



## **Bahrain's NIHR Ignores Government Violations, Endorses Abuses in 2017 Report**

*An Analysis of the Fifth Annual Report of the Bahraini National Institution for Human Rights*

On 28 March 2018, Bahrain's National Institution for Human Rights (NIHR; also referred to as the B-NIHR and BNIHR) submitted its 2017 annual report "on the Progress Achieved in the Human Rights Situation"<sup>1</sup> to the king.<sup>2</sup> It is the NIHR's fifth annual report since its establishment as a semi-independent oversight mechanism in 2009, and the first since the king reorganized the institution in late 2016<sup>3</sup> and early 2017.<sup>4</sup> Like its predecessors, the 108-page document provides an overview of the NIHR's three primary functions during the last year: 1) its advisory opinions issued to the two houses of the National Assembly and the government; 2) its efforts to "promote and protect" human rights through training, complaint resolution, and site inspections; and 3) its open-ended assessment of the "Main Issues of Direct Impact on the Human Rights Situation."

Despite the NIHR's reorganization, however, the report demonstrates that the institution continues to lack the necessary will or independence to objectively and comprehensively assess the state of human rights in Bahrain. The NIHR remains closely connected to the government and it has failed to fully comply with the international standards governing national human rights institutions, known as the Paris Principles. These deficiencies are reflected in the report, which not only omits the vast majority of major human rights developments and violations of 2017, but also indicates that the institution declined to exercise its authority to address these issues with the government. While the report does make some welcome observations and policy recommendations – particularly concerning the rights of expatriate/migrant workers and the relevant international conventions – these are undercut by the NIHR's outright endorsement of political and civil rights abuses. Likewise, the report provides incomplete and misleading information on the institution's complaint and inspection programs.

Although 2017 was one of the single worst years for human rights in Bahrain since 2011, the NIHR's report presents only ostensive progress and government success – a picture at complete odds with reality. Specifically, the report focuses almost exclusively on describing Bahrain's positive legislative and theoretical commitments to human rights – including lengthy parallel descriptions of their foundations in international law – while neglecting to assess the practical implementation of these laws or their impact on the actual enjoyment of human rights. It simultaneously ignores abusive legislation, despite its mandate to evaluate such policies, as well as the range of core human rights violations endemic to the kingdom, among them torture, arbitrary detention, political repression, and religious discrimination. The report includes the word "torture" just eight times: six in reference to the title of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; once in reference to International Day in Support of Victims of Torture; and once while paraphrasing the International Covenant on Economic, Social and Cultural Rights. Religious discrimination is similarly neglected, mentioned

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<sup>1</sup>*Fifth Annual Report of the National Institution for Human Rights on the Progress Achieved in the Human Rights Situation in the Kingdom of Bahrain 2017*, National Institution for Human Rights, March 2018, [http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/NIHR\\_2017\\_En.pdf](http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/NIHR_2017_En.pdf)

<sup>2</sup> "HM King affirms Bahrain's commitment to human rights," Bahrain News Agency, 28 March 2018, <http://www.bna.bh/portal/en/news/833438>

<sup>3</sup> "Amended NIHR Law unprecedented step to protect human rights," Bahrain News Agency, 11 October 2016, <http://www.bna.bh/portal/en/news/749572?date=2016-11-8>

<sup>4</sup> "HM King issues decree appointing NIHR commissioners," Bahrain News Agency, 19 April 2017, <https://bna.bh/portal/en/news/781653>; New leadership was selected in November 2017, see: "NIHR president, secretary general elected," Bahrain News Agency, 5 November 2017, <http://www.bna.bh/portal/en/news/809696>



only in the context of international agreements, while systematic arbitrary detention and due process violations are equally disregarded. The NIHR fails to directly address these issues in any capacity, despite consistent and extensive documentation of such abuse by the United Nations (UN) Special Procedures.

Ultimately, the NIHR focuses almost entirely on what it interprets as positive reform efforts, abrogating its mandate to report accurately and thoroughly on human rights violations. At its worst, the fifth annual report uncritically praises laws, policies, and institutions that have contributed to the persistence and escalation of human rights abuses in Bahrain during the period under review.

Americans for Democracy & Human Rights in Bahrain (ADHRB) has analyzed the NIHR's fifth annual report below. The analysis reviews the institution's activity in 2017 and presents a selection of key advisory opinions and decisions documented in the report. It does not assess every action reported by the NIHR; rather, it highlights some of the NIHR's most problematic positions, in its own words. It then briefly assesses the adherence of these positions with international human rights standards in the context of Bahrain's worsening human rights situation.

## **I. Support for Abusive Legislation**

Bahrain's NIHR is explicitly authorized to "study the legislations and regulations in force in the Kingdom relating to human rights, and to recommend the amendments it deems suitable, particularly insofar as the harmony of those legislations with the international human rights commitments of the Kingdom, and it may also recommend the enactment of new legislations related to human rights." It commonly exercises this authority passively, by responding to requests for advisement submitted by the elected lower house of Bahrain's National Assembly, the Council of Representatives; the royally appointed upper house, the Shura Council; or the executive branch of government and its various ministries, but it is also empowered to actively submit advisory opinions on policy developments it finds relevant to human rights.

Despite this clear mandate, the NIHR formulated official advisory opinions on just eight legislative or policy proposals for the entire year of 2017. As it states explicitly – and with inexplicable self-congratulation – the NIHR "took the initiative on its own to refer one advisory opinion to the government." In each of these eight cases, the NIHR ultimately endorsed the proposal or policy with at most minor comments; it never once issued an explicit criticism or negative opinion.

The most problematic of the eight advisory opinions are as follows:

### **A. Shura Council (Submitted to the NIHR)**

- **Bill to amend Article 2 of Law No. 74 of 2016 concerning the care of, rehabilitation and employment of the physically handicapped** – The NIHR concurred with the bill and its aim to provide support to disabled children of Bahraini women and non-Bahraini men equal to that of citizens. While a welcome step, the NIHR rests its judgment of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Person with Disabilities (CRPD) "which prohibit discrimination against woman [sic] and disabled persons ... [and therefore require] granting the offspring of the Bahraini woman the same rights enjoyed by citizens." The NIHR completely fails to acknowledge that this bill addresses only a symptom of the root problem generated by gender-based discrimination within Bahrain's



nationality legislation, which prevent Bahraini women from transferring citizenship to their children.<sup>5</sup> Even though the fifth annual report includes a subsequent section entirely devoted to a discussion of women's rights in Bahrain, nowhere in the document does the NIHR recognize this core abuse and its role in attendant human rights violations.

- **Draft law to amend Decree Law No. 64 of 2002 on the Code of Criminal Procedure** – The NIHR endorsed with small terminological recommendations the draft law to create a system of “conciliation” to expedite adjudication and provide alternative penalties to prison in minor criminal cases. Again, in principle, this could be a positive proposal for several reasons indicated by the NIHR, such as by reducing an “excessive reliance” on “prisons and detention centers.” However, the NIHR omits serious practical concerns emanating from Bahrain's deeply flawed criminal justice system and its interpretation of an offense's severity. As the NIHR itself states in the report, “crimes that impinge on state security” are necessarily excluded from the proposed conciliation process, but in Bahrain the definition of such crimes is excessively broad, and can include “insulting the king,” “insulting a statutory body,” “spreading false news,” “illegal gathering,” and other inherent acts of free expression or assembly.<sup>6</sup> In practice, then, the conciliation process proposed by the Shura Council's draft law threatens to establish a parallel system of adjudication for non-political cases, ensuring that the prisons and detention facilities are reserved only for activists, opposition figures, protesters, journalists, and other civil society actors perceived as government critics along with the violent criminals that constitute the vast minority of Bahrain's several thousand convicts.

