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Bahrain's Failure to Uphold UPR Commitments.

A Deepening Crisis of Compliance

Bahrain's Failure to Uphold UPR Commitments. A Deepening Crisis of Compliance

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HuMENA For Human Rights and Civic Engagement
HuMENA pour les Droits de l'homme et l'Engagement Civique
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HuMENA is a non-profit, nonpartisan organization promoting human rights and civic engagement across the MENA region, with offices in Brussels and Beirut. HuMENA works through regional teams to protect civic space and advocate for fundamental freedoms.

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Abstract

Despite Bahrain's status as a signatory to numerous international treaties within the United Nations (UN), the country exhibits a notable lack of compliance with international norms and recommendations pertaining to its human rights commitments. Bahrain has not yet fully implemented the international and national recommendations put forth to address its human rights violations, nor has it demonstrated compliance with its own human rights obligations. This research examines the multifaceted factors and reasons that contribute to non-compliance with international human rights law and offers recommendations to the Government of Bahrain to enhance its compliance with the Universal Periodic Review (UPR).

Furthermore, this research elucidates the challenges, complexities, and resistance from the Bahraini government in integrating international human rights norms into its domestic system. The absence of autonomous institutions and bodies tasked with implementing recommendations, coupled with a culture of impunity, are the primary factors contributing to non-compliance with UPR recommendations. These findings indicate that Bahrain's signature on UN conventions represents a perfunctory and normative commitment to human rights law, undertaken primarily to avoid negative international consequences, bolster its sovereignty, enhance its international reputation, and encourage international investment in Bahrain. The Bahraini government has limited the influence of critical voices on the international stage, the result of a multifaceted strategy to counteract any criticism.



Keywords

Bahrain, International Human Rights Law, United Nations Conventions, Human Rights, ICCPR, United Kingdom, United States, Non-compliance, UPR. Human Rights.

List of Abbreviations

ACHR- Arab Charter on Human Rights

ADHRB- American for Democracy and Human Rights

Alwasat – Bahraini Newspaper, disbanded in 2017

BCHR- Bahrain Center for Human Rights

BICI - The Bahrain Independent Commission of Inquiry

(BHRS) The Bahrain Human Rights Society

CAT- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CEDAW - UN Convention on the Elimination of All Forms of Discrimination Against Women

CIVICUS- World Alliance for Civic Participation

CRC - UN Convention on the Rights of the Child

GCHR- Gulf Centre for Human Rights

Isolation Law- Bahraini legislation depriving key individuals of their political rights

Majlis Nuwwab – Bahrain Council of Representatives

Majlis Shura- Bahrain Consultative Council

MOI - Ministry of Interior

NGOs- Non-Governmental Organizations

OHCHR – Office of the High Commissioner of Human Rights

Salam DHR – Salam for Democracy and Human Rights

SIU - Bahrain Special Investigation Unit

UPR – Universal Periodic Review



Chapter 1

1.1 Introduction

The Universal Periodic Review (UPR) entails the periodic examination of the human rights records of all 193 United Nations (UN) Member States.¹ It is a significant innovation from the Human Rights Council, based on the principle of equal treatment for all countries. It provides an opportunity for all states to declare what actions they have taken to improve human rights in their countries and to overcome their systematic challenges. Additionally, the UPR facilitates the sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.²

The UPR was formally established on March 15, 2006, with the creation of the Human Rights Council by the UN General Assembly in resolution 60/251. This mandate required the Council to "conduct a universal periodic review based on objective and reliable information regarding the fulfilment of each State's human rights obligations and commitments, ensuring universal coverage and equal treatment with respect to all

1 Charlesworth, H., & Larking, E. (Eds.). (2015). *Human rights and the Universal Periodic Review: Rituals and ritualism*. Cambridge University Press.

2 Kim, Y. (2021). *Explaining Human Rights Cooperation and State Compliance: Analysis of the Universal Periodic Review at the United Nations Human Rights Council*. The University of Iowa.

States. The overarching objective of the UPR is to enhance the human rights situation in every country with significant, global implications. The UPR is designed to encourage the advancement and expansion of the promotion and protection of human rights at the national level. To this end, the UPR entails the evaluation of a state's human rights record and the rectification of human rights violations in all instances where they are identified by other states. Furthermore, the UPR strives to furnish States with technical assistance, thereby enhancing their capacity to address human rights challenges effectively and to disseminate best practices in the field of human rights among States and other stakeholders.³

The first UPR was conducted on April 7, 2008, during which Bahrain was included.

At the first meeting, the Minister of State for Foreign Affairs of Bahrain, Nizar Al-Baharna, presented Bahrain's national report. At the time, Bahrain demonstrated a dedication to human rights, playing a pivotal role in the United Nations' reform initiatives that culminated in the establishment of the Human Rights Council and the UPR. The selection by drawing lots as the first State to undergo the review was welcomed, and it was regarded as a privilege and a responsibility. The size and composition of the delegation is indicative of the country's commitment to the UPR process. Its national report was prepared through a process that sought the full involvement of the country, where civil society was consulted throughout the preparation process. Additionally, Bahrain devised a media and communications strategy, meant to foster public awareness and encourage participation in all aspects of the UPR process.

The Kingdom of Bahrain was among the first states to accept being reviewed under the UPR. In the spirit of constructive engagement, Bahrain underwent two separate reviews in 2008 and 2012. They resulted in 165 recommendations, which Bahrain has endeavoured to implement.⁴ Since its second review in May 2012, the government of Bahrain has committed to introduce the reforms recommended by the Human Rights Council, as well as by the Bahrain Independent Commission of Inquiry. The international community welcomed the government's acceptance of the majority of recommendations as an encouraging step towards fostering reform.⁵ However, despite the Bahraini government's

3 Sen, P., Vincent, M., & Cochran, J. (2011). *Universal Periodic Review: lessons, hopes and expectations*. Commonwealth Secretariat.

