

Evaluation of Human rights Conditions in Bahrain In Terms of Laws, Institutions and Protection Mechanisms

A Paper Presented by Abdul Hadi Al Khawaja, Director
Bahrain Centre for Human Rights

Bahrain, 10th December, 2003

Contents:

- ❖ Introduction
- ❖ Legislation: Constitution, Laws and Extraordinary Measures
- ❖ Public Affairs Societies: Political Parties and Organizations at the Government's Mercy
- ❖ Media and Press
- ❖ International Organisations and International Non-government Organisations
- ❖ Power of Legislation and Control (House of Representatives and Shura Council)
- ❖ Judiciary: Is it a means of Rendering Justice or Restriction?
- ❖ Executive Authority (Government)
- ❖ Conclusion
- ❖ The Penal Code: Restricts Basic Rights and Freedoms
- ❖ Societies Law No.21 of 1989: A Sword Threatening Societies

Introduction:

Voting in favor of the National Charter on 15 Feb 2001, along with the release of detainees, return of deportees, formation of societies, flourishing of freedoms assembly and expression was a turning point towards a positive phase of political and social conciliation.

However, we are now going through a different phase, following the second turning point brought about by:

- controversial constitutional amendments declared by the king,
- the boycott of parliamentary elections by the opposition
- the clash between the freedoms sought by the civil societies, with the laws insisted upon by the Government, and
- other hot issues raised by political and human rights societies.

Actually, social and political tension is growing bigger as result of deterioration in living conditions and the spread of poverty, related to the high percentage of unemployment, underpayment, housing problem and the related instances of corruption, privileges and discrimination.

The purpose of this paper is not to talk about the pre-Charter phase nor to discuss the era of festivities and great hopes that followed. What we are concerned with is the current period and features of the forthcoming period.

In order to evaluate the status of freedoms and human rights at present, and in order to look forward to the future, we ought to answer the following questions:

1. What are the available methods and mechanisms to those who seek to strengthen and protect basic freedoms and human rights? Further, how far are those able to protect themselves and their societies and projects?
2. Do the Constitution and the laws, as they stand, serve or obstruct the reformation? and who actually controls the implementation or amendment of the laws?
3. What about the role of the media, such as radio and TV stations and the press? Who controls them? What are the laws that regulate them?
4. Is there a real supervision and accountability of whoever has influence and has the means of economic and security powers?
5. What about the judiciary as it stands at present? does it actually represent the final means of protection for victims and complainants?
6. What about international treaties and mechanisms? Do they have an impact on all this?
7. It is true that there are significant manifestations of the exercise of basic freedoms in Bahrain at the present time represented by the formation of societies, organization of seminars and sit-ins. However, is this a deep-rooted and established phenomenon that complies with the laws? or is it an extraordinary condition and a gesture that is given by the decision-makers and can be blown away by unfavorable winds?
8. Above all will the hands that influence the political and economic life meet the citizens' economic rights? Or will the crises of poverty, unemployment, corruption and discrimination destroy social security which would require once again the use of methods of oppression and repression?

Legislation: Constitution, Laws and Extraordinary Measures:

1. For the Constitution, there are two basic issues:
 - a) Following the Constitutional changes, the King's powers became significantly broader and he practically held in his hands all all powers. He does appoint the Cabinet and administers the country through it. He appoints members of the Constitutional Court and the Supreme Council of the Judiciary. He appoints one half of the members of the National Council and legislation is not enacted without his approval. Also the National Council has become unable to put forward a no-confidence motion against the Prime Minister. The Council proposes legislations but it is drafted by the Government. All this undermines the citizens' actual right to political participation as stipulated by international charters and casts shadows over the existing democracy.
 - b) The Bahrain Constitution underlines a great number of freedoms and rights, but then refers the issue of regulation to the laws, which makes the laws having a constitutional basis, even though the enacted laws were issued in absence of democracy, and violate the principles of the Constitution itself.
2. As for the laws especially these related to basic rights and freedoms, they were enacted in the absence of the elected legislative institution and came to restrict freedoms, give a free hand to the executive authority and giving it absolute powers and authorities. Of the laws that are still in force there are the Penal Code promulgated in 1976 and its amendments enacted in 1982 and the Societies Law No.21 of 1989. In fact, the laws introduced by the government following the Charter were of the same kind such as the new Press, Printing and Publication Law.
3. For the security systems and extraordinary procedures, the State Security Law and Court have been revoked. Never the less, Article 186 provides that the crimes set forth in the Articles from 112 to 184 of the Penal Code require that their perpetrators must be tried before a special court whose formation and terms of reference shall be determined by an Amiri Order. The aforesaid Articles mention such crimes as the publication of anti-regime news and statements, formation of opposition societies and assembling and rioting. Thus, the formation of a court that is governed by special procedures for the trial and prosecution of the opposition is still a legal right held by the ruling authority.

