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الجمعية البحرينية لحقوق الإنسان
Bahrain Human Rights Society



Human
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Foundation

Bahrain

Evaluation report of the Bahraini National Institution for Human Rights

*Report submitted to the Sub-Committee on
Accreditation of National Human Rights Institutions
as part of the reaccreditation of the Bahraini
National Institution for Human Rights (NIHR)*

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1 Introduction

The Bahraini National Institution for Human Rights (“NIHR” or “the Institution”) was established on 10 November 2009 by Royal Order No. 46 of 2009. The appointment of its members took place only a year later, on 25 April 2010. In August 2014, the Council of representatives and the Shura Council adopted Law No. 26 of 2014 with a view to give it more independence. The law was later amended in 2016 by Decree-Law No. 20 of 2016.

In 2015, the NIHR was granted B status to mark the Bahraini NIHR’s partial compliance with the Paris Principles.¹ In 2018, the UN Human Rights Committee expressed its concern that “the Institution lacks the independence to perform its functions and regrets the lack of information on the complaints it has received and the investigations it has carried out in response to those complaints.”²

In October 2023, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) will decide on the re-accreditation of the Bahraini Institution based on the evaluation of the progress made since 2016.

Ahead of this examination, MENA Rights Group, Salam for Democracy and Human Rights and the Bahrain Human Rights Society would like to provide information that may serve to assist in the evaluation of the compliance of the Bahraini national human rights institution (NHRI) with the Paris Principles in both legal and practical terms.

The SCA identified six main areas in which the NIHR could improve to be in line with the Paris Principles: establishing a clear and transparent appointment process for members; ensuring members of the Council of Commissioners are not affiliated with the government; including full-time members; supporting all complaints and human rights defenders fully; monitoring places of deprivation of liberty; and, cooperating with other human rights bodies.

The present report submitted jointly by MENA Rights Group, Salam for Democracy and Human Rights and the Bahrain Human Rights Society, examines the progress or lack thereof in the areas of concerns identified by the SCA.

2 Human rights situation in Bahrain

King Hamad Bin Isa Al Khalifa acceded to the throne in 1999 with promises of significant reforms such as the release of political prisoners, the return of exiles, more civic space for opposition and the establishment of an elected parliament.³ In this context, Mansoor Al Jamri, a known political dissident founded *Al-Wasat* newspaper which was considered to be a semi-

¹ GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 9-13 May 2016, available at: <https://ganhri.org/wp-content/uploads/2019/11/SCA-FINAL-REPORT-MAY-2016-English.pdf> (accessed on 24 May 2023).

² Human Rights Committee, *Concluding Observations on the Initial Report of Bahrain*, 15 November 2018, UN Doc. CCPR/C/BHR/CO/1, para. 9.

³ Laurence Louër, *Bahrain's Fragile Political Reforms*, 20 August 2008, available at: <https://carnegieendowment.org/sada/21029> (accessed on 24 May 2023).



independent and non-sectarian media outlet.⁴ Similarly, a new constitution was adopted in 2002 providing for the establishment of a new parliament made up of two chambers.⁵

In the wake of the Arab Spring, in March 2011, Bahrain witnessed a wave of protests which demanded for democratic reforms in the country. Soon after, the government undertook a crackdown on public dissent namely by arresting (and sometimes killing) protesters, activists and opposition leaders.⁶

In the upcoming years, the government continued its crackdown and enacted several laws that aim to suppress all political opposition. For instance, it dissolved opposition groups such as *Al Wafaq* and *Wa'ad* in 2016 and 2017, and issued a decree called the “political isolation law” that ban members of opposition parties to stand for election.⁷

Many of those arrested in 2011 remain in detention and thousands of people have been arrested ever since for their political views. Among them is prominent human rights defender Abdulhadi Al-Khawaja who was subject to a sham trial and handed a life sentence.⁸ Since then, around 51 persons have been sentenced to death.⁹

Despite constant promises of reform, the Bahraini government continues, to this day, its crackdown on public dissent. Civic space is all the more restricted and several human rights defenders continue to be behind bars.¹⁰ All significant opposition groups are dissolved, and authorities fail to hold officials accountable for alleged acts of torture and ill-treatments.