4 UNITED NATIONS. (2008). NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(A) OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1. In *HUMAN RIGHTS COUNCIL*. <https://upr-info.org/sites/default/files/documents/2013-07/ahrcwg61bhr1e.pdf>

5 Human Rights Council, Working Group on the Universal Periodic Review, & Office of the High Commissioner for Human Rights. (2012). Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. In Thirteenth Session (pp. 2–5). <https://upr-info.org/sites/default/files/documents/2013-07/ahrcwg.613bhr2e.pdf>

assertion that more than 90 percent of the UPR recommendations have been implemented, local and international groups have identified instances where this has not occurred and recommendations were not fully implemented.

Following a review of the 176 recommendations made during the second UPR in May 2012, the government of Bahrain issued an official statement reflecting their intention to fully cooperate with the Human Rights Council in the spirit of constructive engagement. Regarding human rights, the government indicated its support for recommendations 115.37, 115.41, 115.93, 115.103, 115.115, 115.119, 115.123, and 115.161 of the second UPR. These recommendations call on the government of Bahrain to safeguard the rights to freedom of assembly and association, freedom of expression, as well as to protect journalists, and ensure the safety of human rights defenders. However, the government has taken actions that restrict the freedom of expression and assembly, and targeted members of civil society and journalists, violating these recommendations.⁶

On May 1, 2017, Mr. Abdulla Faisal Al Doseri, Assistant Foreign Minister of Bahrain, presented the third national report of the Universal Periodic Review of the Kingdom of Bahrain. The report addressed the country's human rights commitments and its application of previous recommendations. In the wake of the UPR conducted in 2017, Bahrain received 176 recommendations and supported 139.⁷ Bahrain claimed that the third report was prepared following inclusive consultations with governmental agencies and “civil society”, and included an account of the measures taken to implement the recommendations of the second UPR.⁸ On November 7, 2022, the Kingdom of Bahrain submitted its fourth national report to the Human Rights Council, Working Group on the Universal Periodic Review, and Office of the United Nations High Commissioner for Human Rights.⁹

In response, the Kingdom received 245 recommendations, of which 172 were accepted and 73 were noted by Bahrain. Bahrain has asserted that several recommendations are inconsistent with the application of Sharia, are incompatible with national laws, or require further study.¹⁰

6 *Implementation of UPR Recommendations in Bahrain.* (2017, February 22). SALAM DHR. <https://salam-dhr.org/implementation-of-upr-recommendations-in-bahrain-2/>

7 Human Rights Council, Working Group on the Universal Periodic Review, & Office of the United Nations High Commissioner for Human Rights. (2017). Summary of stakeholders' submissions in Bahrain. In *Report of the Office of the United Nations High Commissioner for Human Rights*. <https://documents.un.org/doc/undoc/gen/g17/036/70/pdf/g1703670.pdf>

8 *Bahrain's UPR - 2017.* (2017, May 1). <https://www.gicj.org/positions-opinions/gicj-positions-and-opinions/1069-bahrain-s-upr-2017>

9 *Universal Periodic Review (UPR).* (n.d.). <https://www.mofa.gov.bh/en/universal-periodic-review>

10 Human Rights Council & United Nations. (2022). National report submitted in accordance with resolutions 5/1 and 16/21 of the Human Rights Council. In *Working Group on the Universal Periodic Review* (Report A/HRC/WG.6/41/BHR/1; Vol. 41). <https://mofawebsite.s3.me-south-1.amazonaws.com/uploads/Fourth%20national%20report.pdf>

In contrast, a number of local and international human rights organizations have submitted their shadow reports, expressing concerns about the exercise of civil and political rights and the impact of restrictive legislation that impedes individuals from exercising their political rights, including the right to a fair trial, the right to life, the right of nationality, freedom of expression and the press, the right to peaceful assembly, and the inequality of citizens.¹¹ This research demonstrates that the government of Bahrain has accepted the majority of recommendations outlined in its four cycles between 2008 and 2022. However, its voluntary commitment to the United Nations UPR mechanism does not align with actions within its local legislature or in the protection of citizens' and migrants' rights in Bahrain.

1.2 Research Purpose and Timeline

This research underscores the absence of Bahrain's compliance with UPR recommendations, which persists despite the Bahraini government's assertions that it engages with United Nations mechanisms. It examines the period from 2008 to 2024 and assesses the advancements achieved, along with persisting obstacles to compliance with international human rights law and UN principles. By analysing four periodic reviews of Bahrain, this research provides valuable insights for donors, policymakers, and international organizations seeking to develop effective solutions and recommendations for the Bahraini government and international organizations. By conducting a thorough examination of the underlying factors contributing to Bahrain's failure to comply with UPR recommendations, it endeavours to advance academic discourse and contribute to the promotion, awareness, and protection of human rights in Bahrain. This research employed a semi-structured interviewing methodology to conduct virtual interviews with prominent members of Bahraini non-governmental organizations (NGOs) and scholars with expertise on Bahrain. The interviews are significant in that they yield primary data from directly affected individuals of the restrictive laws, lawyers and human rights activists who possess firsthand experience with Bahrain's legal system, and experts with experience in Bahrain's political situation.