In this paper, we will shed light in detail on the Penal Code and Societies Law not only for their importance and direct effect upon freedoms and human rights, but also because they have not been given sufficient attention by civil society institutions and the media as was the case with the Press Law. It should be noted that the ruling authority has started using such laws to restrict freedoms. We note that the charge brought against the defendants in the case of the Exhibition Centre Concert was assembling and not only the use of violence and destruction of property.

Penal Code: (Enclosed are the most important of the freedom restricting provisions)
(Societies Law No.21 of 1989: A Sword Threatening Societies- Enclosed)

Public Affairs Societies: Marginalized Political Parties and Organizations at the Government's Mercy:

In spite of allowing the political groups to reform themselves under the Societies Law, they do not enjoy the status of political parties. Furthermore, the Societies Law and Penal Code remain a sword threatening them and all their activities used by the executive authority whenever it wishes to suspend or restrict their activities. The same applies to the societies involved in human rights and public affairs. Because of the laws related to the election and powers of Municipal Councils and House of Representatives, political societies found themselves marginalized and have no real influence whether they participate in or boycott general elections. In addition, the executive authority have effectively supported the pro-government societies either through appointments in the Government and Shura Council or by allowing them access to the media.

As for human rights societies, the executive authority has pursued a policy of not giving actual support and co-operation except in information and procedural issues. In fact, it exercised pressures on such societies by indirect methods and was almost able to tame one of the basic human rights societies while the other society was brought under considerable pressures and threatened with closure because of the latter's raising in public the issue of privileges enjoyed by the Ruling Family members. The government's influence upon the judicial system and National Council actually restricts the co-operation of these two institutions with non-government societies.

Upon reviewing the Penal Code and Societies Law, we will see that the status of rights, political and other public affairs societies that were launched in the post-Charter era is an unusual and abnormal status from the legal point of view. It is clear that the chartering of such societies has come by a political not an administrative decision. Most of the activities undertaken by such societies are contrary to the law under which they have been created. Non-application of the law, non-intervention in their affairs and refraining from prosecuting them is only the result of a supreme will or circumstances preventing such actions. Should the political mood change, the law will take its course whether in the form of decisive administrative decisions or court judgements and actions. The slogan that is becoming more obvious at the moment is no one above the law and the final word is for the judiciary. But which law and which judiciary? Who protects the non-government societies and institutions when gestures become scarce?

Media and Press:

The executive authority still owns and dominates the radio and TV station. It also exercises direct influence or pressures to influence the policies of the local dailies. It has changed from pursuing the methods of direct repression by restricting the freedom of printing and publishing to the method of using tough laws (represented by the Penal Code and Press Law) and by taking advantage of the non-independent judiciary which, in turns, imposes self-censorship upon the local press. It has been noted that the level of freedom of expression in the local newspapers has receded tremendously especially after activating the new Press Law in the courts against editors and columnists. Moreover, the authorities have used the media to launch regular campaigns against societies and individuals who discuss topics that they feel are sensitive or attempt to communicate to overseas circles (as in the case of the Jaw Prison detainees, naturalization issues and discrimination).

International Organisations and International Non-government Organisations:

In spite of the Government of Bahrain's joining many international agreements such as the Anti-Torture Agreement and the Agreement for Non-Discrimination Against Women and in spite of preliminary reports submitted by the Government to the Anti-Discrimination Committee and the Children's Rights Committee, yet all these agreements have not as yet come into effect and are not referred to in the law courts. In addition, no serious effort is made to adapt the local legislation in compliance with the provisions of such agreements and there is no actual benefit derived from the international mechanisms related to them. However, there are slow moves by certain government agencies to activate the agreements related to children's and women's rights. There are attempts that so far seem desperate at the House of Representatives to draft laws related to the incrimination of discrimination and torture.

As for the other international mechanisms and international non-government organisations, their influence on the domestic situation has declined considerably. Human rights societies were too busy to benefit from such mechanisms after having been allowed to operate on the domestic level. Meanwhile, the ruling authority has succeeded to take advantage of the changes that occurred in the early phase of accession by Shaikh Hamad bin Isa Al Khalifa to power to launch a continuous publicity campaign abroad to portray Bahrain as a model of democracy and respect for human rights. This has been helped by the US need to provide evidence that its influence in the region serves changes towards democracy and consolidation of human rights.