Conditions in detention have been worsening. According to Human Rights Watch, three detainees have died amid allegations of medical negligence, lack of hygiene and sanitation lead to two major outbreaks and authorities continue suppressing protests occurring inside prisons (most significantly the Jaw prison).¹¹ 26 individuals are still on death row and allegations of torture are increasing.¹² There is a continued restriction on the legal framework that guarantees freedom of expression and the press, and a ban of independent news outlets

⁴ Committee to Protect Journalists, *2011 CPJ International Press Freedom Awardee, Mansoor al-Jamri*, available at: <https://cpj.org/awards/mansoor-al-jamri-bahrain/> (accessed on 24 May 2023).

⁵ See Bahrain's Constitution of 2002, available at: https://www.constituteproject.org/constitution/Bahrain_2002.pdf (accessed on 24 May 2023).

⁶ Reuters, *Timeline: The 2011 uprising in Bahrain and what's happened since*, 16 February 2021, available at: <https://www.reuters.com/article/us-bahrain-uprising-timeline-idUSKBN2AG1K6> (accessed on 24 May 2023).

⁷ Al-Jazeera, *Bahrain dissolves main Shia opposition Al-Wafaq party*, 17 July 2016, available at: <https://www.aljazeera.com/news/2016/7/17/bahrain-dissolves-main-shia-opposition-al-wafaq-party> (accessed on 24 May 2023); BBC News, *Bahrain court dissolves main secular opposition group*, 31 May 2017, available at: <https://www.bbc.com/news/world-middle-east-40104731> (accessed on 24 May 2023); AP News, *Bahrain king enacts law on banning candidates from elections*, 11 June 2018, available at: <https://apnews.com/article/ecdba3b137c44570bd2b9139373bc1f3> (accessed 24 May 2023).

⁸ Front Line Defenders, *Detained human rights defender Abdulhadi Al-Khawaja begins hunger strike*, available at: <https://www.frontlinedefenders.org/en/case/detained-human-rights-defender-abdulhadi-al-khawaja-begins-hunger-strike> (accessed on 24 May 2023).

⁹ Human Rights Watch, *“The Court is Satisfied with the Confession”: Bahrain Death Sentences Follow Torture, Sham Trials*, 10 October 2022, available at: <https://www.hrw.org/report/2022/10/10/court-satisfied-confession/bahrain-death-sentences-follow-torture-sham-trials> (accessed on 24 May 2023).

¹⁰ Human Rights Watch, *World Report 2022, Bahrain – Events of 2021, 2022*, available at: <https://www.hrw.org/world-report/2022/country-chapters/bahrain> (accessed on 24 May 2023).

¹¹ Ibid.

¹² Ibid.



such as *Al-Wasat*.¹³ Independent rights monitor, UN Special Procedures, foreign journalists and rights group are regularly denied access.¹⁴

It is undeniable that the general human rights situation in Bahrain, especially since 2011 must be addressed effectively through independent domestic mechanisms to ensure that individuals in Bahrain can exercise their rights freely. We believe that the national human rights institution has a responsibility to address the country's most pressing serious human rights concerns.

3 Legal framework

3.1 Independence of the NIHR from the executive

According to section A.2 of the Paris Principles, the mandate of the NHRI should be set forth in a constitutional or legislative text.

Initially, the Bahraini NIHR was created by a Royal Decree No. 46 of 2009, amended by Royal Decree No. 28 of 2012; which is a text directly enacted by the King. As this was contrary to section A.2 of the Paris Principles, the mandate of the NIHR, composition and sphere of competence was later transposed in a legislative act through Law No. 26 of 2014 (amended in 2016 by Decree-Law No. 20 of 2016), which was approved by the Shura Council and the Council of Representatives.