11 Bahrain Human Rights Society. (2022). *Shadow report for the Kingdom of Bahrain report Universal Periodic Review (4th session)*. https://upr-info.org/sites/default/files/country-document/2022-10/BHRS_UPR41_BHR_E_Main.pdf



Chapter 2.

2.1 Bahrain's Constitution Framework

This chapter presents an overview of Bahrain's constitution, legal framework, and structure of power, as well as an examination of the international and regional human rights conventions to which Bahrain is a signatory. Furthermore, this chapter demonstrates the absence of a separation of powers in Bahrain, which is incongruent with the constitutional provisions and the democratic principles enshrined in the Bahraini constitution. This chapter presents reports and findings from local and international human rights organizations concerning Bahrain's non-compliance with international human rights law at the domestic level. It also demonstrates the status of Bahrain in terms of compliance with United Nations mechanisms and recommendations, with a particular focus on the Universal Periodic Review.

The legal framework of Bahrain, which is based on civil law and guided by Islamic Sharia principles, purports to safeguard fundamental human rights, including the freedoms of expression, assembly, and association, as well as the rights of women and the right to equality. However, the legal landscape presents significant inconsistencies and contradictions. While the Constitution of Bahrain enshrines these rights, various procedural, penal, and regulatory laws impose restrictions and infringe upon civil and political liberties, thereby constituting a fundamental challenge to the protection of human rights.¹²

¹² *The Legal System of the Kingdom of Bahrain (Bahrain)*. (n.d.). GlobalLex | Foreign and International Law Research.

Prior to examining the ways in which Bahrain has failed to comply with human rights law, it is valuable to present an overview of the country's legal framework and the structure of its political system. This will facilitate a deeper understanding of the internal legal challenges and international obligations that shape the Bahraini legal landscape. The legal system of Bahrain is based on civil law, with Islamic Sharia jurisprudence serving as a source of legal authority. Bahrain is a signatory to the Arab Charter on Human Rights (ACHR), which enshrines the fundamental rights and human rights of individuals. These include the right to liberty, freedom of political activities (associations), right to nationality, and freedom of thought.¹³

Bahrain has ratified numerous international human rights conventions established by the United Nations. Despite its human rights obligations, it is essential to understand the structure of Bahrain's legal system to comprehend the legal factors contributing to Bahrain's failures to comply with UPR recommendations. The concept of separation of powers entails the distribution and division of authority between the executive, legislative, and judicial branches, as well as between governmental and non-governmental entities. However, this concept is not currently reflected in Bahrain's legal system. In accordance with the provisions set forth in the Constitution of Bahrain, the King of Bahrain is vested with the authority to oversee the executive, legislative, judicial, and military branches. Similarly, in accordance with the tenets of Bahrain's constitution, the King is the head of state, serves as the nation's symbolic representation, and is, for all intents and purposes, above the law.¹⁴

2.2 Bahrain national reports to UPR (2008-2022)

Bahrain asserts that it has initiated human rights reforms since 2001, with the objective of fostering political, social, and economic development. The Bahraini government has established a number of institutional bodies meant to support human rights. These include the Supreme Council for Women, the National Committee on Childhood, and a new human rights department within the Ministry of Foreign Affairs. In its 2008 report, Bahrain claimed that it has expanded the provision of child protection, education, and health services in alignment with the provisions set forth in the Convention on the Rights of the Child (CRC). This encompasses raising the legal age for marriage for women and

<https://www.nyulawglobal.org/globalex/Bahrain1.html>

13 Hu, M. (2024, August 14). *Behind the Facade: Understanding Human Rights Challenges in Bahrain*. HuMENA. <https://humena.org/behind-the-facade/>

14 Jones, M. O. (2020). *Political repression in Bahrain* (Vol. 58). Cambridge University Press.

the enhancement of assistance for children with special needs. In its report, the Bahraini government claimed that it has safeguarded the rights of women in both the public and private spheres. This includes ensuring their access to legal counsel and housing options following a divorce. Bahrain advanced the argument that it has implemented reforms to safeguard labour rights, including the prohibition of the sponsorship system (also known as the Kafala system), the establishment of labour grievance mechanisms, and the introduction of housing inspections for worker safety.¹⁵

In its 2012 report, Bahrain demonstrated that it has made progress in promoting gender equality. These efforts included integrating gendered perspectives into government programs, expanding women's political and economic roles, and establishing equal opportunity units across ministries. In its report, Bahrain indicated that it is considering the removal of reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), with a focus on the issue of citizenship rights for the children of Bahraini mothers married to non-nationals. Bahrain has indicated that its draft labour legislation incorporates safeguards for domestic workers, while a new press law has been designed to facilitate freedom of expression while preventing the misuse of media. Bahrain has updated several national laws and policies to align them with international standards, including legislation pertaining to anti-trafficking, the protection of persons with disabilities, and the protection of children. Additionally, initiatives such as the National Strategy for the Elderly and policies for prisoner welfare were implemented. In the wake of the mass protests that commenced in early 2011, Bahrain established the Bahrain Independent Commission of Inquiry (BICI) with the objective of investigating the circumstances surrounding the unrest and its violent suppression, along issuing recommendations to prevent recurrences.¹⁶

Bahrain asserts that it has implemented measures in accordance with the 2012 UPR recommendations, with a particular focus on institutional reforms, legislation, and policy development. To enhance transparency and accountability in law enforcement, particularly in detention settings, the government has established the Prisoners' and Detainees' Rights Commission and the Office of the Ombudsman. Furthermore, Bahrain has established the National Institution for Human Rights (NIHR).

