

International
accountability
Bahrain

the relevance of
'Magnitsky' sanctions

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Edited by Drewery Dyke



International accountability and Bahrain: the relevance of ‘Magnitsky’ sanctions

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Overview

The number of states using 'Magnitsky' sanctions continues to grow. But what are they; how did they come about and what - broadly - do they address? What, too, are their shortcomings? And are they relevant to the situation in Bahrain?

The text below sets out the inspiration and origin of the provisions and examines, in broad terms, where they are implemented and what the provisions address. It then examines whether and how the Government of Bahrain (GoB) has addressed questions of accountability since the human rights crisis in 2011 and indeed since then. We argue that the situation in Bahrain is one in which Magnitsky sanctions would be relevant; would meet the criteria of application and would, on balance, be helpful to advance a culture of respect towards the rule of law and international human rights standards and its implied conduct. The text ends with a few recommendations that look towards international cooperation in the imposition by the leading jurisdictions - the US, EU, UK, Canada and Australia - of Magnitsky sanctions on specific Bahraini officials.

Introduction: Sergei Magnitsky

In 2009, Russian auditor and tax expert, Sergei Magnitsky exposed fraud totalling \$US230 million in his country. After alerting officials, rather than investigating Magnitsky's claims, in 2008, Russian officials detained *him* on charges of collusion to commit tax fraud.

In November 2009 he died in pretrial detention in Moscow just eight days before he would have either had to be put on trial or released¹. Various accounts from campaigners and opposition groups asserted that the Russian authorities forced him to endure prolonged and extreme cold as well as water deprivation. They denied him the right to family visits and deprived him of treatment for pancreatitis. The Russian legislature, the *Duma*, later denied that Magnitsky faced pre-trial torture but conceded that he may not have been given prompt medical treatment for his diagnosed illness. In 2012, the United Nations' (UN) Committee against Torture [called](#) on the Russian authorities to investigate his death in custody; in 2018, the same UN body [urged](#) the authorities not to dismiss allegations of pre-trial torture, as they did in the case of Sergei Magnitsky. Both the United States and the United Kingdom claimed that the Russian authorities arrested Magnitsky on fabricated evidence in an effort to conceal allegations of high-level corruption.

¹ Mike Eckel, U.S. Settles Magnitsky – Linked Money Laundering Case On Eve Of Trial, RFE/RL, May 2017, <https://www.rferl.org/a/magnitsky-prevezon-u-s-settlement-6-million/28483793.html>, accessed 31 October, 2021

As a result of a campaign led by a colleague, the United Kingdom-based American financier Bill Browder, in 2012 then President Barack Obama enacted the US Congress bill carrying Magnitsky's name².

Text box: The United States' Magnitsky Act

Then President Barack Obama enacted the 2012 Magnitsky Act in part on account of strong bi-partisan support for the measures. The provisions prevented those designated from:

- *Entering the United States;*
- *Using banking or other financial systems in the country, and*
- *Banning them from holding any assets in US-located, registered or licensed commercial undertaking.*

Upon enactment, US authorities sanctioned 18 Russian officials involved in the case of Sergei Magnitsky.

As a result of the positive response and success of the sanctions, in 2016 Congress expanded the applicability of the regulations, which became the Global Magnitsky Human Rights Accountability Act. The expanded provisions empowered the US authorities to impose targeted, restricted sanctions on alleged abusers of aspects of international human rights law from other parts of the world such as officials from China, Turkey and Saudi Arabia.

Those subject to designation were individuals or legal entities whom the US authorities held responsible for:

- *Extrajudicial killings;*
- *Other gross violations of international human rights committed against individuals in any foreign country seeking to expose illegal activity carried out by government officials (in that country);*
- *Being an agent of or acting on behalf of a foreign government, person or entity in such activities, or:*
- *in relation to acts of significant corruption, including the expropriation of private or public assets for personal gain, or corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions; or who*
- *Has materially assisted or provided financial, material, or technological support for, or goods or services in support of such activities.*

Furthermore, the US Congress established committees to make recommendations to the President in respect to the identification of persons or entities allegedly engaged in any of the stipulated activities set out in the act or a change in designation.

Just as designations can be made by the US President, the post-holder can likewise terminate the designation, under specified conditions and after consulting various committees and the Department of State. The President must annually report to Congress regarding those thus designated, the type of sanction imposed on them and the reason for it, in order to ensure that the basis of the designation remains relevant or whether it needs to be dropped.

Overall, there was huge international support for the implementation of the Magnitsky Act in the US as many nations saw it as the first step in the right direction in protecting and promoting International Human Rights. color

² Bill Browder, see website: <https://www.billbrowder.com/>, accessed 31 October, 2021

International spread of Magnitsky provisions

Many other states have since introduced analogous legislation, often drawing on Sergei Magnitsky’s name³, including, in December 2020, the European Union (EU) and, in July 2020, the United Kingdom of Great Britain and Northern Ireland, but as well as Canada and Australia.

On 7 December 2020, the Council of the EU, or European Council (EC), adopted a Council Decision and a Council Regulation establishing the EU’s Global Human Rights Sanctions Regime (GHRSR). The Sanctions Regime was voted on unanimously - a requirement of the European Council - despite some signs of apprehension from member states such as Hungary and France.

