



Universal Periodic Review: Bahrain

Third Cycle

Submission to the Stakeholders' Summary

Alkarama Foundation, 22 September 2016

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1. The present contribution falls within the framework of the second cycle of the Universal Periodic Review (UPR) pertaining to the general human rights situation in Bahrain and takes into account the recommendations made in November 2011.

1. Background and Framework

2. Over the past five years, Bahrain continued to face the consequences of the 2011 political crisis and the repression of the opposition by the authorities. Demonstrations continue to be held each year on the anniversary of the uprising of 14 February 2011, despite the law prohibiting public gatherings in the capital Manama, which was enacted by the King Hamad ben Isa Al-Khalifa in 2013. Peaceful protests are severely repressed and the use of force by the authorities is often disproportionate.

3. The confessional division remains at the heart of many issues and political fractures in the country. The process of "National Dialogue" launched by the King on 1 July 2011, still does not seem to reach the announced objective of opening the political debate in order to realise reforms in Bahrain. Such a failure underlines the increasing polarization of the society, particularly illustrated by the boycott of this process by Al Wefaq, the country's main opposition party.

4. The repression against the opposition results in abusive arrests, often for political reasons, travel bans or stripping of nationality. After the arrest of the Secretary General of Al Wefaq in December 2014, and the deprivation of nationality of many opponents in January 2015, the High Administrative Court of Bahrain pronounced, on 17 July 2016, the dissolution of the party for serious violations of the Constitution and national laws, being accused of "conducting of activities detrimental to the civil peace and unity" and "incitement to non-compliance with institutions". This dissolution is contrary to the right to freedom of assembly and association.

5. The national reconciliation is all the more problematic with Bahrain's participation with the Gulf Cooperation Council's Saudi-led coalition against the Houthi rebels in Yemen, which significantly contributed to feed this polarisation of the society.

6. In addition, the rights and freedoms in the country are restricted by an oppressive legal arsenal: the 2006 Anti-Terrorism Law, the 2002 Press Law and certain provisions of the Penal Code. This repressive arsenal was repeatedly used to punish activists on account of their statements or public positions against the government, especially on social media networks.

7. In June 2011, the Bahraini Independent Commission of Inquiry (BICI) was created and mandated with investigating the allegations of human rights violations, which occurred during the 2011 uprising. The Commission concluded that serious violations were committed by the National Security Agency and the Ministry of Interior (MoI). In September 2015, on the occasion of the 30th session of the Human Rights Council, 33 countries called on the Bahraini authorities to fully implement the recommendations of the BICI, as well as those from the second cycle of the State's UPR, and to strengthen the cooperation with the Office of the High Commissioner for Human Rights and the UN Special Procedures.¹ To date, the government still has not fully implemented the recommendations of the BICI, particularly those on reconciliation, safeguarding of the freedom of expression, torture and accountability of its members for the abuses perpetrated.

1.1 Scope of international obligations

8. Bahrain is a party to international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT).

¹ The signatories also called for the release of all those imprisoned for having exercised their fundamental rights and freedoms and asked the government to « put an end to the repression of peaceful protestors and issue clear instructions to the security forces to refrain from using disproportionate force against the protestors ».

9. Bahrain has, however, neither ratified the Convention against Enforced Disappearance (ICCPED),² nor accepted the two ICCPED Optional Protocols³ and the CAT Optional Protocol.⁴

10. **Recommendations:**

- a) Ratify the abovementioned Conventions.

1.2 Constitutional and legislative framework

11. During the last UPR, Bahrain agreed to amend its legislation and bring it into conformity with the requirements of the CAT.⁵ In October 2012,⁶ the government amended the Penal Code to incorporate the definition of torture as stipulated in Article 1 of the CAT. However, Alkarama notes that the clear and unequivocal prohibition of this practice still does not appear in the text.⁷

12. In February 2014, the Penal Code was amended to incorporate a prison sentence of one to seven years for any person, who "publicly insults the King of Bahrain", "the flag or national emblem".