15 Bahrain NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(A) OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1. (2008). In *UPR Info*. UPR. <https://upr-info.org/sites/default/files/documents/2013-07/ahrcwg61bhr1e.pdf>

16 The Kingdom of Bahrain regards its second report as complementing the action plan to strengthen and protect human rights that was initiated when its first report was adopted. Bahrain will work to cooperate with the OHCHR in building capacities, training, and exchanging expertise with friendly countries. (n.d.). <https://www.mofa.gov.bh/en/universal-periodic-review>

Bahrain has introduced legislation, such as the Child Protection Law, and implemented programs to address the needs of children, including those with disabilities. New education policies emphasise equal access, the integration of students with disabilities, and the promotion of human rights education within the school curricula. Bahrain asserts that it has enacted anti-trafficking legislation and established shelters for victims of trafficking, as well as a national committee to oversee anti-trafficking measures and the protection of victims. Bahrain asserts that it has a zero-tolerance policy regarding impunity for human rights violations.¹⁷

Bahrain submitted its fourth report to the UPR on August 20, 2022. It claimed that it has supported 139 out of the 2017 recommendations and noted 36 recommendations because they conflict with Islamic Sharia. In response to the global COVID-19 pandemic, the Kingdom of Bahrain developed a module to address the resulting challenges through proactive plans and remedial measures. These enabled the continuation of public life without the necessity for exceptional measures such as partial or total restrictions on movement. In March 2020, the government launched a financial and economic package designed to provide support for individuals and the private sector. Furthermore, the Council of Ministers adopted the National Human Rights Plan (2022–2026). The plan has four fundamental components: civil and political rights; economic, social, and cultural rights; the rights of groups requiring priority care; and solidarity rights.

To facilitate the attainment of the Sustainable Development Goals (SDGs) as set forth by the United Nations, Bahrain has established a Ministry of Sustainable Development. The Bahraini government has enacted legislation, specifically Act No. 4 of 2021, which establishes the Act on Restorative Justice for Children and on Their Protection from Ill-treatment. Additionally, it has enacted Act No. 18 of 2017, which concerns penalties and alternative measures, as amended in 2021. The amendments to the Act provide for a broader range of possibilities regarding requests to replace the sentence that has been imposed, either before or after the execution of the penalty. Moreover, the Bahraini government enacted Decree No. 59 of 2018, which amended the Private Sector Labour Code and prohibited discrimination against workers and sexual harassment.¹⁸

17 Bahrain is currently submitting its third report to the universal periodic review and reiterates its continued commitment to respect for human rights and fundamental freedoms within the framework of its National Action Charter, the Constitution, legislation, its international obligations and the policy and programmes of the Government, and its intention to continue its efforts to build on the achievements in this area in terms of legislation, policy and action. (2017). <https://www.mofa.gov.bh/en/universal-periodic-review>

18 *The Kingdom of Bahrain submitted its third national report to the Human Rights Council in February 2017, and it was adopted by the Council in May of the same year. In September 2017, Bahrain fully supported 139 recommendations.* (n.d.). Retrieved August 24, 2022, from <https://mofawebsite.s3.me-south-1.amazonaws.com/uploads/Fourth%20national%20report.pdf>

2.3 Local Bahrain organizations' reports on non-compliance with UPR Recommendations (2008-2022)

In 2008, the Bahrain Centre for Human Rights (BCHR) and the Bahrain Human Rights Society (BHRS) submitted a shadow report to the International Federation for Human Rights (FIDH) that highlighted numerous concerns regarding civil and political rights. One notable issue pertains to the law on gatherings and demonstrations, which defines a group of five or more individuals as a public gathering and imposes significant limitations on their freedom to assemble and demonstrate, part of the right to freedom of expression. Bahrain's Ministry of the Interior (MoI) has the authority to grant or deny a request to gather or demonstrate. Furthermore, individuals and groups exercising their civil rights are subject to penalties. The MoI has been accused of authorising its personnel to employ excessive force against demonstrators and human rights activists. A considerable number of individuals have been subjected to severe physical mistreatment, both at the scene of the incident and in custody, by security forces. The MoI has never initiated an investigation into these allegations or taken disciplinary action against the perpetrators. Conversely, the MoI has not been monitored to provide protection for officials who have been accused of human rights abuses.¹⁹

The Bahraini government has implemented a de facto policy of discrimination on the basis of ethnicity, religious sect, and political affiliation. There is a striking degree of discrimination against Shi'a Muslims in government administration. The government currently refuses to appoint Shi'a to operative military roles (Ministry of Defence and Royal Guard). Only a small number of low-ranking posts in the MoI have been made available for Shi'a applicants. The proportion of Shi'a in high-ranking positions across all ministries is only 18%, despite the fact that they constitute two-thirds of Bahrain's population.

Notwithstanding sustained calls from civil society organisations and Members of Parliament for the enactment of legislation to prohibit all forms of discrimination, the government has consistently opposed such initiatives in Parliament. In 2006, the International Crisis Group published a special report on discrimination in Bahrain, in which it cautioned against the potential for the situation to deteriorate further, leading to a political crisis.²⁰

In a shadow report published by local Bahraini organizations in November 2011, it was

19 *Universal Periodic Review (UPR) First Session 7-18 April 2008 Human Rights record of the Kingdom of Bahrain.* (2007). https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session1/BH/IFHR_BHR_UPR_S1_2008_InternationalFederationforHumanRights_FIDH_etal_uprsubmission.pdf

20 *International Crisis Group Annual Report 2006 - World.* (2006, June 1). Relief Web. <https://reliefweb.int/report/world/international-crisis-group-annual-report-2006>

revealed that the majority of recommendations made by the United Nations in 2008 as part of the UPR process were not fully implemented by the government. These recommendations include: Bahrain removing its reservations on CEDAW, signing the Convention on the Protection of Persons from Enforced Disappearances, and imposing laws on the provision of citizenship to children where the father is not Bahraini. These recommendations have yet to be fulfilled. Another recommendation to Bahrain was that the draft press law should not unduly restrict freedom of expression. However, the current state of freedom of expression in Bahrain is arguably the worst it has ever been.