## **B. House of Representatives (Submitted to the NIHR)**

- **A bill concerning punishments and alternative measures, accompanying Royal Decree No. 32 of 2017** – Much like the similar draft law submitted for advisement by the Shura Council, this bill to introduce alternative penalties and rehabilitative measures for lesser crimes was endorsed by the NIHR with an additional assertion that it include house arrest among the alternatives. Like its Shura Council counterpart, however, the bill suffers from the same deficiencies, emphasizing, for example, that prisoners are ineligible for the program if their release might “endanger public order” – a wide-ranging category that includes individuals convicted of charges stemming from peaceful human rights or political activity. While this caveat encompasses legitimate concerns regarding the eligibility of those detained over violent crimes, it is also excessively broad so as to encompass nonviolent critics; presumably, an imprisoned human rights defender like Nabeel Rajab<sup>7</sup> would be ineligible for release as a threat to public order, for example (see more on Rajab's case below, Section II). The NIHR raises none of these obvious concerns.
- **A bill to amend Decree Law No. 4 of 2001 on Combatting Money Laundering and Funding of Terrorism** – The NIHR supported a bill expanding the government's authority to monitor financial information in connection with suspected money

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<sup>5</sup> *Joint Submission to the Human Rights Council at the 27th Session of the Universal Periodic Review*, ADHRB and the Institute on Statelessness and Inclusion, May 2017, [https://www.upr-info.org/sites/default/files/document/bahrain/session\\_27\\_-\\_may\\_2017/js10\\_upr27\\_bhr\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/bahrain/session_27_-_may_2017/js10_upr27_bhr_e_main.pdf)

<sup>6</sup> “The National Security Agency and Systematic Counter-terror Abuses in Bahrain,” ADHRB, 4 September 2017, [http://www.adhrb.org/wp-content/uploads/2017/10/HRC-36-ADHRB-Written-Statement\\_Bahrain-NSA.pdf](http://www.adhrb.org/wp-content/uploads/2017/10/HRC-36-ADHRB-Written-Statement_Bahrain-NSA.pdf)

<sup>7</sup> UPDATED: Bahrain Sentences Nabeel Rajab to Additional 5-Year Prison Term in Blatant Violation of Free Expression,” ADHRB, 21 February 2018, <https://www.adhrb.org/2018/02/bahrain-sentences-nabeel-rajab-to-additional-5-year-prison-term-in-blatant-violation-of-free-expression/>



laundering or terror activity. As above, the NIHR completely fails to raise concerns over the excessively broad definition of terrorism in Bahraini law – which includes nonviolent criticism and activism in contravention of international standards – and the risk that expanding the government’s powers in this regard could increase its ability to arbitrarily surveil and undermine the work of independent human rights organizations, political societies, religious organizations, and other civil society groups. Further, the NIHR fails to raise concerns over the history of malfeasance in the security institutions that would likely assume these expanded powers: the Ministry of Interior (MOI)<sup>8</sup> and the National Security Agency (NSA),<sup>9</sup> both of which are consistently found by international human rights organizations to engage in reprisal, arbitrary detention, torture, and other abuses of power. It is additionally unclear if this bill was at all related to Decree Law No. 36 of 2017 issued by the king in September of that year, and which amended the same law to impose harsher penalties for associated terror offenses.<sup>10</sup>

- **A bill to amend Decree Law No. 15 of 1976 on the Penal Code** – The NIHR endorsed the amendment to intensify penalties for “crimes and actions which aim to destroy state institutions and violate private property thereby beclouding the tranquility of society and destabilizing it, including crimes which constitute an infringement of personal freedom with private dwellings, and the safety and privacy of public and vital buildings and installations.” Though the language of both the bill and this passage of the annual report is unclear, the proposed amendment appears to specifically focus on criminalizing unauthorized “monitoring” of private or public buildings, in addition to illegal or fraudulent entry. Bizarrely, the NIHR asserts that use of “modern” equipment in the commission of such offenses necessitates harsher penalties: “the scope of criminalization ... [must be] widened to involve suitable punishment given the ominous modern methods used in those crimes.” It does not clarify what it means by “modern methods” or further explain the supposed crimes in question. However, the report does emphasize the NIHR’s position that the bill be narrowed to ensure that government “monitoring” not be criminalized along with this other unknown category. Again, the NIHR fails to raise concerns over Bahrain’s excessively broad definitions of crimes against “state institutions” or that “becloud[...] the tranquility of society and destabiliz[e] it.” It also mistakenly cites an increase in such crimes as a justification for imposing harsher penalties, despite recent contradictory reports by Bahrain’s own MOI, which claims that crime declined in 2017,<sup>11</sup> as well as the United States (US) Department of State’s Bureau of Counterterrorism and Countering Violent Extremism, which has noted a decrease in terrorism in Bahrain.<sup>12</sup>
- **Proposal to establish a media plan to spread the culture of the right to peaceful gathering** – In a particularly disingenuous advisement, the NIHR supported the Council of Representative’s proposal to direct the media to raise awareness for the “right to

<sup>8</sup> “US Must Maintain Restrictions, Push for Reforms Following Bahrain Interior Minister Visit,” ADHRB, 14 July 2017, <http://www.adhrb.org/2017/07/us-must-maintain-arms-restrictions-following-bahrain-interior-minister-visit/>

<sup>9</sup> “The National Security Agency and Systematic Counter-terror Abuses in Bahrain,” ADHRB, 4 September 2017, [http://www.adhrb.org/wp-content/uploads/2017/10/HRC-36-ADHRB-Written-Statement\\_Bahrain-NSA.pdf](http://www.adhrb.org/wp-content/uploads/2017/10/HRC-36-ADHRB-Written-Statement_Bahrain-NSA.pdf)

<sup>10</sup> “HM the king issues three decree-laws,” Bahrain News Agency, 27 September 2017, <http://www.bna.bh/portal/en/news/803401>

<sup>11</sup> “Report highlights Bahrain police achievements,” Police Media Center, Ministry of Interior, Government of Bahrain, 14 December 2017, <https://www.policemc.gov.bh/en/news/ministry/77897>

<sup>12</sup> “Bahrain: US State Department Documents Decline in Terrorism Last Year, Continued Rights Concerns,” ADHRB, 21 July 2016, <http://www.adhrb.org/2017/07/bahrain-us-state-department-documents-decline-terrorism-continued-rights-concerns/>



peaceful gathering” in Bahrain. While any effort to increase engagement of the right to free assembly is welcome, the NIHR ignores the core issue in Bahrain – and the key obligation of the state – which is to ensure protections for the exercise of this right. Even barring the problematic implication of direct government imposition on the content of the media, which the NIHR also fails to address, the report deceptively asserts that Bahrain’s legislation already contains robust guarantees to free assembly. This is patently false, as both the 1973 Public Gatherings Law – which the NIHR explicitly praises – and the 2006 Law on Protecting Society from Terrorist Acts – which the NIHR overlooks – enact extensive and undue restrictions on peaceful assemblies. Demonstrations are outright banned in the capital city of Manama, a massive proportion of the country’s populated area, and the authorities have wide discretion to arbitrarily prohibit or intervene in any proposed gathering submitted for approval. Meanwhile, police routinely attack protests using excessive force, injuring and even killing demonstrators; six were killed by security forces in 2017 alone, and hundreds – if not thousands – were wounded. Such abuses are compounded by the government’s increased militarization of the healthcare system, including the arrest of medical personnel for treating injured protesters, which has had a deleterious impact on demonstrators’ access to impartial healthcare and thereby impacted the right to health as well as the right to free assembly. The NIHR recognizes none of these issues, and instead insists that it is in fact Bahraini society’s ignorance that is to blame for “challenges” inhibiting the right to free assembly: “it is the view of the National Institution that the right to peaceful gathering faces a challenge *connected to the culture of awareness of society in dealing with it* [emphasis added].” This is an absurd and callous position for a national human rights institution to take, and Bahrain’s NIHR appears to not only omit or minimize these crimes against free assembly, but also exonerate the government of its direct role in undermining the citizenry’s enjoyment of the right.