13. The 2006 Anti-Terrorism Law was amended in 2013⁸ and 2015⁹ with the aim of increasing the penalties.¹⁰ This law significantly restricts the fundamental freedoms and threatens peaceful activists, human rights defenders and members of the opposition.

14. The Bahraini Citizenship Law (1963), amended in July 2014, provides for the revocation of nationality, upon request of the MoI, of any Bahraini citizen, who receives another nationality without the Minister's prior approval or who "causes harm to the interests of the kingdom".

15. **Recommendations:**

- a) Amend the national legislations, restricting fundamental freedoms, to bring them into conformity with international standards.

1.3 Institutional and human rights infrastructure

16. In 2013, the National Institution for Human Rights of Bahrain (NIHR) was established by Royal Decree as a national human rights institution (NHRI). Its lack of independence, transparency and compliance with the Paris Principles, raised by Alkarama,¹¹ led the Accreditation Sub-committee of the Global Alliance of National Human Rights Institutions (GANHRI) to accredit the NHRI with the "B" status in May 2016.¹²

² Despite the commitments made during the last UPR, by accepting recommendations n.115.3 (Spain), n.115.5 (Uruguay), n.115.6 (Argentina) and n.115.14 (France).

³ Despite the commitments made during the last UPR, by accepting recommendations n.115.3 (Spain) and n.115.5 (Uruguay).

⁴ Despite the commitments made during the last UPR, by accepting recommendations n.115.3 (Spain), n.115.18 (Uruguay) and n. 115.1 (Czech Republic).

⁵ Particularly to introduce a definition of torture in conformity with the Convention, in accordance with the recommendations accepted n.115.88 (Maldives) and n.115.18 (Uruguay) and to criminalise all acts of torture and ill-treatment in accordance with the recommendation accepted n. 115.22 (Spain).

⁶ Decree n.52 (2012) <http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=2114> – available in Arabic only (consulted on 23.08.2016).

⁷ Despite the commitments made during the last UPR, by accepting recommendations n.115.92 (Slovakia).

⁸ Articles 10 and 24. <http://bahrainrights.org/sites/default/files/Stateless%20in%20Bahrain%20-%20Final.pdf> - (consulted on 23.08.2016).

⁹ Articles 2, 8, 15, 26, 27.

Americans for Democracy & Human Rights in Bahrain, *Bahraini Authorities Introduce Additional Oppressive Laws*.

<http://www.adhrb.org/2015/12/bahraini-authorities-introduce-additional-oppressive-laws/> - (consulted on 23.08.2016).

¹⁰ Terrorism-related crimes are punished by a minimum of seven years up to life imprisonment, death penalty or deprivation of nationality. The definition of terrorism remains vague and therefore allows for an extensive use of this law.

¹¹ Alkarama's Alternative Report submitted to the Accreditation Sub-Committee, 15 January 2016,

<http://en.alkarama.org/bahrain/reports/2016-bahrain-national-institution-for-human-rights-2015-before-the-international-coordinating-committee-of-nhris> - (consulted on 23.08.2016).

¹² Report of the Accreditation Sub-Committee of the GANHRI – May 2016,

<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-French.pdf> - (consulted on 23.08.2016).

17. In 2012, the High Coordinating Committee was established and tasked with the preparation of the Human Rights National Plan of Action. In 2014, it was restructured and is now chaired by the Minister of Foreign Affairs.¹³

18. In February 2012, the government established the Office of the Ombudsman within the Ministry of Interior in order to achieve a political and institutional reform and to "promote human rights". Alkarama notes that the lack of independence of the institution prevents it from fully exercising its mandate and meeting the objectives of impartiality and transparency in accordance with international norms as initially set out in its annual report.¹⁴

19. Similarly, Alkarama notes that the Prisoners and Detainees Rights Commission established in 2013 and chaired by the Ombudsman, as well as the Special Investigations Unit¹⁵ established in 2012 and chaired by the General Prosecutor, are not able to fulfill their mandates due to a lack of independence.