In the most recent follow-up report, the Bahraini government asserted that it had engaged all pertinent stakeholders in the implementation of the action plan, including BHRS. However, BHRS was ordered to cease operations that same year, with its board replaced by government officials from the Ministry of Social Development. Moreover, BCHR claimed it was never consulted by the government. According to the Bahrain National Action Plan, Bahrain commits itself to a timely response to requests for country visits. This commitment should be upheld by accepting visits by Special Rapporteurs, including the Special Rapporteur on Torture and the Special Rapporteur on Freedom of Association and Assembly. However, the government continues to deny them access to the country. Additionally, the 2010 UPR report indicated that the King had established the NIHR, which was assigned the objective of "strengthening, developing, and protecting human rights, as well as promoting human rights awareness". Human rights NGOs claim that NIHR whitewashes human rights abuses in Bahrain and that the organisation's most prominent action has been its attempt to persuade the Fédération Internationale de l'Automobile's vice president, Carlos Gracia, to reinstate the Formula 1 race in Bahrain. This involved the NIHR arguing that "inaccurate information has been very bad for the country and does not help to improve the human rights situation." The NIHR has remained largely silent on grave human rights violations committed since 2011. This is despite the fact that Bahrain received \$1.2 million from the United Nations Development Programme to assist the Bahraini government with the implementation of the UPR.²¹

According to Americans for Democracy and Human Rights in Bahrain (ADHRB), the Bahraini government has demonstrably failed to practically apply a range of constitutional guarantees, including those pertaining to the protection of free expression, the prohibition of torture, and the elimination of discrimination. Furthermore, the government has removed

21 Bahrain Centre for Human Rights (BCHR) & Cairo Institute for Human Rights Studies (CIHRS). (2011). *Joint Submission to the Stakeholder Report for the Universal Periodic Review (UPR) of Bahrain (2012)*. https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session13/BH/JS4_UPR_BHR_S13_2012_JointSubmission4_E.pdf

constitutional guarantees that partially protected due process rights and expanded the role of military courts. This action explicitly violates accepted UPR recommendations, such as 115.119, which call for a formal proscription on "civilians being tried in military courts in the future." In early 2017, both legislative chambers of Bahrain's National Assembly ratified an amendment to Article 105(b) of the 2002 Constitution, which previously prohibited the utilisation of military courts for the prosecution of civilians unless the monarch had proclaimed a state of emergency or martial law. On 3 April, the monarch ratified the amendment, thereby making it legally binding. The current constitutional framework permits the use of military courts for the prosecution of civilians accused of threatening national security or of engaging in terrorist activities. The latter is defined as including, inter alia, criticism of government institutions and other forms of basic dissent and expression.

In March 2011, King Hamad granted military courts extensive powers to try civilians when he declared a State of National Safety, thereby facilitating the suppression of pro-democracy demonstrations. The National Safety Courts (NSC) were responsible for the prosecution of at least 300 protesters, according to the BICI. Those tried in the NSC included medical professionals, such as doctors and nurses, as well as the "Bahrain 13", a group of political leaders and human rights activists who were sentenced to terms of imprisonment ranging from five years to life. The BICI determined that the fundamental principles of a fair trial, including the right to prompt and full access to legal counsel and the inadmissibility of coerced testimony, were not respected in these courts.²²

On 20 March 2022, the Bahraini local organisation BHRS published its shadow report, in which it expressed concern over the failure to implement numerous recommendations in Bahrain despite the government's assertion that it had fully implemented the recommendations set out in the UPR. BHRS has demonstrated the rights that were violated by the Bahraini government, namely civil and political rights. To illustrate, the amendment of Article (3) of the Law on the Exercise of Political Rights No. 14/2002, as set forth in Law No. 25/2018, has resulted in the deprivation of citizen rights. This is evidenced by the fact that tens of thousands of members of dissolved organizations have been affected, according to local sources. BHRS demonstrated that in April 2018, Law No. 15/2018 added a second paragraph to Article (60) of Law No. 21/1989. This addition states that "a candidate for membership in the board of directors of a club or sports federation may not be affiliated with any political association." The amendment has effectively disenfranchised thousands

²² Admin, A. (2017, June 9). *Bahrain's UPR National Report: A Response with Selected Assessments – Part I*. Americans for Democracy & Human Rights in Bahrain. <https://www.adhrb.org/2017/04/bahrains-upr-national-report-response-assessment/>

of citizens who are members of active political societies, in addition to former members of dissolved political societies, from participating in the management of any charity or sports club. This amendment is illustrative of the broader phenomenon of the curtailment of individual rights on the basis of political opinion.

BHRS considered the alternative penal code a positive development but identified numerous challenges in its implementation. They recommended that the decision to release an individual under this law should be made by a judge and at the request of the prisoner or their legal counsel. This is because the current law grants the prison administration and security the authority to release the sentenced person.

The 2017 amendment to the penal code (Law No. 18/2017) granted the MoI extensive powers to establish the criteria for eligibility for alternative penalties for convicted individuals, thereby enabling the MoI to decide on the implementation of alternative penalties and to determine who is eligible. Although thousands of prisoners have benefited from this legislation, only a few dozen are from political backgrounds; often considered prisoners of conscience by human rights NGOs. A high number of individuals remain in Bahraini prisons for political crimes, currently unable to benefit from the facilities of alternative punishments.