The GHRSR allows the EU to adopt the following targeted, restrictive measures in response to human rights abuses and other violations⁴:

- A travel ban applying to individuals wanting to enter the EU;
- The freezing of funds and economic resources of individuals and entities already present in the EU at the time of designation and
- The prohibition of access to funds and economic resources available to targeted individuals and/or entities

According to the GHRSR, “serious human rights violations and abuses” include acts such as:

- Genocide
- Crimes against humanity
- Torture and other cruel, inhuman or degrading treatment or punishment
- Slavery
- Extrajudicial, summary or arbitrary killings
- Enforced disappearance of persons
- Arbitrary arrests or detentions
- Other Human Rights abuses can also fall within the scope of the GHRSR where such violations are “widespread, systematic or are otherwise of serious concern”
- Individuals and entities who provide financial, technical or material support to perpetrators, as well as those associated with them

However, unlike the US’ and UK’ sanctions framework, the designations do not extend to those who are corrupt, prompting criticism from some advocacy groups and MEPs.

³ Daventry (ibid.), September 2020

⁴ Deutsche Welle, ‘EU approves its “Magnitsky Act” to target human rights abuses’, December 2020, <https://www.dw.com/en/eu-approves-its-magnitsky-act-to-target-human-rights-abuses/a-55859105>

The main goal of the new regime is to *“enable the EU to stand up in a more tangible and direct way for human rights”*.

At the same time, the GHRSR does not replace the existing EU country-specific regimes focused on human rights abuses. For example, mid-2020 sanctions imposed on Belarusian officials in response to human rights violations will not be incorporated into the GHRSR⁵. Sanctions from 2013 on Iranian persons and entities, added to in April 2021, are likewise imposed under a country-specific regime.

EU officials, as well as Members of the European Parliament (MEPs) - who do not have a formal role in the process - have likewise addressed the question *de-listing*: the Netherlands Minister of Foreign Affairs, speaking to the issue at a conference held in the Hague specifically mentioned the importance of due process for listing, review and de-listing of those designated on sanction framework. The European Parliament (EP), in a resolution concerning the adoption of the EC's individual sanctions regime, *“insists [...] that decisions to list and delist individuals or entities should be based on clear, transparent and distinct criteria... in order to guarantee a thorough judicial review and redress rights.”*

While those designated can call for a review via individual states or the EC itself, a listing can be [challenged](#) in the European Court of Justice. Other aspects in instances of redress are, at the time of writing, yet to be confirmed by the EU⁶.

On 6 July 2020, the UK published its first autonomous regime developed from the 2018 Sanctions and Anti-Money Laundering Act (SALMA). Even if rooted in broadly analogous features, and given that the UK incorporated wholesale pre-Brexit regulations relating to sanctions into post-Brexit legislation, the UK's [Global Human Rights Sanctions Regulations](#) was nevertheless the first major foreign policy legislation of the post-Brexit period.

The application of this sanction framework enables the UK to impose targeted sanctions for *“gross violations of human rights”* and *“to promote compliance with International Human Rights Law or respect for Human Rights.”*

⁵ Townsend et al, 'The EU adopts a new global human rights sanctions regime', Allen & Overy, January 2021, <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/the-eu-adopts-a-new-global-human-rights-sanctions-regime>

⁶ Chachko, 'Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence', The Yale Journal of International Law, 2019, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1694&context=yjil>

(Then) Foreign Secretary Dominic Raab drew upon the Global Human Rights Sanctions Regulations to immediately designate forty-nine individuals and organisations⁷. Henceforth, they would face:

- Prevention from entering the UK or having the right to remain in the country;
- Deterrence of channelling money through UK banks;
- Being barred from profiting from the UK economy and
- The freezing of all assets in the UK and under UK jurisdiction⁸

In respect to designation, the UK Government issued a policy paper highlighting a non-exhaustive list of factors to be taken into account in deciding whether a person should be considered for designation, comprising of⁹:

- The UK's Human Rights priorities;
- The nature of the victim;
- The seriousness of conduct;
- The international profile and any collective action taken;
- The involvement of non-state actors;
- The status and connections of persons involved and
- The effectiveness of other measures, including law enforcement.

Broadly in line with processes and structures in the EU and USA, the designations will be monitored by a [special unit](#) created by the Foreign, Commonwealth and Development Office ([FCDO](#)) that will consider the use of future sanctions, with various teams across different governmental departments who will continue to monitor Human Rights issues worldwide.

The UK Government website, GOV.UK, claims they will ensure that targets will meet stringent legal tests before the UK decides to designate sanctions on individuals and/or entities¹⁰. (Then) Foreign Secretary

⁷ The forty-nine individuals and entities included in the first designations made by the Foreign & Commonwealth Office comprised: 25 Russian nationals involved in the mistreatment and death of Sergei Magnitsky; 20 Saudi Arabian nationals involved in the death of journalist Jamal Khashoggi ; two high-ranking generals of the Myanmar Armed Forces involved in the systematic and brutal violence against the Rohingya people and other ethnic minorities and two entities involved in forced labour, torture and murder that takes place in North Korean prison camps.

⁸ The provisions applied to all UK territories under the governance of the government in London.

⁹ Carroll et al, 'UK adopts first autonomous sanctions regime targeting human rights abusers', White & Case LLP, July 2020, <https://www.whitecase.com/publications/alert/uk-adopts-first-autonomous-sanctions-regime-targeting-human-rights-abusers>

¹⁰ Foreign & Commonwealth Office, 'UK announces first sanctions under new global human rights regimes', GOV.UK, July 2020, <https://www.gov.uk/government/news/uk-announces-first-sanctions-under-new-global-human-rights-regime>

Raab suggested that the government will review all designations at least once every three years and individuals can request ministers to review the designations or have the opportunity to challenge them in court¹¹. Interested persons can submit information directly to the FCO and request that the designation of a specific person be considered; and in response the FCO will be required to take into account all relevant considerations. Although the FCDO has claimed that it will not comment on designations once an individual has submitted information, this does not necessarily protect the department from any challenge in relation to its response to the requests. Therefore, an individual can seek to challenge the FCDO’s failure to designate or consider the material on public law grounds in court¹².