### **C. Executive Branch of Government (Submitted by the NIHR)**

- **Recommendation to the Ministry of Interior on granting temporary permits for detainees to attend bereavement ceremonies** – In its one unsolicited advisory opinion, the NIHR emphasized to the MOI that both international standards for the minimum treatment of prisoners and Bahraini law require it to authorize temporary leave for detainees to visit with dying relatives or attend funerals. Oddly, the advisement takes the form of a reminder more than a new recommendation, as it concludes that Bahraini law and MOI policy “assure the right of the detainee or one subject to preventive custody to leave the detention center to visit family in case of the death of one of his relatives...but they [Bahraini law and MOI policy] placed rules and restrictions.” These rules and restrictions, which should of course be known to MOI personnel in the absence of an NIHR advisement, imbue the MOI leadership with wide authority to approve or reject requests for leave, however. As the NIHR makes clear, detainees must first obtain permission from the director of the detention center in question or his or her deputy, and then from the interior minister or his deputy. If the detainee is in pre-trial detention, he or she must in turn obtain permission from the Public Prosecution of the Ministry of Justice and Islamic Affairs (MOJ) or whatever other “party...issued the detention order.” The NIHR does not acknowledge that this gives the authorities significant discretion to arbitrarily reject bereavement leave requests, as there is no other criteria listed, nor does the institution provide any actual recommendation to improve this process. It likewise fails to note the authorities have abused precisely this authority in the past to further



retaliate against prisoners of conscience like leading human rights defender Abdulhadi al-Khawaja and his brother Salah al-Khawaja, for example.<sup>13</sup>

In addition to providing uncritical support for such problematic legislation, the NIHR neither received requests to comment nor submitted voluntary advisements on any of the most serious human rights policy developments that occurred during the period under review. With the exception of the advisement to the MOI that reiterated bereavement rights but failed to recommend improvements to the existing system, the NIHR issued no other unsolicited opinions to the government concerning its policies. It follows that the NIHR saw no need to exercise its mandate to submit further advisements, and therefore implicitly supported the remainder of promulgated legislation for 2017. These included decisions that directly violate international human rights standards, such as the following:

- **Royal Decree No. 1 of 2017 amending Decree Law No. 14 of 2002 on the National Security Agency** – On 5 January 2017, the king restored power to the National Security Agency, Bahrain’s primary intelligence service which acts effectively as the government’s secret police.<sup>14</sup> The decision reversed Royal Decree No. 115 of 2011, which stripped the NSA of its domestic law enforcement authority in accordance with Recommendation 1718 of the Bahrain Independent Commission of Inquiry (BICI). The BICI found that the NSA was responsible for widespread arbitrary detention and torture, as well as extrajudicial killing, and there is no evidence that agents were held accountable or that the institution implemented reforms prior to the king’s January 2017 decision. Almost immediately following the decree, the NSA resumed its abusive practices, launching a reprisal campaign against political activists and human rights defenders. Among other violations, the NSA was implicated in multiple deadly incidents in 2017, including the January raid on a peaceful sit-in in Diraz that left a teenager fatally wounded, and it detained and tortured prominent woman human rights defender Ebtisam al-Saegh in retaliation for her work with the UN. The NIHR makes no mention of the decree or the NSA anywhere in its report.
- **January 2017 decision to contravene the *de facto* moratorium on capital punishment** – Although not an explicit legislative development, the government implemented a drastic change in policy by ending the kingdom’s seven-year *de facto* moratorium on the death penalty and executing three individuals convicted in an unfair trial. The proceedings were so deeply marred by torture and severe due process violations that the UN Special Rapporteur on summary executions described the firing squad killing of Sami Mushaima, Ali al-Singace, and Abbas al-Samea as “extrajudicial.”<sup>15</sup> Meanwhile, the government has continued to issue death sentences at a rapid pace, more than doubling the number of prisoners on death row.<sup>16</sup> While the issue is not raised anywhere in the annual report, the NIHR chose to actively endorse the executions soon after they occurred,<sup>17</sup> marking a dramatic departure from the typical behavior of a national human

<sup>13</sup> “Bahrain: Authorities prevent Abdulhadi and Salah Al-Khawaja from attending the funeral and mourning of their brother,” Bahrain Center for Human Rights, 24 April 2015, <http://www.bahrainrights.org/en/node/7506>

<sup>14</sup> “Bahrain Restores Law Enforcement Powers to NSA, Reversing BICI Recommendation,” ADHRB, BIRD, ECDHR, 5 January 2017, <https://www.adhrb.org/2017/01/11571/>

<sup>15</sup> “Three executed in Bahrain – Reprieve comment,” Reprieve, 15 January 2017, <https://reprieve.org.uk/press/three-executed-bahrain-reprieve-comment/>

<sup>16</sup> “ADHRB Condemns Rising Use of Capital Punishment in the GCC,” ADHRB, 10 October 2017, <https://www.adhrb.org/2017/10/adhrb-condemns-rising-use-of-capital-punishment-in-the-gcc/>

<sup>17</sup> “NGOs condemn Bahrain NIHR Statement on Executions,” ADHRB, BIRD, BCHR, and ECDHR, 23 January 2017, <https://www.adhrb.org/2017/01/ngos-condemn-bahrain-nihr-statement-executions/>



rights institution and the international standards they are meant to uphold. The NIHR's support for the executions and the wider use of capital punishment in Bahrain conflicts directly with recent UN calls on the kingdom to impose an official moratorium on the death penalty with a view toward abolition.<sup>18</sup>

- **April 2017 constitutional amendment removing the prohibition on military trials for civilians** – The NIHR's annual report completely omitted the constitutional amendment allowing the military judicial system of the Bahrain Defence Force (BDF) to try civilians accused of terror offenses.<sup>19</sup> Though the amendment went through both houses of the National Assembly and was ultimately signed by the king, the NIHR never received a request for an opinion on potential human rights impacts nor submitted one. The NIHR's silence comes despite the fact that the use of military courts to try civilians is in direct violation of the fair trial rights enshrined in both the Universal Declaration of Human Rights (Article 10) and the International Covenant for Civil and Political Rights (Article 14). In addition, it contravenes the spirit of the BICI recommendations, which stated in Recommendation 1720 that “fundamental principles of a fair trial, including prompt and full access to legal counsel and inadmissibility of coerced testimony, were not respected” in the similar emergency security tribunals of 2011, and that the cases should be subject to civilian review.<sup>20</sup> The amendment also explicitly violates recommendations that Bahrain accepted as part of its UN Universal Periodic Review (UPR) process, which variably called on the authorities to ensure that civilians are never again tried in military courts, and which the NIHR's report inexplicably “lauded” the government for supposedly implementing. The first civilian trial by military courts under the new amendment – and the first since 2011 – took place in late 2017,<sup>21</sup> with six men (five civilians and one soldier) sentenced to death and seven more civilians sentenced to seven years in prison. All were stripped of their Bahraini nationality. Though the final appeals process is ongoing,<sup>22</sup> and some of the prison sentences have been reduced, several of the defendants report that they have been tortured, while others were subjected to enforced disappearance.
- **June 2017 ministerial order to indefinitely suspend *Al-Wasat* newspaper** - On 4 June 2017, Bahrain's Ministry of Information Affairs (MIA) indefinitely suspended both the print and online publication of *Al-Wasat*, Bahrain's only independent newspaper.<sup>23</sup> The move ostensibly came in response to an article in *Al-Wasat*'s 4 June issue in which the author discussed events related to ongoing unrest in Morocco. In a statement, the MIA claimed that the newspaper had violated the law by spreading information that “would

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<sup>18</sup> “Urgent appeal to the Government of Bahrain to stop new executions – UN rights experts,” OHCHR, 25 January 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21118&LangID=E>

<sup>19</sup> “Bahrain's king approves military trials for civilians,” BBC, 3 April 2017, <http://www.bbc.com/news/world-middle-east-39478101>

<sup>20</sup> “Seven Years After the 2011 Uprising, Bahrain's Military Courts Confirm Death Sentences for Civilians,” ADHRB, 21 February 2018, <https://www.adhrb.org/2018/02/seven-years-after-the-2011-uprising-bahrain-military-courts-confirm-death-sentences-for-civilians/>

<sup>21</sup> “Bahrain Begins First Military Trial of Civilians since 2011, Victims of Incommunicado Detention Unfairly Prosecuted,” ADHRB, 24 October 2017, <https://www.adhrb.org/2017/10/bahrain-begins-first-military-trial-of-civilians-since-2011-victims-of-incommunicado-detention-unfairly-prosecuted/>

<sup>22</sup> Monica Zuraw, “Bahrain's Highest Military Court Postpones Final Appeal for Civilian Defendants,” ADHRB, 30 March 2018, <https://www.adhrb.org/2018/03/bahrain-highest-military-court-postpones-final-appeal-for-civilian-defendants/>

<sup>23</sup> “Bahrain suspends *Al-Wasat*, further restricting press freedom,” ADHRB, 6 June 2017, <https://www.adhrb.org/2017/06/bahrain-suspends-al-wasat-restricts-press-freedom/>



stir divisions within the community and undermine the Kingdom of Bahrain's relations with other countries." The legal basis for closing *Al-Wasat* appears to be Article 70 of the 2002 press law, which prohibits the publication of materials seen as "abusive" towards leaders of states with which Bahrain has diplomatic relations.<sup>24</sup> The government has repeatedly targeted *Al-Wasat* for engaging in independent journalism in the past, and it also imposed a temporary suspension on the newspaper's online edition after it reported on the January 2017 executions. However, the indefinite suspension in June ultimately forced *Al-Wasat* to lay off its staff and cease operations. The NIHR totally ignores this clear attack on press freedom in its 2017 annual report, and it fails to acknowledge that the decision virtually eliminated independent media in Bahrain.