The application of the Alternative Penal Code imposes several restrictions on beneficiaries, including travel bans, the denial of the ability to obtain a certificate of good conduct, which is necessary for any employment, house arrest within their residential area, and the exploitation of beneficiaries as unpaid employees in jobs that are not typically commensurate with their qualifications or social status, or the age of the convict. Regarding the children's restorative justice law, BHRS has undertaken comprehensive monitoring and documentation of the government's implementation of the law. They concluded that Law No. 4/2021 on Restorative Justice for Children and Protection from Abuse stipulates that a child who has been tried by ordinary courts must be retried before the Children's Correctional Justice Court in accordance with a retrial request submitted by the Public Prosecution. Nevertheless, to date, no case has been announced that falls under this category.

Despite the amendment of the law, the age of criminal responsibility for children in Bahrain remains at 15 years old, contravening the Convention on the Rights of the Child, which stipulates that the age of childhood is from birth to 18 years. In Bahrain, there have been recent cases following the enactment of the legislation in which verdicts have been handed down against minors who, at the time of the alleged offence, did not meet the legal age

requirement. One such case is that of 16-year-old Sayed Hassan Ahmed Amin. During the 2022 UPR, a substantial number of state representatives from a range of countries called upon the government of Bahrain to implement reforms to the country's judicial system. In light of the UN experts' findings regarding the unfair nature of the trial in Bahrain, BHRS concluded that all cases passed through the courts, particularly those with a political background and related to freedom of opinion and expression, have included confessions obtained through duress or ill-treatment. In most cases, there is a paucity of material evidence to substantiate these allegations. The verdicts were based on the aforementioned confessions, in addition to the statements of secret sources. Furthermore, the defendants were not confronted with all the evidence. In numerous instances, the sentences handed down were excessive and disproportionate to the actions attributed to the defendants. Furthermore, the defendants were subjected to interrogation without the presence of legal counsel.²³

2.4 International organizations' reports on non-compliance with UPR Recommendations (2008-2022)

In April 2008, a number of international organizations submitted their respective reports to the UPR. In April 2008, Amnesty International expressed reservations about the recently enacted counter-terrorism legislation, which it asserted undermines the protection of human rights in the country. The legislation, entitled "Protecting Society from Terrorist Acts," was ratified by King Hamad bin Isa Al Khalifa in August 2006 following the approval of the House of Representatives and the Shura Council. The legislation permits the imposition of the death penalty on any individual convicted of perpetrating or conspiring to commit acts of terrorism.

Human Rights Watch (HRW) has expressed concern regarding the restrictions on freedom of association. The Bahraini government continues to deny legal status to BCHR, which it ordered to be dissolved in 2004 after its president publicly criticized the Prime Minister. Additionally, the National Committee for the Unemployed and the Bahrain Youth Human Rights Society sought registration with the Ministry of Social Development in 2005, as required by law. However, as of November 2007, they had not received a response to their application.²⁴

²³ Bahrain Human Rights Society. (2022). *Shadow report for the Kingdom of Bahrain report Universal Periodic Review (4th session)*. https://upr-info.org/sites/default/files/country-document/2022-10/BHRS_UPR41_BHR_E_Main.pdf

²⁴ Human Rights Watch. (2007). *UPR Submission Bahrain November 2007*. <https://upr-info.org/sites/default/files/documents/2013-07/bahrainhrw.pdf>

Over the course of its 2008 UPR, Bahrain stated on a consistent basis that it had no objection to peaceful demonstrations, provided that they were conducted in accordance with the law and that participants did not engage in criminal acts, such as rioting.

The legislation that regulates freedom of assembly is not aligned with Bahrain's international human rights obligations, as set forth in the International Covenant on Civil and Political Rights (ICCPR). Furthermore, the authorities have been known to utilize these laws as a means of limiting the freedom to assemble peacefully. Bahrain's Public Gathering Law 32/2006 defines a public gathering as any meeting in which "more than five people" participate. It requires that organizers give three days' notice before holding such meetings and grants sweeping powers to local security authorities to deny such requests, depending on their purpose or any other circumstance. Furthermore, the police are permitted to attend meetings, and organisers may be subject to penalties for statements or discussions that are deemed to be "infringing on public order or morals." The legislation allows sentences of up to six months' imprisonment and/or fines for alleged contravention.

The law has been employed by the authorities to suppress gatherings organized by opposition groups, as well as to prosecute those who have participated in such gatherings, which have been arbitrarily deemed to be "illegal". In mid-February 2011, security forces launched an assault on peaceful demonstrators who had established a camp in Manama's Pearl Roundabout, demanding political reform. The attack resulted in the deaths of dozens of protesters and injuries to many more.²⁵

In the initial session of the 2008 UPR, the Bahraini delegation asserted that anti-terrorism policies do not impinge upon the rights of human rights defenders, as their actions do not align with the definition of terrorism. Nevertheless, human rights defenders (HRDs) in Bahrain have been designated as "terrorists" by the authorities and have been subjected to legal proceedings in accordance with this designation. In August 2010, officials from the National Security Agency (NSA) apprehended a number of prominent human rights defenders, bloggers, and political activists on allegations of affiliation with a terrorist network. The arrests and charges of terrorism were widely disseminated by pro-government media outlets. The individuals facing charges included eleven human rights defenders. They were released following a decision by the King in February 2011, after having been incarcerated for six months.²⁶