20. **Recommendation:**

- a) Ensure the independence of the NHRI in accordance with the Paris Principles, and of other human rights protection and promotion mechanisms.

2. Cooperation with human rights mechanisms

2.1 Cooperation with treaty bodies

21. On October 2015, Bahrain submitted its periodic report to the Committee against Torture,¹⁶ due since 2007. The review of Bahrain before the Committee is expected in 2017.

22. However, Bahrain has yet to submit its periodic report to the Human Rights Committee, due since 20 December 2007.

23. **Recommendation :**

- a) Submit the overdue periodic report to the Human Rights Committee.

2.2 Cooperation with special procedures

24. Despite the commitments made during the last UPR, Bahrain still has not set a date for the visit of the Special Rapporteur on Torture (SRT). The government cancelled the scheduled visits of 2012 and 2013 and continues to push the deadline due to an "inability to fix a date".¹⁷

25. Alkarama notes that the request for visit of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (FPAA) of 2011 and of the Special Rapporteur on the situation of Human Rights Defenders of 2012 both remain unanswered. These requests were renewed in October 2013 and February 2015 respectively.

¹³ <http://www.upr.bh/index.php/hcc-2/> - (consulted on 15.08.2016).

¹⁴ First Annual Report of the Office of the Ombudsman of Bahrain (2014): <http://ombudsman.bh/mcms-store/pdf/610-First%20Annual%20Report%20%202013-2014-2812251.pdf> (consulted on 20.08.2016).

The mandate of the Ombudsman and the guidelines as set out in the report state that the Ombudsman is required to perform its functions in a manner that reflects positively on the Ministry of Interior and does not affect the credibility of the Ministry. In addition, the Ministry of the Interior has the power to put an end to the public inquiries of the Ombudsman by launching private and internal investigations handled by the Special Investigations Unit of the MoI. The capacity of the Ombudsman's Office to effectively criticize the Ministry is compromised by the control exercised over the institution.

¹⁵ The Special Investigations Unit has been established on the recommendation of the BICI. It is responsible for conducting interrogations and investigations and take action in the allegations of torture, cruel and degrading treatment in accordance with international standards, including the Istanbul Protocol, to effectively investigate torture and other cruel, inhuman or degrading treatments, to determine the responsibility of government officials accused of committing such acts, including those of the chain of command. The aim is to bring appropriate disciplinary actions and present the case to the competent authority for possible disciplinary action or other action within the jurisdiction of that authority.

<http://www.biciunit.bh/en/special-investigation-unit.html>. Resolution No. (8) 2012 establishing the Special Investigations Unit, https://www.biciactions.bh/wps/themes/html/BICI/pdf/1716/decision_special_investigations_unit_en.pdf

¹⁶ Second Periodic Report of Bahrain submitted to the Committee against Torture on 29 September 2015: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/264/13/PDF/G1526413.pdf?OpenElement> - (consulted on 23.08.2016).

¹⁷ In March 2014, Special Rapporteur Mr. Juan E. Mendez met with the Minister of Foreign Affairs of Bahrain who declared that the authorities were not able to set a date for the visit.

26. Similarly, the requests for a visit from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (FRDX) of 2014, and from the Working Group on Arbitrary Detention (WGAD) also remain unanswered.

27. **Recommendations:**

- a) Set, without delay, a date for the visit of the SRT;
- b) Plan the visits of the HRD, FPAA, FRDX and the WGAD.

3. Implementation of international human rights obligations

3.1. Right to life, liberty and security of the person

3.1.1. The death penalty

28. Bahrain continues to sentence people to capital punishment,¹⁸ officially only for the "most serious crimes".¹⁹ However, Alkarama notes that dozens of dissidents were sentenced to death after unfair trials based on confessions extracted under torture.²⁰ Three new sentences were upheld by the Bahraini High Court of Appeal in May 2016, bringing the total number of individuals sentenced to death to 16.²¹

29. **Recommendation:**

- a) Review all sentences handed down on the basis of confessions obtained under torture;
- b) Establish a *de jure* moratorium on the death penalty.