## **II: Endorsement or Omission of Human Rights Violations**

After listing the NIHR's advisory opinions for 2017, the report turns to the institution's efforts to "promote and protect human rights" and its general observations concerning key human rights issues in Bahrain.

### **A. "Promoting Human Rights" – Reporting and Training**

The report's section on human rights promotion consists almost entirely of descriptions of Bahrain's international human rights commitments and the NIHR's work to support attendant treaty obligations through reporting, trainings, and awareness events. Though it comprises an extensive portion of the report, the section is devoid of significant detail, with the institution largely content to simply list out actions, events, and reporting efforts without substantive elucidation. The NIHR declines to provide any explanation of the kingdom's continued refusal to accede to the International Convention on the Protection of the Rights of All Migrant Workers or the International Convention for the Protection of All Persons from Enforced Disappearance, for example, while quoting from ratified conventions at length. Moreover, while lauding Bahrain's ostensive attempts to properly engage UN human rights bodies, the annual report includes no commentary on the government's persistent refusal to allow UN Special Procedures mandate-holders to visit the country. The NIHR makes no mention of the fact that they have been virtually barred since 2006.

Likewise, the NIHR states that it held 40 "training programs and events" in 2017, but it does not provide comprehensive information on the participants or the curricula. What specific figures the report does include suggest that the NIHR's programs are actually quite limited, and fail to reach large numbers of people in key sectors such as the judiciary or security forces. The report's "explanatory chart showing the number of beneficiaries of training events and programs for the year 2017" indicates that 865 individuals took part in just 160 total hours of programming for the entire year, and only 190 of these individuals may have been employees of the judiciary or security forces; the actual number of such personnel is likely even lower, as 150 individuals of this second category participated in a "legal program for public sector employees" that encompassed the entire government and did not specifically address issues related to criminal justice or security.

Furthermore, the NIHR praised government reporting efforts that have been proven inaccurate and misleading. Most prominently, the report notes that the NIHR was intimately involved in both the government's second UPR National Report ahead of the kingdom's third-cycle review,

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<sup>24</sup> Habib Toumi, "Bahrain suspends Al Wasat daily," Gulf News, 4 June 2017, <http://gulfnews.com/news/gulf/bahrain/bahrain-suspends-al-wasat-daily-1.2038355>



and that the institution believes the government made extraordinary strides toward implementing the related reforms: “the Institution showed through its participation in the meetings [with the UPR Working Group] the significant transformations witnessed by the Kingdom of Bahrain since His Majesty King Hamad bin Isa Al Khalifa assumed the throne, represented in an enhanced commitment to democracy and human rights, and it also indicated the positive efforts exerted by the Kingdom in dealing with the recommendations of the ... [UPR] particularly in the field of criminal justice, child and anti-trafficking law, and it lauded the role performed by the Government in providing the suitable climate for freedom of thought, opinion, expression and belief [sic].” The NIHR’s assertions were directly contradicted during the third-cycle review, when dozens of states reiterated old recommendations and issued new reform proposals on precisely the issue areas of criminal justice, free expression, political liberties, and religious freedom.<sup>25</sup> Further, as documented by ADHRB, the government failed to implement nearly all of the 176 recommendations issued during its second UPR cycle,<sup>26</sup> and the official National Report was purposefully deceptive.<sup>27</sup>

## **B. “Protecting Human Rights” – Complaints and Inspections**

The NIHR devotes by far the shortest section of the report – just seven pages of text – to a review of its most important functions: monitoring violence, resolving complaints of human rights abuse, and inspecting sites where human rights abuses might occur, primarily detention centers. The report provides only cursory details in this regard, and, when it is specific, directly endorses several major abuses perpetrated by the government in 2017.

### **1. Violent Incidents**

This is the only portion of the report where the NIHR references incidents of violence in 2017, and it prefaces the section by briefly commenting on “some events which cast their shadow on human rights.” However, rather than present a full and objective account of the year’s violence – or the results of its own independent investigations – the NIHR draws directly on official statements from government security agencies like the MOI.

Specifically, the report focuses almost entirely on violence against security forces, while diminishing government violence against unarmed civilians. In the three paragraphs it dedicates to violent incidents, the NIHR expresses “deep regret” over the death of a police officer and “condemnation...of the use of violence against police,” but it issues no comparable condemnation of government violence against civilians. The NIHR rejects terrorism and particularly “explosion[s] targeting the life of security men,” but completely fails to acknowledge any government role in violence against civilians, or to even call for relevant investigations.

Despite hundreds of violent arrests and protest raids throughout 2017, the section obliquely references just two incidents: the 26 January raid on the sit-in around the home of Shia Muslim cleric Sheikh Isa Qassim in Diraz, and the 23 May raid on the same demonstration:

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<sup>25</sup> Spotlight on Bahrain’s Human Rights Record: Bahrain Undergoes 3rd Cycle UPR Review,” ADHRB, 1 May 2017, <https://www.adhrb.org/2017/05/spotlight-bahrain-human-rights-record-bahrain-undergoes-3rd-cycle-upr-review/>; and “Human Rights Council Adopts Bahrain 3rd Cycle UPR, Kingdom Rejects Dozens of Recommendations,” ADHRB, 21 September 2017, <https://www.adhrb.org/2017/09/human-rights-council-adopts-bahrain-3rd-cycle-upr-kingdom-rejects-dozens-of-recommendations/>

<sup>26</sup> *Bahrain’s Third-Cycle UPR: A Record of Repression*, ADHRB January 2017, [http://www.adhrb.org/wp-content/uploads/2017/03/2017.2.28\\_Web-Version\\_ADHRB\\_BCHR\\_BIRD\\_Bahrain-3rd-Cycle-UPR-Assessment.pdf](http://www.adhrb.org/wp-content/uploads/2017/03/2017.2.28_Web-Version_ADHRB_BCHR_BIRD_Bahrain-3rd-Cycle-UPR-Assessment.pdf)

<sup>27</sup> “Bahrain’s UPR National Report: A Response with Selected Assessments – Part I,” ADHRB, 10 April 2017, <http://www.adhrb.org/2017/04/bahrain-upr-national-report-response-assessment/>



- **26 January 2017 raid on Diraz** – In response to the government’s June 2016 decision to arbitrarily revoke citizenship from Sheikh Isa Qassim, the most prominent religious leader of Bahrain’s marginalized Shia community, supporters launched a peaceful sit-in around his home in Diraz to protect him from deportation. Security forces responded by surrounding the area, restricting freedom of movement, and cutting off access to services, such as the Internet. On the night of 26 January, masked men armed with military-grade weapons entered the security cordon and fired live ammunition into the sit-in encampment, where demonstrators were sleeping. A teenager, Mustafa Hamdan, was shot in the back of the head and later died after security procedures prevented him obtaining timely medical care. Witnesses and local activists report that the masked men appeared to be members of the NSA, the intelligence body re-empowered by the king several weeks earlier. The NSA officially arrested a paramedic who provided treatment to Hamdan at the scene following a raid. Because the MOI expressly controlled who could enter and leave Diraz at any given time, it is unlikely any such individuals could penetrate the security cordon without some form of authorization.<sup>28</sup>

The NIHR does not raise or address any of these issues. In its one-sentence description of the events, it repeats the unsubstantiated MOI allegation that injuries resulted from “an exchange of fire and stones between two groups of veiled men, while expressing its condolences and consolation to the relatives of the deceased and injured.” It provides no assessment of possible human rights violations and calls for no further investigation.