25 *Bahrain has failed to live up too many of the pledges it made during the Human Rights Council's Universal Periodic Review (UPR) four years ago.* (2011). <https://upr-info.org/sites/default/files/documents/2013-07/hrwuprbhrs132012human-rightswatche.pdf>

26 The following submission has been prepared based on information received from independent human rights defenders in Bahrain. (2011). In *Frontline Defenders*. <https://upr-info.org/sites/default/files/documents/2013-07/flduprbhrs->

In accordance with Recommendation 115.92 from Slovakia, Bahrain has been directed to prohibit torture and other forms of ill-treatment at the legislative and practical levels. This is to be done in alignment with the obligations set forth in the Convention Against Torture (CAT). Furthermore, Bahrain is obliged to guarantee that all allegations of torture or other forms of ill-treatment are subjected to prompt, thorough, and impartial investigations. Additionally, the perpetrators of such acts must be held accountable in accordance with international standards of fair legal proceedings. In contrast, prior to the issuance of the report, NGOs received allegations and documentation of testimonies of torture in Bahraini prisons, and culture of impunity still exist.

France's recommendation, number 115.146 has called upon Bahrain to release all political prisoners and bring its national legislation into compliance with Article 19 of the International Covenant on Civil and Political Rights, which guarantees freedom of expression. However, there are still dozens of political prisoners in Jaw prison. In a similar vein, recommendation No. 115.159, from Switzerland, has called on Bahrain to release individuals imprisoned as a result of exercising their right to freedom of expression and to repeal all legislation that criminalizes this right. However, the Bahraini government has continued to arrest individuals for exercising their right to freedom of expression, both online or offline. Recommendation 115.147, issued by Norway, called on Bahrain to protect human rights defenders and to allow them to conduct their work without hindrance, intimidation, or harassment. However, it should be noted that, as of writing, most human rights defenders in Bahrain are imprisoned or in exile.²⁷

In its third UPR cycle, the Bahraini government accepted four recommendations pertaining to the prohibition of torture. These included the establishment of an independent and effective mechanism to investigate claims of ill-treatment (114.17), the implementation of measures to protect victims (114.81) and the investigation of all allegations of torture (114.79). Nevertheless, NGOs have documented cases of torture after the government's acceptance of the recommendations, in which Ebtisam Alsaegh, Younis Sultan, Ebrahim Sarhan, Younis Alnasiri, Hussain Ali Mousa and Mohamed Ramadan were subjected to inhuman treatment, sexual harassment, and torture while in custody.

132012frontlinedefenderse.pdf

27 Human Rights Council UPR Working Group 27th Session April-May 2017. (2017). In *Human Rights First*. <https://upr-info.org/sites/default/files/documents/2017-04/document.pdf>

In its review before the Committee Against Torture on 25 April 2017, the Bahraini government stated that a Special Investigation Unit (SIU) had been established in 2012 with the purpose of investigating allegations of torture. The government further asserted that 52 cases had been brought before criminal courts, resulting in 101 suspects being convicted of torture. On 8 May 2019, the SIU published a report indicating that it intended to prosecute 12 officials. On 6 September 2019, it published a report claiming that an individual affiliated with the security services had been referred to the SIU. The report indicated that the unit had conducted interviews with 29 plaintiffs and 23 witnesses, in addition to questioning 30 defendants and suspects from the security forces. A total of 12 plaintiffs were referred to the forensic doctor, while two others were referred to the psychiatrist within the unit. The SIU has not been transparent about the results of this process. The eighth annual report (2020-21) of the Government of Bahrain's Ministry of the Interior's Ombudsman provides illustrative examples of investigations conducted under sections 2 and 3. It is asserted that the Ombudsman's Office referred cases to the SIU.

There are no accounts of prosecution or sentencing in any of these cases, nor suspension from employment pending a review of conduct. Moreover, while a December 2021 news article asserted the role of the SIU in upholding human rights and eliminating all forms of torture or ill-treatment, as well as achieving criminal justice, the 2021 annual report of the SIU provides limited evidence that the authorities took action to combat torture on a routine basis. Its report details cases referred to by all the government human rights bodies but provides limited information regarding the outcome of these cases. Specifically, it cites only seven referrals to the criminal court and confirms four minor convictions for assault, without providing further details regarding the nature of these cases.²⁸

28 Salam for Democracy and Human Rights, Bahrain Center Against Torture, & World Organisation Against Torture. (2022). Submission to the UN Universal Periodic Review. In *Submission to the UN Universal Periodic Review*. https://upr-info.org/sites/default/files/country-document/2022-10/JS11_UPR41_BHR_E_Main.pdf



Chapter 3

3.1 Findings and Conclusion

This chapter presents the findings of interviews conducted with experts and members of local and international organizations with knowledge and experience of Bahrain's human rights record. It also includes the conclusions of the research, based on reports written by these organizations to the Office of the High Commissioner for Human Rights (OHCHR) between 2008 and 2024. The ratification of UN conventions by Bahrain does not currently signify a commitment to comply with human rights law. Rather, it demonstrates that the country has attained the standards of a modern state within the context of the international community. These findings indicate that a lack of political will, the absence of genuine pressure from major powers, and the absence of UN enforcement tools have collectively contributed to Bahrain's non-compliance with UPR recommendations and human rights law. Considering the observations made by numerous activists, scholars, and international human rights bodies, it is evident that UPR recommendations have yet to receive the attention they deserve. While some recommendations have been implemented, it is concerning that the most critical ones have not been addressed. Bahrain's failure to comply with the recommendations set forth in the UPR reflects a violation and marginalisation of the rights enshrined in international treaties to which the government is a signatory.