Upon enactment of the UK provisions, Salam for Democracy and Human Rights [called](#) on the UK government to apply them to the situation in Bahrain.

Considerations on the general efficacy and/or suitability of Magnitsky sanctions

Text box: Magnitsky provisions as a political act: France and the UK and the Gulf

In 2019, France more than doubled its arms sales to the Middle East, but the rest of the EU appeared to be more apprehensive about getting involved. Countries such as the Netherlands, Germany and Denmark have all stated that they will not sell arms to any coalition members active in Yemen as it would be indirectly contributing to the ongoing humanitarian crisis there. Leading French companies have established their offices in Bahrain – some for more than fifty years and continue to use Manama as their regional headquarters for the Gulf region

The United Kingdom may experience some economic repercussions, which would impact the financial power of London, if they place sanctions on nationals from the Gulf region, due to the UK’s relationship with countries such as Saudi Arabia and Bahrain: A Saudi Arabia official claimed in an interview to the Guardian that the “Kingdom would not be happy” by the sanction placed on nationals ‘allegedly’ involved in the Khashoggi assassination and it was “not the best way to treat your allies” As a result, UK Ministers may face claims that they are willing to select lesser officials in a country for sanctioncolor

Arguably, the emergence of targeted sanction regimes rooted in unaddressed (by the state in which the designated person or entity resides) violations of human rights by persons or entities represents, in broad terms, a normalisation of expected conduct, governance and accountability.

¹¹ Cassin, ‘UK imposes first “Magnitsky Sanctions”; here is the list’, The FCPA Blog, July 2020, <https://fcpablog.com/2020/07/15/uk-imposes-first-magnitsky-sanctions-heres-the-list/>

¹² Otty et al, ‘Bringing Sanctions Home: the Global Human Rights Sanctions Regulations 2020’, Blackstone Chambers, July 2020, <https://www.blackstonechambers.com/news/bringing-sanctions-home-global-human-rights-sanctions-regulations-2020/>

It is not *justice*: the imposition of Magnitsky sanctions by a given state will not provide justice or redress in the place where the designated person or entity allegedly committed the act or acts addressed.

It is also, ultimately, a political act by a state or, in the case of the EU, a collection of states. In that regard, it is open to political abuse and/or manipulation. With respect to the EU, for example, there may be complications in reaching a consensus on designating sanctions amongst member states of the EU – some of whom believe that sanctioning 'established allies' would have detrimental effects on their relationship with the country in question.

France, for example, may be reluctant to support designations in the Gulf due to its deep involvement there, which they fear could result in economic repercussions. At the time of writing, the French authorities, to take just one such example, appear to be pursuing a strategy to expand their influence on the Gulf region's countries security forces and strategies. Other countries have shown wariness in establishing sanctions on some nations, worrying about souring any relations they have and putting any economical covenants at risk. Such concerns are applicable to any jurisdiction possessing such provisions.

With respect to Bahrain, discussed in depth below, the absence of any of its officials on any Magnitsky lists calls into question western commitment towards a fair application of the powers provided by the provisions.

Will Magnitsky sanctions improve the conduct of state officials or states themselves, in holding to account alleged human rights abusers? Perhaps...

Bill Browder stated in an interview that *"sanctions from [countries like the] UK have particular cultural clout due to the desires of many wealthy individuals overseas to have a 'house in Belgravia' or send their children to British schools and universities¹³".* (Then) UK Foreign Secretary Raab told Parliament, *"those with blood on their hands won't be free... to waltz into this country, to buy property on the Kings Road, do their shopping in Knightsbridge, or siphon dirty money through British banks.¹⁴"* Some Belarus activists highlight the important deterrent effects of blacklists – *"those who abuse human rights grossly and regularly... enjoy immunity because they're high officials and no international law makes it possible to bring charges against high officials of the state... impunity is a driving force of further repression, so*

¹³ Daventry, September 2020

¹⁴ Wintour et al, 'UK on collision course with Saudis over new human rights sanctions', The Guardian, July 2020, <https://www.theguardian.com/law/2020/jul/06/dominic-raab-to-announce-uk-sanctions-against-human-rights-abusers>

*the Global Magnitsky Law will be a very powerful instrument.*¹⁵” Also, that a senior Saudi official was named as a preparator on UK’s Global Human Rights Sanctions Regulations demonstrates that the UK, for one, may not be selective in its applications of sanctions, and the imposition of sanctions on specific individuals or entities engaging in gross human rights violations can draw international attention to the relevant country situation, attracting further international attention: Belarus opposition leader Andrei Sannikov substantiates both rationales by claiming that sanctions on Belarus “*probably saved his life*”.

Yet, as noted above, it is a political measure rather than one stemming from a proven, neutral source such as an independent court. And it does not magically create conditions of justice in the country situation addressed. In some states where officials are not held to account for their acts, it may be impossible to gather the relevant information in order to argue for the imposition of sanctions.