- **23 May 2017 raid on Diraz** – After Sheikh Isa Qassim received a one-year suspended sentence on money-laundering allegations stemming from the Shia religious practice of *khums* on 21 May, security forces launched a major operation to permanently disperse the peaceful sit-in around his home, using excessive force to clear out the participants. Five demonstrators were killed, including an environmental activist and Mustafa Hamdan’s older brother, and hundreds more were injured. The MOI arrested at least 286 individuals.<sup>29</sup> In response to the violence, the UN High Commissioner for Human Rights called on the “Government to investigate the events of 23 May, in particular the loss of lives, to ensure that the findings are made public and that those responsible are held accountable,” urging “Bahrain to choose a different path – one of engagement and dialogue, as well as accountability for violence, regardless of the perpetrator.”<sup>30</sup>

Rather than take up the High Commissioner’s call, the NIHR again placed primary emphasis on security personnel, declining to even ascertain estimates of civilians killed and injured: the institution “issued a statement deploring the events related to the injury of 31 security personnel and the death of a number of citizens in one of the areas of the Kingdom.” The NIHR actually acknowledges that there was no violent threat precipitating the raid and warranting the use of lethal force, indicating that the operation was “aiming to remove a number of legal violations which were a hindrance to the movement of citizens and which led to a hampering of their interests while constituting a risk to their safety.” While this finding suggests that Bahraini security personnel directly

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<sup>28</sup> “18-year-old Mustafa Hamdan dies after security forces shooting,” ADHRB, 24 March 2017, <https://www.adhrb.org/2017/03/18-year-old-mustafa-hamdan-dies-security-forces-shooting/>

<sup>29</sup> “Bahrain Police Raid Duraz Sit-in, Killing Five and Injuring Dozens,” ADHRB, 23 May 2017, <http://www.adhrb.org/2017/05/12478/>

<sup>30</sup> “U.N. rights chief calls for Bahrain probe into protester deaths,” Reuters, 2 June 2017, <https://www.reuters.com/article/us-bahrain-security-rights/u-n-rights-chief-calls-for-bahrain-probe-into-protester-deaths-idUSKBN18T22U>



contravened the MOI's 2012 Code of Conduct, which states that "deadly force can only be used by an officer where it is the last resort to defend against aggression against the police officer, or where it is necessary in order to save the officer's life or the lives of others,"<sup>31</sup> the NIHR inexplicably raises no additional concerns over the use of lethal violence by the authorities, or their own role in the "hindrance to ... movement." It makes no further assessment of the incident or those responsible for the violence, and it calls for no investigation. Rather, it explicitly "lauded the efforts of the security forces in restoring security and safety" in an operation that killed five unarmed civilians dead and wounded hundreds.

## 2. Court Cases

Though the NIHR emphasizes that it is not competent to review judicial decisions and therefore refrains from remarking on trials, it does retain the authority to observe proceedings and monitor due process violations. Notably, the fifth annual report makes a specific point to comment on – and ultimately endorse – two high-profile cases that blatantly violated fair trial rights, freedom of religion, and/or free expression:

- **The trial of Sheikh Isa Qassim** – Following the MOI's extrajudicial decision to revoke Sheikh Isa Qassim's citizenship in June 2016, the authorities began prosecuting him and two other defendants on allegations of money laundering stemming solely from the Shia religious practice of *khums*. The Bahraini government has long discriminated against the Shia Muslim majority community in the kingdom, and these abuses have intensified in recent years, as documented by the UN<sup>32</sup> and the US Commission on International Religious Freedom (USCIRF),<sup>33</sup> among others. While Sheikh Isa Qassim was effectively under house arrest within the security cordon around his home in Diraz, the authorities did not bring him to trial and he was sentenced to a one-year suspended prison term *in absentia*. Though the charges were unsubstantiated and predicated on a religious practice, and UN experts have condemned Sheikh Isa Qassim's continued harassment, the NIHR found that the trial "conformed with the basic principles of human rights and the legal rules and parameters." It also declined to note concerns raised by the UN and other international observers about the cleric's deteriorating health under continued house arrest.<sup>34</sup>
- **The trial of Nabeel Rajab** – On 10 July 2017, over a year after his June 2016 re-arrest, leading human rights defender and president of the Bahrain Center for Human Rights (BCHR) Nabeel Rajab was sentenced *in absentia* to two years in prison for giving media interviews in which he criticized Bahrain's restrictions on press freedom. The trial has been condemned as an unfair violation of due process and free expression by virtually all independent international observers, including the UN High Commissioner for Human Rights, as well as the US Government. An appellate court confirmed the sentence on 22

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<sup>31</sup> "Code of Conduct for Police Officers," Ministry of Interior, Government of Bahrain, 2012, [http://www.biciactions.bh/wps/themes/html/BICI/pdf/1717/code\\_of\\_conduct\\_en.pdf](http://www.biciactions.bh/wps/themes/html/BICI/pdf/1717/code_of_conduct_en.pdf)

<sup>32</sup> "UN rights experts urge Bahrain to end the persecution of Shias," OHCHR, 16 August 2016, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20375>

<sup>33</sup> *USCIRF 2017 Annual Report*, USCIRF, April 2017, <http://www.uscirf.gov/sites/default/files/2017.USCIRFAnnualReport.pdf>

<sup>34</sup> "Bahrain: UN experts welcome medical care for Ayatollah Sheikh Isa Qassim but urge full respect for rights," OHCHR, 7 December 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22506&LangID=E>



November 2017.<sup>35</sup> During the year, Rajab was also prosecuted on charges stemming from Tweets in which he criticized the war in Yemen and documented torture in Bahrain's prison system; he was sentenced to five years in prison on these charges in February 2018.<sup>36</sup> Rajab is currently serving his sentences in Jau Prison.

Although it repeats the MOI accusations verbatim, the NIHR's report does not dispute any of these facts, clearly stating that the institution "attended the trial sessions in which an individual who accused [sic] of transmitting false news, statements and rumours concerning the domestic situation in Bahrain through his tweets on Twitter, in addition to another case where he was accused of transmitting false news and statements and intentionally spreading sensationalist propaganda in times of war which does harm to military preparations and operations, and insulting publicly and official quarter, through posting a number of blogs on Twitter." Nevertheless, the NIHR again explicitly endorses Nabeel Rajab's trial as conforming "with the basic principles of human rights," in contravention of all international standards and the findings of the UN.

Without explanation, the NIHR failed to attend or comment on any other legal proceedings with clear human rights impacts in 2017. Among these are:

- **The trial of the Wa'ad opposition group (also known as the National Democratic Action Society)** – On 31 May 2017, a Bahraini court confirmed an MOJ order to arbitrarily dissolve and seize the assets of the National Democratic Action Society (Wa'ad), the country's chief secular, leftist opposition group.<sup>37</sup> Wa'ad was also the last major opposition group officially operating in Bahrain following the July 2016 dissolution of Al-Wefaq National Islamic Society, the largest opposition organization. The MOJ launched the dissolution proceedings against Wa'ad on 6 March 2017, citing unsubstantiated allegations of "incitement of acts of terrorism and promoting violent and forceful overthrow of the political regime" after the society issued a statement describing Bahrain as experiencing a "constitutional political crisis." The MOJ's accusations also concerned Wa'ad's "support with the Al-Wefaq" and its alleged description of the three individuals executed by the government in January 2017 – who were tortured into providing false confessions – as "martyrs." Wa'ad appealed the decision, but the High Court of Appeals upheld the ruling on 26 October 2017. According to state media, the appellate decision was partially based on the argument that the "society cannot claim to exercise its freedom of expression" because it reportedly fails "to recognize the constitution."<sup>38</sup>

Bahraini authorities also continued to judicially harass the society's former secretary-general, Ebrahim Sharif, in 2017. On 20 March, officials charged him with "inciting hatred against the regime" and against "factions of society" under articles 165 and 172 of Bahrain's penal code for messages he wrote on social media. He could now face up to three more years in prison. Other Wa'ad leaders, including Farida Ghulam, Sharif's wife,

<sup>35</sup> "Bahrain Court Rejects Nabeel Rajab's Appeal in Media Interviews Case," ADHRB, 22 November 2017, <https://www.adhrb.org/2017/11/bahrain-court-rejects-nabeel-rajabs-appeal-in-media-interviews-case/>

<sup>36</sup> David D. Kirkpatrick, "Bahrain Activist Gets 5-Year Sentence for 'Insulting' Tweets," The New York Times, 21 February 2018, <https://www.nytimes.com/2018/02/21/world/middleeast/nabeel-rajab-bahrain-twitter.html>

<sup>37</sup> "Bahrain Dissolves Wa'ad, Last Major Opposition Society," ADHRB, 31 May 2017, <https://www.adhrb.org/2017/05/bahrain-dissolves-last-major-opposition-society/>

<sup>38</sup> "Bahraini Appeals Court Confirms Dissolution of Wa'ad, Last Major Opposition Group," ADHRB, 26 October 2017, <https://www.adhrb.org/2017/10/bahraini-appeals-court-confirms-dissolution-of-waad-last-major-opposition-group/>



and Radhi al-Mosawi, another former secretary-general, also faced harassment and arbitrary travel bans in 2017.<sup>39</sup> The NIHR does not reference these clear attacks on civil and political rights anywhere in its fifth annual report.