The aim of this law was to “emphasise the importance of supporting the work of the Institution as an independent body in the Kingdom of Bahrain” and to “grant it more competencies and powers in a manner consistent with the Paris Principles.”¹⁵

The fact that the mandate of the NIHR was established pursuant to a legislative act ratified by the two chambers of the parliament and not simply by a Royal Decree is a step in the right direction.

However, it must be noted that in the specific context of Bahrain, the legislative authority also vests in the King according to article 32 of the Constitution. Although the National Council (i.e., the Bahraini parliament) has some legislative powers, it is ultimately the King who has the legislative authority to enact laws and is therefore the sole decider of the competencies and mandate of the NIHR.

In fact, the Parliament is neither representative nor equipped with real powers. The members of the Shura Council (one of the two chambers of parliament) are appointed by the King. The Parliament can propose laws but does not draft legislation.¹⁶ It is the King that drafts and

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Government of Bahrain, *The National Human Rights Plan – 2022-2026*, 3 July 2022, p. 13, para. 1, available at: <https://www.mofa.gov.bh/Portals/0/pdf/HumanRights/The%20National%20Human%20Rights%20Plan%202022-%20-%202026.pdf> (accessed 25 May 2023).

¹⁶ United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Bahrain 2022 human rights report*, https://www.state.gov/wp-content/uploads/2023/02/415610_BAHRAIN-2022-HUMAN-RIGHTS-REPORT.pdf (accessed 25 May 2023).



adopts all bills submitted before the parliament and the King appoint all judges throughout the Kingdom, including the Supreme Judicial Council.

The Council of Representatives (the parliament's lower chamber) should, in theory, be elected by all the eligible citizens of Bahrain. However, parliamentary elections in Bahrain do not allow for the expression of any form of dissent. The parliamentary elections held on 12 November 2022, showed that there is little independent civil society, and that any opposition was banned from running.¹⁷ This resulted in between 6000 to 11 000 people being unable to run for the election and no opposition representation in the current sitting parliament.¹⁸

Both these laws were therefore directly enacted by the King and simply ratified by the National Council. Undoubtedly, the establishment of an NIHR in a context that disregards the fundamental principle of the separation of powers, considerably undermines the independence of the NIHR.

In fact, political parties are not allowed in Bahrain and since 2016, the government suppressed all political opposition.¹⁹ In July 2018, the King issued a controversial decree that banned members of dissolved opposition parties to stand for election which concurrently compromised the independence of all branches and institutions in Bahrain, including the Bahraini NIHR.²⁰ In fact, this decree was never questioned or addressed by the NIHR itself.

3.2 Amendments of 2016 and definition of the mandate of the NIHR

Since 2014, Law No. 26 has been amended once in 2016 by Decree-Law No. 20 of 2016.²¹ This amendment was enacted following the recommendations of the SCA under which the NIHR was accredited with B status.

First of all, the amendment introduced a change in the composition of the NIHR and the selection process of its members through article 3 and 5 items (a) and (b).

Although, there is an apparent effort to comply with recommendation (1) of the SCA regarding selection and appointment, the legislative framework in that regard is clearly insufficient, as it will be discussed under Section 4 of this report.

The NIHR's mission is enshrined in article 2 of the Law No. 26 of 2014, according to which, it is responsible for "promoting, developing and protecting human rights, consolidating its values, disseminate a culture awareness and contributing to securing its practice." This article vests the NIHR with a broad mandate to ensure the protection and promotion of human rights.

The competences of the NIHR with regards to this mandate are listed in article 12 of Law No. 26 of 2014 and amended by Decree-Law No. 20 of 2016. It holds a wide range of competences,

¹⁷ Civicus Lens, *Bahrain: Election Without Freedoms Fall Far Short of Democracy*, 17 November 2022, available at: <https://lens.civicus.org/bahrain-election-without-freedoms-falls-far-short-of-democracy/> (accessed 24 May 2023).