The alternatives to Magnitsky provisions include trial in a domestic court on grounds of universal jurisdiction, such as in relation to torture, or concerted action by the UN’s human rights bodies. At the close of November 2021, the French authorities were prosecuting a Rwandan official; Sweden prosecuting an Iranian; German authorities handed down a life sentence to an Iraqi, former ISIS official for crimes against humanity while Argentine authorities were investigating Myanmar officials¹⁶.

In light of these considerations, would Magnitsky sanctions make sense in respect to events in Bahrain since 2011?

¹⁵ Directorate General for External Policies of the Union, ‘Targeted sanctions against individuals or grounds of grave human rights violations – impacts, trends and prospects at EU level, Department for External Relations, April 2018, [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO_STU\(2018\)603869_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO_STU(2018)603869_EN.pdf)

¹⁶ See the 30 November 2021 tweet from Philip Grant, <https://twitter.com/PhilipGrant40/status/1465645023417053195?s=20> (accessed 31 October 2021)

Events in Bahrain arguably relevant in respect to Magnitsky provisions

Overview of events in early 2011 leading to the establishment of the BICI

Mass pro-reform demonstrations began on 14 February 2011. Most demonstrators were from the majority Shi'a community, who believed (and still believe) they were discriminated against by the ruling Sunni minority's ruling family. The demonstrations centred on Pearl Roundabout in the capital, Manama, where a protest camp was established. Police and other security forces dispersed the protesters on 17 February 2011 using excessive force. Two days later, demonstrators re-established the camp and became more vociferous in their calls for change.

On 23 February 2011, the King pardoned 23 leading opposition activists, detained since August 2010, and more than 200 other prisoners and detainees.

On 13 March, a small group of anti-government protesters were reported to have attacked Asian migrant workers in Manama, causing two deaths and injuries to others. On 15 March, as demonstrations and strikes continued, the King declared a three-month state of emergency. This came a day after around 1,200 Saudi Arabian troops in armoured vehicles had arrived in the country to support Bahrain's security forces.

By the end of March, the main protests had been crushed, although sporadic protests in predominantly Shi'a villages continued for the rest of the year. The King lifted the state of emergency on 1 June.

In late June, the King appointed the Bahrain Independent Commission of Inquiry (BICI), comprising five international legal and human rights experts, to investigate alleged human rights violations committed in connection with the protests. It reported to the King on 23 November.

Ten years ago, on 23 November 2011, the government-appointed yet highly autonomous [Bahrain Independent Commission of Inquiry](#) (BICI) published its findings. The government tasked the Commission "*with investigating and reporting on the events that took place in Bahrain from February 2011, and the consequences of those events*". It asked the Commission "*to determine whether the events of February and March 2011 (and thereafter) involved violations of international human rights law and norms [...]*" Its [Commissioners](#), led by Professor M. Cherif Bassiouni and including the United Kingdom's Professor Sir Nigel Simon Rodley, set out a range of recommendations in a 513-page [report](#). We set out below a summary of aspects of those events, focusing on the findings of the BICI.

In February and March 2011, in a context of region-wide social unrest in which mass demonstrations called for political reform and accountability, demonstrations likewise took place in Bahrain. While overwhelmingly peaceful, the government deployed excessive and lethal force and carried out arbitrary arrests, amongst a range of other, grave, human rights violations.

As detailed in the BICI report, the country faced an acute human rights crisis. Its team examined more than 8000 complaints; took 9000 testimonies and interviewed more than 5,000 individuals, including

male and female detainees¹⁷. It visited various prisons, detention centres and the Salmaniya Medical Complex in Manama¹⁸. It concluded, amongst other things, that (paragraph 848 of the BICI report) Between 14 February and 15 April 2011, there were 35 deaths that were linked to the unrest in Bahrain during that period [and that] [t]he circumstances

that resulted in the deaths of these 35 individuals can be summarised as [...] (a) Civilian deaths attributed to security forces¹⁹; (b) Deaths attributed to torture²⁰ and (c) Civilian deaths not attributable to a perpetrator²¹.

Other examples of the BICI's findings include information that²²:

- **At least 46 people were killed, including five members of the security forces:** ['Ali 'Abdulhadi Mushaima'](#) died after being shot several times at a demonstration on 14 February in al-Daih village, west of Manama. Some 10,000 people who attended his funeral procession the next day were attacked without warning by riot police using tear gas and shotguns; [Fadhel 'Ali Matrook](#) was shot dead. ['Isa 'Abdulhassan](#), aged 60, died on 17 February when he was shot in the head at close range as the security forces stormed the protest camp at Pearl Roundabout. [Ahmed al-Jaber al-Qatan](#), aged 16, died in hospital on 6 October after being hit by shotgun pellets during a protest in the village of Abu-Saeiba'. Riot police used shotguns and sound bombs to disperse the protesters.
- **Five people died in custody as a result of torture:** Those responsible for their torture were said to be among the 20 security officers facing prosecution at the end of the year. [Hassan Jassem Mohammad Mekki](#) was arrested at his home in the early hours of 28 March. Six days later, his

¹⁷ The BICI received 2639 written statements; 5188 statements submitted in person or electronically, including via interview and 283 statements submitted by organisations. The Commission conducted 65 primary site visits (with several follow-up visits) and held 48 primary meetings with various agencies of the Government of Bahrain (GoB) and members of political and civil society (with numerous follow-up visits).

¹⁸ In March 2011, the authorities took control of the Salmaniya Medical Complex, detaining doctors and other medical workers they accused of supporting the protesters.