- **The trial of Sayed Nizar Alwadaei, Hajar Mansoor Hassan, and Mahmood Marzooq, relatives of exiled activist Sayed Ahmed Alwadaei** – On 30 October 2017, a court convicted the brother-in-law, mother-in-law, and cousin of Sayed Ahmed Alwadaei, the London-based Director of Advocacy at the Bahrain Institute for Rights and Democracy (BIRD), Sayed Nizar Alwadaei, Hajar Mansoor Hassan, and Mahmood Marzooq.<sup>40</sup> Each received a three-year prison sentence on charges of planting “fake bombs” under Bahrain’s anti-terrorism law after an unfair trial based on confessions extracted under torture. Mahmood Marzooq received an additional six-week sentence and a fine for allegedly possessing a dagger. An appellate court upheld the decision in December 2017. It is believed they are being targeted in reprisal for Sayed Ahmed Alwadaei’s continued human rights activism. On 29 November 2017, Sayed Nizar Alwadaei was sentenced to an additional three-year prison term on almost identical charges.<sup>41</sup>

While in custody Mahmood Marzooq and Sayed Nizar Alwadaei were beaten; Sayed Nizar was stripped and threatened with sexual assault; and Hajer Mansoor Hassan was forced to remain standing under hours-long interrogation until she collapsed and had to be taken to the hospital. BIRD reports that Hajer Mansoor Hassan’s health has continued to deteriorate in the Isa Town women’s prison and on 22 March 2018 she was rushed to the hospital after launching a hunger strike to protest the facility’s abusive detention conditions.<sup>42</sup> While the NIHR inspected the Isa Town facility in 2017 (see below), it did provide an assessment of the prison’s conditions and it did not reference Hajer Mansoor Hassan’s case. The annual report includes no mention of the reprisals against Sayed Ahmed Alwadaei’s family, despite public concerns raised by the US Department of State and other international observers.<sup>43</sup>

- **The new trial of Sheikh Ali Salman, Sheikh Hassan Ali Juma Sultan and Ali Mahdi Ali al-Aswad** – On 12 November 2017, Bahrain’s Public Prosecution formally launched a new case against Sheikh Ali Salman, the imprisoned secretary-general of the now-dissolved Al-Wefaq opposition group, and two former Al-Wefaq members of parliament who are in exile, Sheikh Hassan Ali Juma Sultan and Ali Mahdi Ali al-Aswad. The three politicians are accused of baseless accusations that they conspired with Qatar to overthrow the Bahraini government in 2011. Although the allegations date back seven years – when attempted mediation between Qatar, the Bahraini government, and the opposition was well-documented and encouraged by the US – the authorities only

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<sup>39</sup> Ibid.

<sup>40</sup> “Bahrain Intensifies Reprisals Against Activist Sayed Ahmed Alwadaei and Family,” ADHRB, 27 March 2018, <http://www.adhrb.org/2018/03/bahrain-steps-up-reprisals-against-activist-sayed-ahmed-alwadaei-and-family/>

<sup>41</sup> “Court Sentences Sayed Nizar Alwadaei to Further 3 Years in Trial Based on Torture, As Reprisals Against BIRD’s Director’s Family Continue,” BIRD, 29 November 2017, <http://birdbh.org/2017/11/court-sentences-sayed-nizar-alwadaei-to-further-3-years-in-trial-based-on-torture-as-reprisals-against-birds-directors-family-continue/>

<sup>42</sup> “Bahrain Intensifies Reprisals Against Activist Sayed Ahmed Alwadaei and Family,” ADHRB, 27 March 2018, <http://www.adhrb.org/2018/03/bahrain-steps-up-reprisals-against-activist-sayed-ahmed-alwadaei-and-family/>

<sup>43</sup> “BAHRAIN: US Raises “Major Concern” Over Alleged Forced Confessions From Imprisoned Family Members of UK-based Activist,” BIRD, 20 November 2017, <http://birdbh.org/2017/11/bahrain-us-raises-major-concern-over-alleged-forced-confessions-from-imprisoned-family-members-of-uk-based-activist/>



brought charges after Bahrain joined Saudi Arabia, the United Arab Emirates, and Egypt in a diplomatic dispute with Qatar beginning in June 2017.

Bahrain's penal code provides that "capital punishment shall be inflicted upon any person who spies for a foreign country or communicates therewith or with any person acting on its behalf to carry out hostile actions against the State of Bahrain," suggesting that the defendants could face the death penalty if convicted. Notably, Sheikh Hassan was publicly defamed in pro-government media over similar allegations in June 2017; at the same time, Bahraini authorities – including officials from the NSA – repeatedly detained and tortured his son, Mohamed Hasan Ali Mohamed Juma Sultan, in an attempt to coerce him into becoming an informant to help them target Sheikh Sultan and other political figures. The government arbitrarily stripped Sheikh Sultan of his citizenship in 2015, and he is no longer in the country, along with al-Aswad, who fled amid reprisals. Sheikh Salman, however, is incarcerated at Jau Prison on charges stemming solely from political speeches he gave prior to December 2014, when he was arrested.<sup>44</sup> The NIHR raises none of these issues in its report.

### **3. Complaints and Legal Assistance**

The report indicates that the NIHR took up 484 total complaints in 2017, representing a significant increase over past years. However the vast majority of these complaints did not concern core human rights issues, with 218 pertaining to problems with Bahrain's "social security" program. Furthermore, the report provides no details concerning the content or resolution of most cases, and particularly the minority of complaints pertaining to "civil and political rights." According to the document, the NIHR received 50 complaints that fit this classification, with the majority related to the ambiguous categories of "physical and moral safety" and "personal freedom and security" at 19 and 19, respectively. These taxonomies are not defined. Moreover, the NIHR handled just six complaints related to fair trial rights, four related to the "right to quality before the law" or non-discrimination, and two related to the right to citizenship. ADHRB itself has received dozens of complaints related to these rights in 2017 – with more than 150 cases of citizenship revocation documented throughout the year, for example – indicating that, at best, the NIHR continues to lack the confidence of the Bahraini population. At worst, it is refusing to properly investigate and resolve cases related to these sensitive issues.

Likewise, the NIHR received 91 complaints related to economic, social, and cultural rights, with the majority of these – 66 – pertaining to the right to health. It addressed ten related to "appropriate living" standards, six related to the right to work, and five under the broad and undefined category of "the right to enjoy various rights and freedoms." There is no further detail provided on these complaints or their resolution.

Again, it is unclear if any of these complaints were successfully resolved, and – if they were – how.

Finally, the NIHR also received 343 requests for legal assistance in 2017. The report includes only a single paragraph describing this process. It provides no figures concerning the types of assistance or the outcomes of the requests.

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<sup>44</sup> "UPDATED: Bahrain brings new charges against Al-Wefaq's Sheikh Ali Salman amid campaign against opposition," ADHRB, 21 November 2017, <http://www.adhrb.org/2017/11/bahrain-brings-new-charges-against-al-wefaqs-sheikh-ali-salman-amid-campaign-against-opposition/>



## 4. Inspections

In the smallest section of the entire report, the NIHR briefly reviews its efforts to inspect sites of possible human rights abuses in 2017. The institution reserves the authority to conduct announced and unannounced visits to government facilities where violations might occur, and it typically interprets this mandate to inspect detention centers. According to the annual report, it conducted two unannounced site visits to such facilities in 2017; however, it completely declines to provide actual assessments of the detention centers' adherence to human rights standards and ignores allegations of abuse.

