lack of transparency over the allocation of funds and property, the gerrymandering of constituencies and the questioning of Shia loyalty to the Bahraini state, are ultimately causing an erosion of the Bahraini national identity and increasing sectarianism.⁸³

Bahrainis are also exasperated by the current legislative process and the inability of their elected representatives to amend or replace vague legislation that allows for excessive state monitoring and interference. They are likewise alarmed by the introduction of wide-ranging anti-terrorism legislation. The moderate leadership of al-Wefaq senses that time is running out, that they must begin to deliver for their constituents who trusted their decision to engage within Bahrain's flawed parliamentary institutions. Bi-partisan cooperation in the Majlis al-Nuwwab remains non-existent and Bahrain's representatives must lead

from within the parliamentary chamber to ease sectarian tensions and work on issues of common interest. A key dilemma for the more secular supporters of reform in Bahrain is whether they are willing to support the empowerment of a democratically elected legislature in a state with "an arguably illiberal majority and a liberal minority?"⁸⁴

The alternative to constitutional reform and national reconciliation can be found on almost any given weekend in some of the poorer Shia areas that circle Bahrain's capital al-Manama, where crowds of young men gather to burn tyres and clash with the police. Impatient with what they see as a Sunni conspiracy to deny them rights and jobs, some sections of the Shia youth are beginning to look outside Bahrain to Iraq and Lebanon for inspiration from Shia movements there.⁸⁵ It remains to be seen whether the escalating violence in Bahrain is indeed manageable while simultaneously preserving Bahrain's image abroad. Some in government are optimistic that future economic growth, combined with initiatives to address housing and other social problems, will be sufficient to ease current unrest, but this may not be enough to mollify Shia demands for equal treatment. One of the essential lessons of the "King's dilemma" is that decompression is ultimately unsustainable, and by allowing for the construction of a strong civil society that advocates the transfer of power away from the monarch, the King must eventually face a choice: suppress or relent. For now King Hamad continues to search for another way.

⁸² "No discrimination says Bahraini Premier", *The Bahrain Tribune*, 23 April 2008.

⁸³ Many Bahrainis had hoped that any question of national loyalty had been resolved prior to independence in 1970 when a UN Special Envoy, Vittorio Guicciardi, reported to the UN Security Council that "the overwhelming majority of people of Bahrain wish to gain recognition of their identity in a fully independent and sovereign state, free to decide for itself its relations with other states." This report effectively repudiated Iranian claims to be granted sovereignty over Bahrain.

⁸⁴ Nonneman, p. 31.

⁸⁵ The government has begun to demonstrate a sensitivity to Shia opinion in its reaction to events in Iraq and Lebanon, most recently with regards to the crisis in Lebanon in May 2008, when Bahrain went so far as to issue a joint statement with Syria that stated that both countries would not internationalise Hezbollah's recent seizure of strategic areas of Lebanon. Some leaders of the Sunni community remain concerned as to the potential ripple effect of these conflicts and an increasing Shia regional assertiveness. "Syria, Bahrain refuse to internationalise Lebanon crisis" *Kuwait News Agency*, May 112008, and "An island kingdom feels the ripple effects of Iraq and Iran", *The New York Times*, 16 April 2006.

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Bahrain's top-down reforms, initiated by King Hamad bin Isa al-Khalifa in 2001, were a welcome respite for a population weary of the violence and state repression that characterised much of the preceding decade. King Hamad's relatively benign treatment of CSOs and his tolerance for a wider degree of freedom of expression has won international praise, most effusively from the United States. The lack of legislative and judicial reform, however, means that Bahrain's political societies, CSOs, journalists and trade unions continue to operate under flawed and inconsistently applied legislation. Restrictive legislation such as the associations' law, public gatherings law and the legislation governing trade unions and the media urgently require amendment to concretely secure the rights which Bahrain is required to observe under its international obligations, including the International Covenant on Civil and Political Rights (ICCPR).

As the 10th year of King Hamad's reign approaches, this working paper argues that Bahrain has reached an impasse in its reform process. Institutionalised sectarianism and a weak elected parliament have led to rising frustration in Bahrain and while many Bahrainis remain grateful to King Hamad for his initial reforms in 2001 and 2002, there is now a demand for an end to discrimination and for government accountability, the introduction of legislation and judicial reform that defends citizens' rights and a parliament that has primary legislative power. King Hamad will face a complex set of decisions in deciding how to balance the interests of the royal family while addressing calls for further reform or whether he should resist these demands by trying to manage growing dissent, in the hope that Bahrain's economic growth will eventually assuage unrest among its citizens.

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