¹⁹ The BICI concluded that a total of 13 civilians died at the hands of the Security Forces and that, of these deaths, 10 were attributable to the Ministry of Interior (MoI); two to the Bahrain Defence Force (BDF) while one death which was attributable to security forces but which the Commission is unable to attribute to a specific GoB agency.

²⁰ The Commission found that five persons allegedly died as a result of torture and that three of these deaths occurred while the deceased persons were in the custody of the MoI at Dry Dock Detention Centre, while one death occurred at the BDF Hospital after the deceased had been transferred from the custody of the National Security Agency (NSA) and one death occurred four days after the individual was released from the custody of the MoI at Dry Dock Detention Centre.

²¹ The Commission found that eight civilians died during the relevant period and these deaths are not attributable to a perpetrator.

²² This information draws on the BICI report itself, along with various publications issued by Amnesty International and Human Rights Watch.

relatives were called to a morgue to identify his body, which they said bore marks and bruises on the head, neck and legs that appeared to have been caused by beatings. The cause of death was officially attributed to heart failure, but no autopsy was known to have been conducted and the BICI concluded that his death was caused by mistreatment in custody. ['Ali 'Issa Ibrahim al-Saqer](#) died in custody on 9 April, a few days after police called him in for questioning about the killing of a police officer during the March protests. The Interior Ministry stated that he died while being restrained by police but the authorities are not known to have conducted an autopsy. His body was said to have borne marks suggesting that he had been tortured. The BICI concluded that his death was also due to mistreatment in custody.

- **The authorities detained hundreds of people, including prisoners of conscience:** The authorities arrested more than 1,000 people in connection with the protests; some were Sunnis but the vast majority were Shi'a Muslims. Most were arrested in March and April, many in pre-dawn raids at their homes, often by armed, masked security officers who did not produce arrest warrants and often assaulted those they arrested and, sometimes, their relatives. Authorities usually took detainees to undisclosed locations and held them incommunicado for up to several weeks, during which they were interrogated. [Ebrahim Sharif](#), Secretary General of the National Democratic Action Society (Wa'ad), a secular political opposition association, was taken from his home in Manama on 17 March by armed masked security men who refused to produce an arrest warrant when asked to do so. They took him to an undisclosed location and his family and lawyer were denied access to him for weeks.

[Ebrahim] Sharif's role in the protests — where he often appeared side by side with Wefaq's Ali Salman, a Shiite cleric, making joint calls for a peaceful transition to a genuine constitutional monarchy — complicates the widely used official narrative that the protests were sectarian in nature. Although the majority of protesters were Shiites, the youth groups that organized the February 14 protests included both Sunni and Shiites, secular and Islamist Bahrainis, partly inspired by the peaceful mass movements they saw in Egypt and Tunisia. In general, Sunni Bahrainis were treated more leniently during the crackdown, but are also more likely to face family pressure to keep quiet. Sharif, sentenced to five years in prison on charges including insulting the army, is an exception.

Jane Kinnimont, Foreign Policy, 15 August 2015: [Bahrain's Still Stuck](#)

- **Allegations included 559 instances of torture and ill treatment:** The whereabouts of those detained frequently remained unknown until they were brought to trial. Many of the people detained in March and April were taken to police stations and to the Criminal Investigations Department in Manama, where they were held incommunicado and interrogated by members of the National Security Agency (NSA) and other security forces. Many alleged that they were beaten, made to stand for long periods, given electric shocks, deprived of sleep and threatened with rape. Many said they were held incommunicado for weeks after their interrogation ended. The authorities failed to conduct independent investigations into most of these allegations. The (then) National Security

Court (NSC - see below) also failed to adequately investigate defendants' allegations of torture in pre-trial detention and accepted contested "confessions" as evidence of guilt. However, in November, shortly before the BICI presented its report and in anticipation of its findings, the government said it would amend the Penal Code to criminalize torture and that 20 members of the security forces were on trial in connection with allegations of torture of detainees, deaths in custody as a result of mistreatment, and unlawful killings of civilians. [Aayat Alqormozi](#), a student who had read out poems during the February protests, was arrested when she presented herself to the authorities on 30 March after masked members of the security forces twice raided her parents' house and threatened to kill her brothers if she did not surrender. She was held incommunicado for the first 15 days, during which she said that she was punched and kicked, given electric shocks to the face, forced to stand for hours, verbally abused and threatened with rape. On 12 June, the NSC sentenced her to one year in prison after convicting her of participating in illegal protests, disrupting public security and inciting hatred towards the regime. She was conditionally released on 13 July 2011 after she pledged not to participate in protests or criticize the government. Her case was referred to the High Criminal Court of Appeal, which ruled on 21 November that the case was suspended but without clarifying her legal status. She was at liberty at the end of the year, but was prevented from resuming her studies at Bahrain University.