3.1.2. Torture: a persistent problematic

30. Since the last UPR, the practice of torture has still not been eradicated²² and many victims continue to be reported. In its report to the Committee against Torture,²³ Alkarama emphasized that despite the investigations of the BICI and the recommendations issued to put an end to this practice, torture remains a serious concern due to a lack of political will.

31. In its report of November 2011, the BICI documented and condemned the cases of torture and ill-treatment, whether physical or psychological, conducted with the aim of "extracting confessions under duress, and in other cases conducted for purposes of reprisal or punishment".²⁴

¹⁸ Since the last execution in 2010, 12 sentences to death have been pronounced between 2011 and 2014, at least 6 in 2015 and 3 in May 2016. However, all these sentences have not been confirmed in appeal by the High Court of Appeal of Bahrain.

¹⁹ U.N.G.A., Human Rights Council, Report of the Working Group on the Universal Periodic Review: Bahrain, para. 6, U.N. Doc. A/HRC/8/19, May 22, 2008.

The Bahraini Penal Code classifies a large number of offenses as "serious crimes" justifying a death sentence, including apostasy and drugs trafficking. Death penalty is also provided for the following cases: premeditated murder, any act affecting the independence, unity and integrity of the country, plotting against the regime, any act threatening the life of the King, collaboration with a hostile foreign country, and disregard of military orders in wartime. Any conviction must be confirmed by the High Court of Appeal of Bahrain and approved by the King to be implemented.

https://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf

²⁰ Amnesty International Communication, *Bahrein : AI exhorte les autorités à suspendre l'exécution de manifestants*, 28 avril 2011, <http://www.amnesty.fr/AI-en-action/Violences/Peine-de-mort/Actualites/Bahrein-suspendre-execution-de-manifestants-2503> - Available in French only (consulted on 23.08.2016). On 29 December 2014, Mohamed Ramadan and Husain Ali Moosa were sentenced to death for their alleged involvement in a bomb attack in February 2014. The two accused declared that they were forced to confess under torture.

²¹ Amnesty International, *three death sentences upheld* (Consulted on 07.09.2016)

<http://www.google.ch/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjt2bDAnf3OAhWsDsAKHR9vD3YQFgqkMAE&url=http%3A%2F%2Fua.amnesty.ch%2Furgent-actions%2F2015%2F02%2F047-15-1%2Fua-047-15-1-english&usq=AFOiCNEIZE6pyuzMMnpJ7gmJqYvk1jPbPg>

²² Despite the recommendations accepted: n. 115.92 (Slovakia) and n. 115.90 (South Korea).

²³ Alkarama's Report submitted to the Committee against Torture in view of Bahrain's review (2015). <http://en.alkarama.org/reports/1639-bahrain-committee-against-torture-2015-alkarama-s-list-of-issues-in-view-of-state-s-2nd-review>

²⁴ BICI's Report of 23 November 2011, para.1694, p.416 <http://www.bici.org.bh/BICIreportEN.pdf>

32. Despite positive changes in the legislation, torture is still carried out in order to extract confessions, which are then used as sole evidence in trials to convict the accused.

33. The cases documented²⁵ by Alkarama showed that agents of the Criminal Investigation Department under the authority of the MoI, committed acts of torture²⁶ particularly against people charged under the 2006 Anti-Terrorism Law.

34. Finally, despite the criminalisation of torture,²⁷ its absolute prohibition must be unequivocally expressed in the law.

35. **Recommendations:**

- a) Bring a definitive end to the practice of torture and reject any statement obtained thereby;
- b) Investigate, prosecute and punish the perpetrators of torture with penalties reflecting the gravity of their actions;
- c) Ensure that conditions of detention are in conformity with international standards;
- d) Implement all the recommendations of the BICI.

3.2. Right to a fair trial

3.2.1. Arbitrary detention and violations of the guarantees of a fair trial

36. Arbitrary detention remains a source of major concern. This practice continues to be carried out by the government to silence peaceful demonstrators and political opponents or anyone who denounces human rights violations.