Bahrain's lack of democratic institutions and the King's unchecked power have resulted in decreased compliance with UPR recommendations, which represents a significant obstacle to human rights reform. Bahrain's centralised authority, concentrated in the hands of

the King, is a significant factor contributing to the country's inability to adhere to UPR recommendations and UN norms. The Bahraini government has sought to circumvent international pressure by implementing training programs from the United Kingdom and the United States in lieu of meaningful human rights reforms. One illustrative example of Bahrain's efforts to improve its international image and reputation is the Ministry of Foreign Affairs' establishment of a national human rights plan, as opposed to the establishment of an independent human rights body tasked with addressing the country's human rights challenges. This was done with the intention of enhancing the country's international reputation and standing.

The pragmatic approach of many Western states, coupled with a reduction in public criticism directed towards their allies and due to economic and political interests, has encouraged Bahrain to refrain from fully complying with UPR recommendations. Bahrain has employed a range of repressive measures, not only to silence domestic critics and reformers, but also to circumvent and muzzle critics on the international stage. Bahrain has employed a multipronged strategy to neutralize international pressure, leveraging its diplomatic relations, economic interests, advantageous of its geographical and strategic location, public relations (PR) companies, and established government bodies. It is regrettable that the government's human rights bodies lack any meaningful authority. The absence of functional democratic mechanisms and tools, coupled with the preponderance of the intelligence apparatus over the judiciary and the public prosecution, has resulted in non-compliance with human rights law. A lack of judiciary independence is another cause for non-compliance with UPR recommendations.

There are a plethora of instances that demonstrate Bahrain's failure to adhere to the tenets of human rights law and implement UPR recommendations. To illustrate, the right to freedom of assembly and association is subject to restrictive measures in Bahrain. Furthermore, Bahrain's non-compliance with human rights law is evidenced by the restrictions imposed on fundamental rights such as freedom of assembly, expression, nationality, and life. The right to freedom of assembly is subject to restrictions following an amendment that precludes individuals from protesting in the capital, Manama. This is in consequence of a 2013 decree that imposed limitations on the practice of these rights. Freedom of the press and media is significantly curtailed. Journalists are currently facing legal limitations that restrict their work, while local journalists are facing restrictions that prevent independent journalists from practicing freely. The closure of Alwasat newspaper in 2017 and the imprisonment of journalists in Bahrain have become a clear indicator of broader restrictions on the free press.

Additionally, the right to freedom of expression is also restricted, and there are dozens of individuals who have been affected by these restrictive measures, procedures, and legislation. As a result of these measures and legislation, the government suspended and dissolved the boards of numerous civil societies. The consequences of this are still being felt, with members of dissolved civil societies currently banned from running for parliament following a restricted amendment to political rights. This has affected the Bahrain Teachers' Society, the Bahrain Medical Society's board council, Alwefaq Society, the Bahrain Lawyers' Society, the National Democratic Action Society (Wa'ad), the Islamic Action Society (Amal), the Islamic Scholar's Council, the Bahrain Photographic Society, the Islamic Education Association, and the Bahrain Human Rights Society's board council. Consequently, any individual who has previously been a member of a dissolved society cannot hold a position on the board of an active civil society. This arbitrary law has created a situation in which numerous individuals have been deprived of their political rights.

In the wake of the government's legislative amendments, the right to freedom of expression is subject to restrictive and ambiguous legislation. This has had a chilling effect, deterring individuals from expressing their views on social media or at public events, as any criticism of the government or the King could be construed as inciting hatred or insulting the monarch. Some of Bahrain's anti-terrorist provisions contradict international human rights law, which allows for capital punishment and the revocation of the nationalities of Bahraini individuals, even if they are rendered stateless in the process. This is a stark violation of international human rights law. The examples of human rights violations presented above demonstrate that Bahrain is not in compliance with UPR recommendations through its restrictive measures and limitations on many fundamental rights.

3.2 Recommendations to the Government of Bahrain

- All UPR recommendations between (2008 -2022) should be fully implemented and the government's human rights plan should be integrated into the existing policies and administrative procedures.
- All complaints or allegations of torture and ill-treatment should be subjected to prompt and thorough independent investigation.
- All detainees whose confessions were extracted under torture must be released.
- Adopt legislation to ensure redress and rehabilitation for victims of torture and ill-treatment.
- Provide operational independence via existing redress mechanisms or, alternatively, new, and independent ones must be established to review claims relating to compensation and redress for survivors.
- Commute all death sentences and adopt a moratorium on executions.
- Address and implement recommendations made by the Committee against Torture and other UN human rights treaty bodies in an objective and verifiable manner.
- Ratify the Optional Protocol to the Convention against Torture.
- Extend an unconditional invitation to all UN Special Procedures to visit Bahrain.
- Adequately implement the 23 recommendations made in 2017 at the 3rd UPR cycle, pertaining to protecting and promoting the right to freedom of expression.
- Amend aspects of the Penal Code that threaten the transparency of journalists ensure their ability to report on events freely.
- Establish a National Commission on Anti-Corruption in accordance with the recommendation set forth in the United Nations Convention Against Corruption (UNCAC).
- Revise Law No. 4/2021 to guarantee a child's rights to access their parents and a lawyer at all stages of arrest and custody; Furthermore, the child should be informed promptly of their rights and the reasons for their arrest and detention.
- Prohibit discrimination on the basis of gender, sex, sexual orientation, gender identity, disability, race, nationality, and age.
- Permit independent political societies to operate in Bahrain.
- Grant foreign journalists and human rights organizations access to Bahrain.



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