- **The government unfairly tried hundreds of civilian detainees before military courts known as the National Security Court (NSC):** Established under the state of emergency, these unfair proceedings sentenced activists to onerous, disproportionate and, in some cases, unwarranted sentences of up to life imprisonment. These tribunals prosecuted hundreds for offences allegedly committed in connection with the protests, including political opposition activists, medical professionals, teachers, students and human rights activists. . Those convicted and sentenced to imprisonment included prisoners of conscience. The BICI reported that an estimated 300 people were convicted on charges relating to their exercise of freedom of expression. Others were convicted even though they repudiated "confessions" they said had been extracted under torture. The court did not investigate these allegations. In some cases, the NSC refused defence requests to call witnesses; in many, defence lawyers were denied access to their clients until the trial began and so had inadequate time to prepare their defence. Initially, appeals against NSC judgements were heard by a similarly deficient NSC appeal court. Following wide criticism of the NSC, on 29 June the King decreed that all ongoing cases being examined by the NSC and linked to the February-March protests would be transferred to civilian courts, but on 18 August he decreed that the NSC would continue to try the most serious – felony – cases. However, all NSC judgements were made subject to appeal before a civilian court, including those already upheld by the NSC appeal court. In September, a military court sentenced 20 health professionals to up to 15 years in prison on charges that included occupying a government hospital, possession of weapons and stealing medicine. The

cases were sent for appeal before a civilian court before the end of the year. By early October, all cases had been transferred to civilian courts and the NSC was no longer functioning.

- **Courts sentenced at least five people to death:** The NSC sentenced five people to death after convicting them of killings committed during the protests. The NSC appeal court confirmed two of the sentences and commuted two others. The five were the first Bahraini nationals to be sentenced to death in over 10 years. One foreign national sentenced to death in 2010 was still awaiting execution but there were no executions. **'Ali 'Abdullah Hassan al-Sankis** and **'Abdulaziz 'Abdulridha Ibrahim Hussain** were sentenced to death on 28 April after the NSC convicted them of killing two police officers during the protests in March. The NSC appeal court upheld their sentences on 22 May. The Court of Cassation was due to rule on their cases in January 2012. Their lawyer sought a retrial on the grounds that the trial court had failed to investigate their allegations of torture and their sentences had been confirmed by an unfair military appeal court.
- **More than 2,000 workers from the public sector and more than 2,400 from the private sector were dismissed from their jobs or banned from continuing their education for participating in or supporting the protests:** Those impacted included university lecturers, school teachers, medical doctors and nurses. Almost all were Shi'a Muslims. In late November 2011, the BICI reported that 1,682 dismissed public sector employees had been reinstated. Educational establishments likewise prevented scores of students from returning to their studies in connection with taking part in demonstrations.

Text box: Unfair trials and those detained into 2022

'Abdel Jalil al-Singace, Hassan Mshaima' and 19 other leading opposition activists, including seven tried in their absence, were convicted on charges that included "setting up terror groups to topple the royal regime and change the constitution" after an unfair trial before the NSC that concluded on 22 June. Eight, including 'Abdel Jalil al-Singace and Hassan Mshaima, were sentenced to life imprisonment, the others to lesser prison terms. Most had been detained in pre-dawn raids, held incommunicado for long periods during which they alleged they were tortured and forced to sign "confessions", and allowed only minimal access to lawyers before they were brought to trial. They were convicted despite the reported failure of the prosecution to provide strong evidence against them. Most of them appeared to have been prosecuted for calling for the end of the monarchy and the establishment of a republic. There was no evidence that they used or called for violence; they therefore appeared to be prisoners of conscience. The NSC appeal court confirmed the sentences imposed on all 21 defendants on 28 September; they remained in prison awaiting the Court of Cassation's ruling on their appeal. At the time of writing the authorities continued to detain them.

The BICI report confirmed the GoB's systematic use of torture and other forms of physical and psychological abuse on detainees, by security officials who believed they could act with impunity. It found that police and other security forces had repeatedly used excessive force against protesters, resulting in unlawful killings. The forces of security carried out arbitrary arrests of peaceful political

activists. It found that trials before the NSC were defective by failing to ensure judicial due process procedures.

Whither GoB accountability in line with BICI?

Among its recommendations, the BICI called for all allegations of torture to be independently investigated; for those responsible for abuses to be held criminally liable whatever their rank, and for the release of all those imprisoned on account of their legitimate exercise of freedom of expression. The BICI apportioned, in instances, blame. It called for investigations into the killings as well as accountability. The King and government, moreover, undertook to implement the BICI's recommendations.

For example, according to the BICI report, (paragraph 875) "The Mol investigation into the death of Ali Isa Ibrahim Saqer (see above) has resulted in the prosecution of five individuals. On 25 May 2011, the Mol referred charges of manslaughter against two Mol personnel to a military court. A further three Mol personnel have been charged with failing to report this crime." The BICI report states, for example:

- (876) *The Mol investigation into the death of Zakariya Rashid Hassan Al Asheri has resulted in the prosecution of five individuals. The Commission concludes that Mr Al Asheri's death is attributable to his mistreatment while in custody*
- (877) *The death of Abdulkarim Ali Ahmed Fakhrawi occurred at the BDF Hospital after he had been transferred from the custody of the NSA. The NSA conducted an investigation into the physical abuse of Mr Fakhrawi but not into his death. The NSA investigation resulted in the prosecution of two individuals for physical abuse. The Commission considers that the NSA failed to conduct an effective investigation into Mr Fakhrawi's death, which would satisfy the relevant obligations under international law.*
- (878) *The death of Jaber Ebrahim Yousif Mohamed Alawiyat occurred four days after he was released from the custody at the Mol Dry Dock Detention Centre. The Mol failed to conduct an investigation into the death of Mr Alawiyat, and consequently has not complied with international law.*

Yet ten years on, most of the 26 recommendations set out in the BICI report are yet to be implemented - and developments since then cause even greater alarm in relation to accountability²³. The GoB has generally implemented superficial reforms, ignored recommendations and, in some instances, moved backwards.