Power of Legislation and Control (House of Representatives and Shura Council):

Although there is an elected House of Representatives that enjoys powers of control and participation in legislation, yet its effectiveness and performance are poor owing to the limited powers enjoyed by the House according to the new Constitution. This is also due to the weakness of the House's formation because of boycotting the elections by some of the influential political powers.

In spite of the effectiveness of a modest number of members in raising key and important issues within the House and in the press, the House has so far been unable to adopt effective decisions with respect to any of the rights and freedoms issues whether with regard to legislation, control and accountability. So far no laws have been introduced establishing national mechanisms for protection of basic freedoms. Until now the two houses have not been able to adopt any effective decisions related to economic rights, citizens' living conditions or administrative and financial corruption. Nevertheless, the two Houses or some of their members have been involved in practices supporting the executive authority in restricting freedoms and condemning non-government organisations for participating in activities that can be classified as exercise of basic rights (as in the case when the political societies raised the issue of political naturalization and also when BHRC raised the issue of privileges and discrimination). Although there are significant draft laws tabled for the next

period by some House members (related to the provision of social security and minimum wage level) and although investigation committees have been formed and are scheduled to submit their results shortly (such as the issue of GOSI and Pension Fund Commission funds and issue of political naturalization), there are still doubts that there could be results leading to real changes owing to the poor structure and powers of the House compared to the continuous domination of the executive authority.

Judiciary: Is it a means of Rendering Justice or Restriction?

An independent and neutral judiciary is the last resort for rendering justice especially in view of the strength of the executive authority that dominates the executive authority. With the existence of laws that restrict freedoms, the judiciary is not only unable to play its role in protection and rendering justice with respect to infringement of rights and freedoms but becomes an effective tool used by the executive authority to tame the non-government forces and to penalize members of the opposition. Therefore, we find that the court cases filed against the executive authority or its staff members were not admitted or achieve any real results until now (for instance the case of the martyr Mohamed Juma, case of 11 people who were victims of torture in the past and case of the person accused of child harassment in Bilad Al Qadeem). On the other hand, the executive authority used the tough laws and judiciary to rein in the local press (such as the cases of the editors and reporters of Akhbar Al Khaleej and Al Wasat) as well as bringing pressure upon those who lend their support to cases of administrative and financial corruption (such as the cases of the Editor of the Democratic Newsletter and Jaafari Waqfs). The same applies to the role played by societies and activists (such as the case of defaming the Judges of the Shariaa Sunni Court and the dismissed case concerning the Al Wafaq Society's play).

Discussion has started about reforms of the judiciary and achieving its independence but what has already taken place in reality is no more than procedural changes and consolidation of the influence of a certain class of people as well as reinstating the same judicial personalities in new positions and jobs. Although Bahrain has joined numerous international treaties, that have become a part of the Bahrain law, yet in practice such laws are not applied in the applicable regulations, procedures or the judgements handed down by the law courts.

Executive Authority (Government):

In spite of the changes that occurred in Bahrain in recent years, yet the government institutions have not been affected by actual changes neither in persons nor mentality or practices, especially the institutions that are directly involved in forging policies, introducing and enforcing laws. These institutions are linked to or affecting basic rights and freedoms. They are led by the Council of Ministers and government ministries such as the Justice, Interior, Information and Labour Ministries.

The significant changes that took place during around two years after voting on the Charter were the result of phased pressures and circumstances as well as the supreme will of the head of state not the product of a genuine change in the government institutions. All the political prisoners and detainees were released and deportees and opposition figures were allowed to return to their country. The State Security Law and Court were revoked and permission was given to form associations including human rights and political associations. Then, Municipal and Parliamentary elections were allowed and the exercise by the opposition of the freedom of expression, organization of seminars and demonstrations were tolerated.

However, the decline that followed was on the level of legislation and actual practice which proves that the changes were only temporary and had a limited ceiling targeting procedural rather than substantive aspects. Alternatively, it seems that the head of state has lost the sense of initiative in favour of the group that practically held the reins of the executive power. They are the same people who clashed with the National Assembly 30 years ago and are those who have been responsible for all

the government policies and violations since that time. Clearly they are on top of the losers from any real reforms. In addition, they still hold all the means of power and oppression such as the security forces, money and the media.

Therefore, it is not surprising that the same laws and institutions still survive as the Government is still unable to curb the phenomena of poverty and unemployment. Moreover, it is not amazing that there is increased administrative corruption, discrimination, privileges and abuse of influence to seize public funds and property. Also continuing are the non-prosecution of officials responsible for violations in the past and depriving victims of the right to enjoy justice as well as depriving them of support and facilities to compensate them for the damages suffered from their detention or exile for a long period of time.