37. Often abusive, arrests are violently conducted by members of the police or National Security Special Forces acting without a warrant.²⁸ Systematic violations of procedural safeguards are the result of a political will to hinder the proper administration of justice.

38. Many people remain in detention after unfair trials. The cases documented by Alkarama underscore the common practice of *incommunicado* detention, especially during the period of police custody. The impossibility for detainees to communicate with their lawyer is a violation of the right of defense.

39. Finally, procedural delays unduly prolong the duration of pretrial detention. It is also common that confessions obtained under torture are used as sole evidence.

40. **Recommendations:**

- a) Limit the pretrial detention period of custody and respect fair trial guarantees;
- b) Release those detained without legal basis.

3.2.2. Special courts

41. Despite the commitments made during the last UPR, Bahrain has not implemented the recommendations made about special courts.²⁹

²⁵ Alkarama has documented the cases of Ahmed Sayed Hussain Sharaf Ali Mohamed, a 25 year-old student, and Ali Radhi Radhi Abdulrasool, a 30 year-old telecommunication employee. They were both sentenced to heavy prison sentences on the sole basis of confessions extracted under torture. They were electrocuted and subjected to extreme temperatures. In November 2015, Alkarama submitted their cases to the attention of the Special Rapporteur on Torture and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (SRCT).

²⁶ Particularly in the « Dry Dock » detention centre.

²⁷ Under Articles 208 and 232 of the Criminal Code of Procedure.

²⁸ In many cases, prominent members of the opposition or human rights activists have been arrested at their homes by agents of the security services in civilian clothes, conducting raids and seizure of personal effects. Victims often have no access to their families or their lawyer during the first weeks of detention.

²⁹ Recommendations n.115.117 (Poland), n.115.118 (Ireland), n.115.114 (Austria), and n.115.116 (Germany).

42. Bahrain has military tribunals and a National Safety Court divided into a lower court and a court of appeal.³⁰ Since they are dependent on the Executive power, these courts do not offer sufficient judicial guarantees to protect the rights of the accused.³¹

43. **Recommendation:**

- a) Abolish the National Safety Court and limit the jurisdiction of military courts to military personnel only.

3.3. Equality and non-discrimination: the right to nationality

44. During the last UPR, no recommendation was made on the matter, although Bahrain uses deprivation of nationality as a tool of repression against political opponents and human rights activists, in violation of Article 15 of the Universal Declaration of Human Rights.

45. Under Article 17 of the Bahraini Constitution, citizens cannot be deprived of their nationality "except in cases of treason, and other cases provided by law".³² The practice of deprivation of nationality remains nevertheless politically motivated.

46. The Bahraini Citizenship Law (1963) was amended on 7 July 2014 and provides since, for the revocation of nationality upon request of MoI, of any Bahraini citizen receiving another nationality without his prior approval or who "causes harm" to the interests of the kingdom.³³

47. Alkarama notes the imprecise character of the term "harm", which carries the risk of systematic revocations of nationality against human rights activists and political opponents.

48. **Recommendations:**

- a) Put an end to deprivations of nationality motivated by political reasons.

3.4. Freedom of expression, reunion and peaceful assembly

49. Despite its commitments, Bahrain has not implemented the recommendations of the last UPR.³⁴ The freedoms of expression, association and assembly are regularly violated, strongly limited and in some cases severely punished. Many human rights activists have been prosecuted for "criticizing" the government on social networks or at public gatherings and the authorities continue to detain prisoners of conscience convicted after unfair trials.

50. In February 2014, the Penal Code was amended in order to introduce a prison sentence of up to seven years against anyone who "publicly insults the King of Bahrain," "the flag or national emblem".³⁵

51. Authorities continue to prohibit demonstrations in the capital by virtue of the 2013 law on public gatherings. Peaceful protests, which have nonetheless continued, were strongly repressed by the security forces with disproportionate use force.³⁶

52. **Recommendation:**

- a) Amend the provisions of the Penal Code limiting the abovementioned freedoms, in accordance with international norms.