²³ This section draws on, amongst others, Human Rights Watch - World Report 2019: chapter on Bahrain, <https://www.hrw.org/world-report/2019/country-chapters/bahrain>

Despite the promise of the BICI report, in the ensuing years, justice and accountability has been elusive.

On 13 March 2013, the BBC [reported](#) that a Bahraini court sentenced two officers to ten years' imprisonment for the death in custody of 'Ali Issa Ibrahim Saqer (see above), but - despite BICI's findings - "the court cleared the officers of also causing the death of another detainee [and former parliamentarian], Zakaraya Rashed Hassan." The BBC report stated that:

- *Human Rights Watch inspected Mr Saqer's body before his funeral and reported that it showed the signs of severe physical abuse, including large bruises, cuts to his eye, lash marks across his back, blackened feet, and lacerations on his ankles and wrists.*
- *A death certificate issued by the Bahrain Defense Force Hospital given to his family listed the cause of death as "hypovolemic shock", a condition usually brought on by extreme loss of blood. The cause of the shock was "multiple trauma", it added.*

In October 2013, according to a [Gulf News](#) report, the courts reduced from seven to three, the prison sentences imposed against two police officers in connection with their torturing a detainee to death and, in another case, a similar reeducation for the official who killed '[Ali 'Abdulhadi Mushaima'](#).

What of events since 2011?

According to the [2015 annual report](#) of the US-based Human Rights Watch ([HRW](#)), in 2014, Bahrain's "Security forces fatally shot at least three people in circumstances indicating that they used excessive force [and] Bahraini authorities and courts have rarely held members of the security forces accountable for unlawfully using force against protestors and detainees²⁴."

Nevertheless, in 2014, the BICI-proposed Office of the Ombudsman issued its first annual report and it listed 11 deaths under investigation and that it had forwarded details of the deaths of two of these individuals to the likewise BICI-established Special Investigations Unit for investigation. Yet, with regard to outstanding cases from 2011, HRW stated that:

²⁴ The HRW report states: "In January, security forces shot and killed Fadhel Abbas Muslim Marhoon. Authorities said police officers shot him in self-defense as he drove an "oncoming car" towards them, but photographs of his body appeared to contradict this version and show that he had sustained a gunshot wound to the back of his head. In February, security forces shot Abdulaziz al-Abar at a funeral procession; surgeons removed shotgun pellets from his brain, but he died on May 18. In May, security forces shot and killed Sayed Mahmood, 14, after police dispersed a funeral protest. A hospital death certificate, three witness accounts, images of the wound, and a forensic pathologist's opinion indicated that his death had resulted from unlawful use of lethal force by security forces, to whom he had posed no threat when he was shot."

"[...] [T]he justice system has failed to hold members of the security forces accountable for serious rights violations, including in cases where their use of excessive and unlawful force proved fatal. The authorities have prosecuted only a few of the security personnel implicated in the serious and widespread abuses that the BICI documented, focusing almost exclusively on low-ranking officers who, in most cases, have been acquitted or punished with disproportionately lenient sentences."

Writing in August 2015, regional expert Jane Kinnimont indicated that the GoB continued to violate human rights. She [observed](#) that:

[BICI's] recommendations have not been fully implemented. Various practices criticized in the report — from nighttime house raids to imprisonment for offenses involving political expression — are recurring. Promises to hold torturers accountable have resulted in just three policemen being convicted. Opposition groups estimate there are around 1,400 political prisoners while the government says there are none. According to estimates from al-Wefaq, the main opposition group, in July alone 240 people were arrested and 100 injured with birdshot and rubber bullets. The group's secretary-general, Sheikh Ali Salman, was wounded with birdshot when taking part in a small demonstration outside his house in June.

[...]

The Bahrain Independent Commission of Inquiry (BICI) report remains a vital reference point, and is a rare source of leverage for those within Bahrain's bureaucracy who are trying to push reforms. But there is little traction for such efforts given that almost all of the senior decision makers who oversaw last year's crackdown have retained their posts.

In its 2015 annual report on Bahrain, HRW stated that *"further evidence emerged of the torture and mistreatment of detainees, pointing to the ineffectiveness of institutions established since 2011 to safeguard detainees, and the persistent failure of authorities to hold officials accountable for torture and other serious rights violations."*

In its report covering 2016, HRW observed that the third annual report of the (BICI-created) *"Office of the Ombudsman, released in June 2016, provided further evidence that authorities have made little progress in holding police and security forces accountable for the torture and mistreatment of detainees."* HRW noted that since its establishment in 2012, the Office of the Ombudsman had, according to its own annual reports, *"referred 138 cases to the Special Investigations Unit, the body responsible for investigating and prosecuting security or other government officials allegedly involved in the torture or cruel, inhuman, or degrading treatment of detainees. Of these, the Special Investigations*

Unit has successfully prosecuted only one torture case, which the ombudsman's second annual report characterized as 'a vicious assault' on a detainee 'in an attempt to force him to confess to drug dealing.'" Moreover, HRW, noted, *"The ombudsman's 2016 report contained no information on the status of 15 complaints relating to the alleged torture of inmates by prison officials after unrest in Jaw Prison in March 2015."*

According to HRW's [report covering events](#) in 2017, the government *"restored arrest and detention authority to the National Security Agency (NSA), an intelligence agency"* which *"reversed one of the few significant security sector reforms authorities had taken in line with a recommendation of the BICI"*. It had *"concluded that the NSA 'followed a systematic practice of physical and psychological mistreatment, which in many cases amounted to torture.'" The organisation detailed a case in which a family of a detainee "submitted numerous complaints to the Interior Ministry's Ombudsman Office and Special Investigations Unit, and the Office of the Public Prosecutor. In September 2017, the Ombudsman Office responded to an inquiry about the state of its investigation, saying that Allawi 'had been transferred to be under the responsibility of another authority which is out of the Ombudsman's remit.'" The following month the man faced an unfair trial.*