It is true that the security forces are not used for direct repression, detention and torture but the law is being used in defiance of the Constitution, freedoms and human rights principles. The media are being used against the freedom of expression and against the civil community forces. The judiciary is being used for restriction, threats and prosecution instead of protection through rendering justice.

If we take into account the continuous enforcement of the same previous arbitrary laws, weakness of the legislative and supervisory institutions, lack of the legal and practical status of political and national societies, lack of independence of the judiciary, ownership of the key media by the executive authority and ineffectiveness of the means of overseas control, we are faced with an absolute authority that is in possession of the various means of repression that are used as and when it wishes. In other words, it is a threat to freedoms and human rights.

Conclusion:

The forces of reform cannot protect liberties except by seeking to have more of them not by hesitation and yielding to pressure and threats. Their absolute priorities should be to steadily seek to reform the legislation and laws represented by the Constitution or penal, press, societies and press laws. They must seek to reform the judiciary. The legislative and supervision and civil society and institution must exercise their duties and activities as much as possible in order to create a new reality. In addition, it is also essential to activate the role of international mechanisms and organisations to contribute to bringing pressures for the sake of reform and protection of human rights.

On the top of the political hierarchy there is a monarch and a crown prince who have launched significant initiatives and who talk high about freedoms, progress and human rights. We are also aware that the King has theoretically and constitutionally all the powers and influence, but we also know that what impacts and preserves reforms are not good intentions and slogans but the interaction of political interests and balance between the forces existing in the ruling authority and society. Considering that the anti-reform forces have regained their influence and positions once more, the forces of change can only join forces and co-operate whether such forces are within the government authority and organisations or in the National Council or societies and local press.

The Penal Code: Restricts Basic Rights and Freedoms

(Promulgated by Decree Law No.15 of the Year 1976, with the most significant amendments introduced by Decree Law No.9 of the Year 1982)

The Bahrain Penal Code restricts basic rights and freedoms in violation of basic norms stipulated for in the constitution, and in conflicts with the international standards that the Government has undertaken to comply with. This Bahrain Penal law incriminates and impose prison sentences and fines on anyone who does the following:

- Anyone who deliberately releases abroad false or malicious news, statements or rumors about domestic conditions in the State, so as to undermine financial confidence in the State or adversely affect its prestige or position (Article 134).
- Anyone who attends abroad without permission any conference, public meeting, seminar or takes part in its deliberations with the aim of discussing the political, social or economic conditions in the State of Bahrain or other states where this results in undermining financial confidence in the state of Bahrain or adversely affecting its prestige or position or undermines such relations between the State and such other states (Article 134 bis.).
- Any person who establishes, sets up, organizes or runs a society, organization, group or branch thereof aiming at the overthrow or changing the political, social or economic system of the State, promoting or favoring such action, where the use of force, threat or any other illegal method is noticed (Article 159).
- Any person who promotes or favors in any manner the overthrow or changing the political, social or economic system of the State with the use of an illegal method (Article 160).
- Any person who establishes, sets up, organizes or runs in the State of Bahrain, without a license issued by the Government, international societies, organizations or institutions of any kind whatsoever or branches thereof (Article 163). In the cases set forth in Articles 159 and 163, the Court shall order the dissolution of the aforesaid societies, organizations and institutions, closing their premises and confiscation of their monies and assets (Article 164).
- Anyone who incites with the use of one of the publication methods to develop hatred of the ruling regime or show contempt towards it (Article 165).
- Any person who willfully broadcasts any false or malicious news reports, statements or rumors or spreads adverse publicity, if such conduct results in disturbing public security, terrorizing people or causing damage to the public interest. The same penalty shall be inflicted upon any person who possesses, either personally or through others, any documents or publications containing anything provided for in the preceding paragraph, if they are intended for distribution or reading by others and upon any person who possesses any publishing, recording or promotion device intended, even on a temporary basis, for printing, recording or broadcast of any of the above (Article 168).

- Any person who promotes by one of the methods of publication non-compliance with the laws or makes a presentation to improve something that is deemed a crime (Article 174).
- Every person who takes part in a demonstration in a public place where at least five persons are assembled with the aim of committing crimes or acts intended to prepare or facilitate the commission of such crimes or aimed at undermining public security, even though for the realization of a legitimate objective (Article 178).
- Any person who offends by any method of expression the National Assembly, or other constitutional institutions, the army, law courts, authorities or government agencies (Article 216).