- **Isa Town Women's Prison** – The NIHR inspected the kingdom's primary female detention center to “ascertain the presence of a suitable environment which fulfills the dignity of woman and guarantees her the maximum levels of protection.” According to the report, the NIHR rightly emphasized “the importance of limiting and avoiding resorting to solitary confinement...and the absolute prohibition of mistreatment and use of means restricting freedom, and also the use of force in any case whatsoever.” It also met with 28 inmates “based on their request” without the presence of security personnel. Despite these positive reported steps, however, the NIHR provides no information about the nature of these interviews, the inmates' complaints, or the resolution thereof. The NIHR highlights only one specific case, presumably in reference to leading woman human rights defender Ebtisam al-Saegh<sup>45</sup> – who was arbitrarily detained, tortured, sexually assaulted, and ultimately transferred to Isa Town on baseless terror charges in reprisal for her work, but it again provides no actual human rights assessment of the situation. In response to complaints from the “prominent...female activist[...] in the field of human rights” and her family concerning denial of medical care, fair trial, external communication, visitation, and access to legal counsel, the NIHR simply states that it believes assurances from the Public Prosecution that the detainee will be able to meet with her attorney. The report includes no other comment on the case or the other allegations that the NIHR itself listed out. Despite credible evidence of ill treatment and abuse in the Isa Town facility – particularly targeting Bahrain's approximately 13 female political prisoners (10 convicted; 3 pre-trial) with the full knowledge of the prison's director, Major Maryam al-Bardouli<sup>46</sup> – the report concludes there, without any definitive assessment of the site visit and the facility.
- **Juvenile Care Centre** – In an even shorter section, the report describes a visit to the Juvenile Care Centre, which has been tasked with “reforming and rehabilitating juveniles” since its establishment in 1973. The NIHR simply describes the facility and its services, as told by the security officials that run it. Again, it provides no assessment of the facility's practical adherence to international human rights standards, and no mention of Bahrain's child political prisoners, which at any given time are estimated to number around 200.

## 5. Additional Issues

The final portion of the annual report is dedicated to a loosely structured discussion of other “main issues of direct impact on the human rights situation” observed by the NIHR in 2017.

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<sup>45</sup> “Ebtisam al-Saegh,” Frontline Defenders, 2018, <https://www.frontlinedefenders.org/en/profile/ebtisam-al-saegh>

<sup>46</sup> “BAHRAIN: Female Prisoner in Isa Town Prison Stripped Naked, as ill-treatment and Punitive Measures are Exposed,” BIRD, 23 March 2018, <http://birdbh.org/2018/03/bahrain-female-prisoner-in-isa-town-prison-stripped-naked-as-ill-treatment-and-punitive-measures-are-exposed/>



These are, consecutively, “the role of human rights advocates,” “women’s rights,” “expatriate rights,” “the right to health,” and the “right to education.” As in the foregoing, much of this section is taken up with descriptions of various international standards in regards to these issue areas accompanied by uncritical descriptions of Bahrain’s relevant legal framework. The report does highlight legitimate progress in the field of expatriate/migrant worker rights, such as ongoing permit reform, as well as the promulgation of the unified family law, which creates uniform regulations for Shia and Sunni family issues. However the NIHR also makes assertions that directly contradict the human rights reality in Bahrain and serve to obscure government abuses. The most significant portions of this section are as follows:

**Chapter III, Section 1, Paragraph 22: “The National Institution believes that the Human Rights Defenders enjoy like others the basic rights and freedoms to which alluded the UN Declaration on Human Rights Defenders, in addition to the totality of rights guaranteed in accordance with the international conventions, the [Bahraini] Constitution, and [Bahraini] national legislation, which are joint rights, in terms of their nature and content, which the State must ensure respecting and not tampering or restricting in a manner affecting their substance.”**

The NIHR is correct that the state is obligated to protect human rights defenders, but this is where it concludes its discussion of the matter – it does not address that, in practice, the Bahraini government has systematically violated the rights of human rights defenders, including in 2017. As alluded to in the annual report itself, the authorities subjected two of Bahrain’s most prominent human rights defenders – Nabeel Rajab and Ebtisam al-Saegh – to a litany of abuses including arbitrary detention, torture, ill treatment, sexual assault, and denial of medical care in retaliation for their activism. On 20 September 2017, UN Assistant Secretary-General for Human Rights Andrew Gilmour presented the office’s eighth report on reprisals at the 36th Session of the Human Rights Council, specifically naming Bahrain as one of the most “egregious” perpetrators of such attacks on human rights defenders. He found that, during the period under review, the Government of Bahrain engaged in an “ongoing trend of major harassment and intimidation against human rights defenders; the imposition of travel bans on selected individuals; the arrest, detention, and ill-treatment of targeted individuals; and one particular case involving sexual assault and torture as a form of reprisal,” naming al-Saegh and Rajab as well as Hussain Salam Ahmed Radhi, Ebrahim al-Demistani, Abdulnabi al-Ekry, Mohammed Jawad, Nedal al-Salman, Enas Oun, and human rights lawyer Mohammed al-Tajer.<sup>47</sup> Likewise, the Special Rapporteur on the situation of human rights defenders, along with other Special Procedures experts, have called for an end to the persecution of these individuals and expressed “serious concerns regarding the wider context of a general crackdown and mounting pressure exerted on civil society and dissidents in Bahrain, the ongoing prosecution and punishment of human rights defenders, and especially intimidation and reprisals against people who have cooperated with UN human rights mechanisms.”<sup>48</sup> ADHRB has similarly documented the reprisal campaign from 2011 to 2017 in our report *Crushing Civil Society: Bahraini Government Reprisals for International Engagement*.<sup>49</sup> The authorities have undeniably intensified their attacks on human rights defenders in Bahrain for no other reason than their work as human rights defenders, and it is a

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<sup>47</sup> “UN Assistant Secretary-General for Human Rights Cites Bahrain as “Egregious” Perpetrator of Reprisals,” ADHRB, 22 September 2017, <http://www.adhrb.org/2017/09/un-assistant-secretary-general-for-human-rights-cites-bahrain-as-egregious-perpetrator-of-reprisals/>

<sup>48</sup> “UN experts urge Bahrain to investigate reports of torture and ill-treatment of rights defender Ebtisam Alsaegh,” OHCHR, 18 July 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21886&LangID=E>

<sup>49</sup> *Crushing Civil Society: Bahraini Government Reprisals for International Engagement*, ADHRB, June 2017, <http://www.adhrb.org/2017/06/12576/>



clear derogation of the NIHR's duty to wholly omit these abuses in a section ostensibly dedicated to "the role human rights advocates."

**Chapter III, Section 2, Paragraph 6: "Notwithstanding the fact that the Kingdom of Bahrain, when acceding to the Convention on the Elimination of All Forms of Discrimination, made reservations on Article (2) to ensure its implementation within the bound of the provisions of the Islamic Shari'a, and Article (9) paragraph (2), Article (15) paragraph (4), Article (16) in so far as it is incompatible with the Islamic Shari'a, Article (29) paragraph (1) of the provisions of the International Convention. On the basis of the Decree-Law Number (70) of 2014 amending some provisions of the Decree-Law Number (5) of 2002, regarding the accession to the Convention on the Elimination of All Forms of Discrimination Against Women, the Kingdom of Bahrain responded promptly to rephrase those reservations and is committed to the implementation of Article (2) of the Convention without breaching the provisions of the Islamic Shari'a, and continued to make reservations with respect to Article (9) paragraph (2) without explanation. As for Article (15) paragraph (4), and Article (16), the Kingdom of Bahrain is committed to implementing them without breaching the provisions of the Islamic Shari'a; and it continued to make reservations with respect to Article (29) Paragraph (1) without explanation."**

The annual report highlights several notable steps forward for women's rights in Bahrain, but it fails to provide any further insight into the government's refusal to fully implement the Convention on the Elimination of All Forms of Discrimination (CEDAW) or steps to address attendant abuses, like gender-based discrimination in nationality legislation.