HRW asserted in its [annual report covering events in 2018](#) that the GoB continued to fail *"to hold officials accountable for torture and other ill-treatment despite the installation of oversight mechanisms as recommended by the Bahrain Independent Commission of Inquiry (BICI)"*, and that:

"Since 2011, authorities have failed to credibly investigate and prosecute officials and police officers who allegedly committed violations, including torture. Despite numerous complaints by detainees and their family members, the Interior Ministry's Ombudsman Office and Special Investigations Unit failed to hold prison guards and officers to account."

In 2019 HRW - as well as Salam for Democracy and Human Rights - reported a similar absence of accountability.

Conclusion and recommendations

As has been shown above, despite the promise of the BICI report, in respect to both the bloodshed and human rights crisis of 2011, as well as all subsequent years, the GoB has not provided any effective or durable accountability for grave human rights violations that government - including security - officials have inflicted upon the Bahraini people. At the moment, it seems impossible for individual survivors to instigate civil or even criminal cases, such as those reliant on universal jurisdiction, in, say, European Courts.

In the absence of any alternatives, it falls to states - the EU, US, Canada and Australia, amongst others - to impose targeted, Magnitsky sanctions on those who have carried out acts that meet the threshold or criteria under which such restrictions should be imposed. As to who, individual activists know who the serial violators are, as well as their enablers, facilitators and protectors. The 2019 report entitled [Anatomy of a Police State: Systematic Repression, Brutality and Bahrain's Ministry of Interior](#) US-based Americans for Democracy and Human Rights in Bahrain (ADHRB) provides a range of names, functions and roles in respect to specific officials, and a detailed analysis of context under which officials committed abuses. It, along with material issued by other human rights bodies, constitute a starting point for the consideration of Magnitsky sanctions imposed on Bahraini officials.

Magnitsky sanctions emerged to address a very particular situation: one in which a government - the Russian Federation - was unwilling or unable to hold to account its own officials for human rights abuses or other criminal acts, such as forms of corruption. As the jurisdictions in which the provision exists grow, so does the number and scope of designations. The case of Bahrain, however, also shows the provisions' weaknesses: first, it is not justice, but it is, rather, a political tool. Bahrain, an ally of western states, appears to have escaped the standard of scrutiny applied to, say, officials or entities from Belarus, Iran or China.

Salam for Democracy and Human Rights calls on jurisdictions with Magnitsky provisions to:

- Work with civil society engaged on Bahrain in order to develop a fair and robust knowledge about the applicability and relevance of Magnitsky sanctions to the situation in Bahrain;
- Impose targeted restrictions on specific Bahraini officials at the earliest possible opportunity;
- Use the premise of Magnitsky sanctions to promote, on a fair and equitable basis, international compliance with international human rights law;
- Show willingness to use the provisions in respect to officials in all Gulf countries, following on from action already taken in respect to Saudi Arabia and those allegedly linked to the killing of journalist Jamal Khashoggi; and
- Develop the ways and means, in their own jurisdictions, to refine the application of targeted sanctions while ensuring a viable and affordable way to challenge such designations.

Appendix - Table of countries who have implemented ‘Magnitsky-style’ sanctions (as of January 2021)

Country	US	UK	Estonia	Latvia	Lithuania	Canada	EU
Name	Global Magnitsky Act	Global Human Rights Sanctions Regulations	Amendment to Obligation to Leave and Prohibition on Entry Act	International Sanctions and National Sanctions of the Republic of Latvia	Amendment to Law on the Legal Status of Aliens	Justice for Victims of Corrupt Foreign Officials Bills	The Global Human Rights Sanctions Regime
Status	December 2016 – passed	July 2020 – passed	December 2016 – passed	June 2019 – passed	November 2017 – passed	October 2017 – passed	December 2020 – passed
Designation criteria	Persons who have committed serious human rights abuse and engaged in corruption around the world	Individuals suspected of involvement in human rights violations	Foreigners: having participated in activities resulting in ‘death or serious damage to health of a person’ or their ‘unfounded conviction [...] for criminal offence on political motives’	Individuals suspected of involvement in human rights violations	Individuals suspected of involvement in human rights violations	Foreign nationals responsible for extrajudicial killings, torture or other gross violations of human rights committed against individuals in any foreign state who seek to expose illegal activity carried out by foreign public officials, or to defend human rights	Individuals suspected of involvement in human rights violations

Measures foreseen	Visa ban, assets freeze restrictions on their ability to access the US financial markets	Visa ban, assets freeze restrictions on their ability to access the UK assets and barred from UK banks	Visa ban	Visa ban	Visa ban	Asset freezing	Visa ban, assets freeze restrictions on their ability to access the EU financial markets
Listed groups	Various nationalities 13 in the original listing	49 individuals and organisations from Russia, Saudi Arabia, North Korea and Myanmar	49 Russian citizens and 98 Belarusian officials	49 Russian citizens and 98 Belarusian officials	98 Belarusian officials	Russia Venezuela South Sudan 52 in the original listing	Yet to be confirmed

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International accountability and Bahrain: the relevance of 'Magnitsky' sanctions

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