³⁰ On 15 March 2011, the Government of Bahrain declared a state of emergency by virtue of the Royal Decree n.18 (2011), which established, amongst others, a two-tiered National Safety Court – a lower court and a court of appeal – with jurisdiction over certain crimes related to the events that took place in Bahrain in February and March 2011.

³¹ The National Safety Court, which proceedings are not public, is composed of a military judge and two civil judges, and has jurisdiction to try civilians for crimes allegedly committed following the events of 2011, as well as over terrorism matters. Under Article 11 of the Royal Decree n.18 (2011), "final judgments issued by the National Safety Court cannot be disputed". The Court condemned dozens of civilians for offences such as "illegal gathering," "incitement to hatred", "incitement to overthrow the regime" and "spreading false rumors". This Court raises serious concerns, a large number of civilians are brought before it while military courts should never have the jurisdiction to try civilians, being neither independent nor impartial.

³² http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125858.pdf (consulted on 20.08.2016).

³³ Articles 9 and 10.

³⁴ Recommendations n.115.24 (Slovakia) and n.115.27 (Ireland).

³⁵ The 2002 Press Law provides for a prison sentence of up to five years for publications that would criticise or undermine the King, jeopardise the security of the State or call for a change of regime.

³⁶ Some protestors have been beaten, many have been arrested and imprisoned.

3.5. Human rights and the fight against terrorism

53. The provisions of the Anti-Terrorism Law (2006) are contrary to international law,³⁷ despite the statements made by the authorities. This law vaguely defines terrorism as the action of an organization to “prevent state enterprises or public authorities from performing their duties or seeking to undermine national unity.”

54. Extensively used during the events of 2011, this Law continues to limit fundamental freedoms - including the freedom of expression - and threatens peaceful activists, human rights defenders and political opponents. During the 2008 UPR, the authorities declared that the measures taken to protect citizens from terrorist threats do not target human rights defenders, since “their activities are not related to terrorism according to the law”.³⁸

55. Amended by Royal Decree in July 2013, sentences for terrorism-related crimes have been increased to range from seven years up to life imprisonment, deprivation of citizenship or death penalty.

56. In December 2015,³⁹ a new revision established a Prosecutor for terrorism-related crimes⁴⁰, who is authorized to extend the detention for up to six months (Article 26) for investigation purposes. In addition, Article 27 provides for an initial period of detention extendable up to 28 days without charge. Hence, this revision allows the authorities to detain a person for nearly seven months without trial, in violation of Article 9 of the ICCPR, providing for the right to be tried within a reasonable time.⁴¹

57. Recommendations:

- a) Put an end to the repressive nature of the 2006 Anti-Terrorism Law and bring it into conformity with international human rights standards.
- b) Revisit all judgments made by virtue of this law.

³⁷ *Bahrain National Report presented at the UPR session*, Geneva, 11 March 2008, (A/HRC/WG.671/BHR/1), p27, para. 7(f).

³⁸ *Report of the Working Group presented at the UPR session*, Geneva, 22 May2008, (A/HRC/8/19), p4, para. 96(e).

³⁹ Articles 2, 8, 15, 26, 27.

Americans for Democracy & Human Rights in Bahrain, *Bahraini Authorities Introduce Additional Oppressive Laws*, <http://www.adhrb.org/2015/12/bahraini-authorities-introduce-additional-oppressive-laws/> - (consulted on 23.08.2016).

⁴⁰ Articles 2, 8, 15, 26, 27.

Americans for Democracy & Human Rights in Bahrain, *Bahraini Authorities Introduce Additional Oppressive Laws*, <http://www.adhrb.org/2015/12/bahraini-authorities-introduce-additional-oppressive-laws/> - (consulted on 23.08.2016).

⁴¹ Security forces are also allowed to « look for individuals, stop and search vehicles, restrict the right of movement of vehicles, public transports or pedestrians, cut communications and messages sent from the crime scene and sites where anti-terrorism operations are under way, for up to 12 hours”.