Further, the Penal Code threatens with deportation those who are still deprived of Bahraini citizenship. Article 64 bis. Provides that if a foreigner is convicted of any of the crimes set forth in the law, the judge may order in his judgement for his deportation from the State of Bahrain.

As mentioned in the Introduction, the most serious article in the Penal Code is Article 168 which authorizes the setting up of state security courts. It provides that for the crimes provided for in Articles from 112 to 184 of the Code their perpetrators shall be tried before a court whose formation and procedures shall be determined by an Amiri order.

Societies Law No.21 of 1989: A Sword Threatening Societies

It is noted that the Law covers organisations with different objectives and nature including political, human rights, professional, cultural and social societies. They also include such categories as women, youth and foreign community societies as well as the sports clubs. Encompassing all these societies in a single law complicates the drafting and enforcement of this Law.

Restricting the Right to Set up Societies:

The Bahrain Societies Law prohibits the activities of any unlicensed society. The provisions of the Law and Model Form of the Constitution contain detailed standards and specifications so that it becomes difficult to obtain a licence without complying with it. At the same time, the law lays down flexible conditions allowing the Government to reject applications for setting up any society, if it wants to.

Article 3 states that every society that is established contrary to the public order, or for an illegal purpose, or for prejudicing the security or form of the government or its social system shall be invalid.

Article 11 gives the concerned administrative authority the right to reject registration of the society where the society does not need of its services, where there is another society that meets such need, if its establishment is contrary to the State security and its interest or if it is established with a view to reviving a society that was previously dissolved. This Article sets forth procedures for filing complaints with the same administrative authority for a length of time that extends to 4 months before it becomes possible to refer the matter to the law courts, which are in turn bound by the same law and falling under the government influence.

Restricting the Right to Amend the Constitution and to Control:

According to Article 14, every amendment of the society's constitution follows the same procedures for chartering the society. The administrative authority has the right to reject the proposed amendment. According to Article 15, societies shall be subject to strict control as the concerned department has the right to have access to records, documents and correspondence.

Restricting the Right to Engage in Politics:

According to Article 18, a society shall not engage in politics. Of course, this applies to political societies and human rights societies.

Restricting the Right to have Links with Overseas Entities:

According to Article 20, a society shall not without prior permission (from the concerned department) be affiliated with, join or participate in a society or organization based outside Bahrain. The lapse of 45 days without adopting a decision with respect to the application shall be deemed as a rejection thereof. The Law does not contain the right to file a complaint rendering the department's decision final.

Restricting Domestic and Overseas Finance:

For finance, a society shall not without prior permission obtain funds from a foreign organization nor send any of the above to overseas persons or organisations. For the raising of funds locally, a licence shall be issued from the Minister (Article 21). The Minister's right to adopting the decision shall be absolute as there is no possibility to file a complaint.

Minister's Right to Merge Societies, Appointing Management and Suspending its Resolutions:

Article 23 allows the concerned minister to appoint the society's manager or executive committee if the society commits any violations that necessitate such action and where the minister does not wish to dissolve them. The Minister shall be empowered to decide the merger of more than one society where they seek to achieve similar objectives, consolidating their management or amending their objects for the reasons that he feels ensure the proper realization of the objectives for which they are established (Article 24).

Also the Minister is empowered to suspend the execution of any resolution adopted by the society in breach of the law, society's constitution, public order or ethics. Such decision may be challenged before the law court (Article 28). In other words, the Minister adopts the decision and enforces it against the society which will be prosecuted not the contrary.

Control and Supervision at General Meetings:

According to Article 30, the concerned government directorate has the right to convene a general meeting.

Article 33 requires societies to notify the administrative authority of every general meeting 15 days before its convention in addition to forwarding copies of the letter of invitation, agenda and enclosed documents. The administrative authority shall be empowered to designate the officer it deems fit to attend the meeting. According to Article 38, the Ministry must be provided with copies of the minutes of the meeting and resolutions adopted thereat.

Intervention in the Specifications of Candidates for Management and its Meetings:

According to Article 43, the minister may add conditions to be fulfilled by anyone who has the right to be nominated for membership of the executive committee of any society.

According to Article 45, the administrative authority is entitled to request the convention of any meeting of the executive committee of any society if this is deemed necessary.

Minister's Right to Temporarily Close the Society:

According to Article 50, the minister has the right to dissolve or close any society for a period of 45 days if it proves unable to realize its objectives or disposes of its funds in areas other than the specified ones, if it fails to convene its general meeting for two successive years or if it violates public order.