Positively, the NIHR emphasizes its support for the promulgation of Law No. 19 of 2017, a unified family law. The NIHR does not provide any analysis of the law's actual provisions, and ADHRB has not yet conducted its own assessment, so it cannot be verified if it does or does not – like its Sunni-specific predecessor – fully adhere to international standards.<sup>50</sup> Still, a unified family law for Shia and Sunni Bahrainis, rather than just Sunnis, helps ensure legal equality and reduces the chance for arbitrary proceedings for Shia family law issues.

Likewise, the NIHR appropriately welcomes further legislative efforts to combat domestic violence, though it does not comment on Bahrain's continued refusal to explicitly criminalize spousal rape. It also rightly welcomes the gradual increase in women's employment, but it overstates the success: Bahraini women still only account for approximately eight percent of the labor force, and many continue to face discrimination like unequal pay. Few women hold significant political positions and, as the NIHR itself notes, women remain explicitly prohibited from certain professions.

Most problematic, however, is that the NIHR provides no answers as to why the government refuses to lift its reservations to CEDAW. The report notes that the government has redrafted these reservations, but the authorities have repeatedly used such practices to stall and continue to maintain the same objections.<sup>51</sup> Particularly, the NIHR fails to address one of the major human

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<sup>50</sup> *Bahrain's Third-Cycle UPR: A Record of Repression*, ADHRB January 2017, [http://www.adhrb.org/wp-content/uploads/2017/03/2017.2.28\\_Web-Version\\_ADHRB\\_BCHR\\_BIRD\\_Bahrain-3rd-Cycle-UPR-Assessment.pdf](http://www.adhrb.org/wp-content/uploads/2017/03/2017.2.28_Web-Version_ADHRB_BCHR_BIRD_Bahrain-3rd-Cycle-UPR-Assessment.pdf)

<sup>51</sup> "Backtracking on Women's Rights: Discriminatory Citizenship Law in Bahrain," ADHRB, 13 April 2016, <http://www.adhrb.org/2016/04/backtracking-womens-rights-discriminatory-citizenship-law-bahrain/>



rights abuses that arises out of this failure to adhere to international law, namely gender-based discrimination in nationality. Article 9 of the CEDAW, which maintains a reservation on, provides that, “States Parties shall grant women equal rights with men with respect to the nationality of their children.” As stated by the Committee on the Elimination of Discrimination against Women, Article 9 is “central to the object and purpose of the Convention” and that “reservations impact negatively on the enjoyment by women of their rights.” Therefore, the maintenance of nationality laws that discriminate on the basis of gender are themselves in conflict with the object and purpose of the CEDAW and with the general obligation of all state parties to “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.” Furthermore, UNHCR’s Global Campaign to end statelessness prioritizes the removal of gender discrimination from nationality laws through its Action Point 3.7.<sup>52</sup> Despite its constant appeals to such international commitments, the NIHR makes no effort to reconcile these concerns or recommend the government lift the reservations.

**Chapter III, Section 3, Paragraph 23: “Within the framework of tackling the phenomenon of non-regular workers, the National Institution testifies to the efforts exerted by the Labour Market Regulatory Authority (LMRA) in issuing a regulation concerning the ‘flexible labor permit’ which is applicable to the Migrant Workers with canceled work permits ... work permits [that] are expired and were not renewed by their employers.”**

The annual report correctly identifies the LMRA’s new “flexible labor permit,” or Flexi Permit, as a significant reform of the abusive *kafala* sponsorship system, which typically grants employers excessive control over migrant workers and facilitates human trafficking. If properly implemented, the new permits will give workers the option to sponsor themselves. Those who are eligible for the program will receive a “Blue Card,” which acts as proof of their legal residency and work status in the country. It gives them permission to work for more than one employer as well as enter and exit Bahrain freely, and is renewable on a six-month basis.

However, it remains a partial reform that only impacts some workers, as “regular workers, household workers, and workers leaving work” are excluded from applying. Moreover, the existence of the program at all belies past government claims that the *kafala* system was abolished; the Flexi Permit itself is an attempt at correcting a symptom of the *kafala* system, which still remains in place in various forms.<sup>53</sup>

There may also be adverse consequences of the program. First, the high cost of the permit would likely make it inaccessible to many workers, as well as additional healthcare fees. The permit will additionally makes it difficult to define what an employer’s responsibilities are in terms of providing for their employees. If employees carry the burden of paying the aforementioned fees, then the employer may not feel obligated to provide any additional benefits. Further, the exclusive nature of permit eligibility remains a significant barrier: to be eligible, a person must have a passport, cannot have a criminal record, and must never have attempted to escape a previous employer, even if the situation was abusive.<sup>54</sup> The NIHR does not address any of these serious concerns, and it does not provide any new figures on the actual disbursement of these permits, which were meant to become active between April 2017 and July 2017. It is unclear if

<sup>52</sup> *Bahrain’s Third-Cycle UPR: A Record of Repression*, ADHRB January 2017, [http://www.adhrb.org/wp-content/uploads/2017/03/2017.2.28\\_Web-Version\\_ADHRB\\_BCHR\\_BIRD\\_Bahrain-3rd-Cycle-UPR-Assessment.pdf](http://www.adhrb.org/wp-content/uploads/2017/03/2017.2.28_Web-Version_ADHRB_BCHR_BIRD_Bahrain-3rd-Cycle-UPR-Assessment.pdf)

<sup>53</sup> *Bahrain’s Forgotten Workers: A Status Report on Labor Discrimination and Forced Dismissals since 2011*, ADHRB, June 2017, [http://www.adhrb.org/wp-content/uploads/2017/06/ADHRB\\_Bahrain-Forgotten-Workers.pdf](http://www.adhrb.org/wp-content/uploads/2017/06/ADHRB_Bahrain-Forgotten-Workers.pdf)

<sup>54</sup> Navneet Gidda, “New Flexi Permit Could Provide Alternative to Kefala System in Bahrain,” ADHRB, 3 August 2017, <https://www.adhrb.org/2017/08/new-flexi-permit-provide-alternative-kefala-system-bahrain/>



the program, which at best is estimated to “correct” eight percent of Bahrain’s labor market, has yet come close to reaching its goals.<sup>55</sup>

Finally, the NIHR’s report does issue three several specific and useful recommendations to the Bahraini government on migrant worker rights: 1) accede to the International Labour Organization Conventions No. 87 of 1998 and No. 98 of 1988 concerning the right to organize; 2) adopt strict legal measures toward employers to promote proper housing conditions for migrant workers; and 3) enact a special law protecting the rights of domestic workers. However, again, it fails to provide further assessments of these issue areas, such as statistics related to human trafficking and migrant rights’ abuses, or any real analysis of the practical enjoyment of the right to organize, which remains heavily circumscribed as documented in ADHRB’s June 2017 report *Bahrain’s Forgotten Workers: A Status Report on Labor Discrimination and Forced Dismissals since 2011*.<sup>56</sup>

### **III. Conclusion**

The NIHR’s 2017 annual report fails to present a comprehensive assessment of the country’s human rights situation or of the enjoyment of basic human rights like those to freedom of expression, assembly, association, and belief. The report indicates that – with the exception of nominally constructive work on women’s rights and migrant workers’ rights – the NIHR has largely neglected to address core problems such as arbitrary detention, enforced disappearance, due process violations, unfair elections, religious discrimination, and torture. Moreover, it has endorsed by omission some of the government’s most egregious new policies, such as the constitutional amendment to allow military trials of civilians – a severe indictment of its advisory process and an undeniable failure of its core mandate. Meanwhile, the report demonstrates that the NIHR has also directly supported or minimized clear human rights abuses like the January executions; the January Diraz raid; the May Diraz raid; and the persecution of Nabeel Rajab, Sheikh Isa Qassim, and Ebtisam al-Saegh.

Despite the NIHR’s reorganization, its fifth annual report indicates that the institution remains noncompliant with the full spirit and letter of the Paris Principles, and that it is unable or unwilling to objectively monitor Bahrain’s human rights situation in good faith.

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<sup>55</sup> *Bahrain’s Forgotten Workers: A Status Report on Labor Discrimination and Forced Dismissals since 2011*, ADHRB, June 2017, [http://www.adhrb.org/wp-content/uploads/2017/06/ADHRB\\_Bahrain-Forgotten-Workers.pdf](http://www.adhrb.org/wp-content/uploads/2017/06/ADHRB_Bahrain-Forgotten-Workers.pdf)

<sup>56</sup> *Ibid.*