¹⁸ Ibid.

¹⁹ Ibid. Importantly, "In July 2016 it dissolved Al-Wefaq, claiming it helped foster violence and terrorism. In May 2017, a court dissolved Wa'ad, a left-leaning opposition party, on similar charges."

²⁰ AP News, *Bahrain king enacts law on banning candidates from elections*, 11 June 2018, available at: <https://apnews.com/article/ecdba3b137c44570bd2b9139373bc1f3> (accessed 24 May 2023).

²¹ Accessible here in English: https://www.nihr.org.bh/EN/MediaHandler/GenericHandler/documents/Download/LawDecree20-2016_amendingLaw26-2014.pdf.



mirroring those demanded by the Paris Principles (see chapter 4 of the Paris Principles on the effectiveness of the mandate).

Article 12 of Law No. 26 of 2014 reads as follow:

In fulfillment of its objectives, NIHR shall be free to comment on any issue related to human rights, and to address any human rights case, as it deems fit. NIHR shall have the following mandates:

a. To participate in the production and implementation of a national plan for the promotion and protection of human rights in the Kingdom.

b. To examine legislation and regulations enforced in the Kingdom which are related to human rights, and recommend amendments as it deems fit, particularly in connection with the consistency of such regulations with the Kingdom's international obligations in the human rights field. NIHR shall be empowered to recommend enacting new legislation related to human rights.

c. To consider the conformity of legislative and regulatory provisions with regional and international treaties related to human rights issues, and submit proposals and recommendations to the competent authorities in any matter that promote and protects human rights, including recommendations to accession to regional and international conventions and treaties concerned with human rights.

d. To submit parallel reports, participate in the drafting and discussion of the reports which the Kingdom is obliged to submit periodically for the implementation of regional and international conventions concerning human rights, make remarks thereon, and publish such reports in the media outlets.

e. To monitor violation of human rights instances, conduct the necessary investigation, draw the attention of the competent authorities and provide them with proposals on initiatives to put an end to such violations and, where necessary, to express an opinion on the reactions and positions of the competent authorities.

f. To receive, examine and consider complaints related to human rights, refer the complaints, which NIHR deems necessary, to the relevant authorities, follow-up the complaints effectively, or inform those concerned of the procedures that should be applied, help them take such procedures, or assist in the settlement of complaints with the relevant authorities.

g. To conduct field visits in accordance with the applicable principles in order to monitor human rights situation in correctional institutions, detention centers, labor gatherings, health and education centers, or any other public place in which it is suspected that human rights violations are committed.

h. To initiate cooperation with the competent authorities concerned with cultural, media and educational affairs, to submit proposals and recommendations in any matter in order to disseminate and promote a culture of awareness and respect for human rights.

i. To cooperate with national bodies and regional and international organisations, as well as relevant institutions in other countries that are concerned with the promotion and protection of human rights.

j. To host conferences and to organise training and educational events in the field of human rights and conduct research and studies in this regard.

k. To participate in national and international forums, as well as in meetings of regional and international bodies concerned with human rights issues.



I. To issue newsletters, publications, data and special reports, and upload them on NIHR website. NIHR shall be entitled to address the public opinion directly or through any of the media outlets.

The amendments of Decree Law No. 20 of 2016 read as follow:

Article (12) item (f): f) To perform announced and unannounced field visits, to monitor human rights situation in Correction institutions, detention centers, labor calls gathering, health and education centres, or any other public place in which it is suspected that human rights violations are taking place.

Article (12) item (j): Holding meetings and joint activities, cooperation, coordination and consultation with civil society and non-governmental organizations and various other groups and human rights defenders, and communicate directly with the claims of exposure to any form of abuse, and to report back to the Council of Commissioners.

It is not clear whether civil society has been involved in the drafting of the enabling law and its amendments. All international and Bahraini human rights organisations we have contacted have indicated that they have not been consulted prior to the adoption of the law and its amendments.

4 Effectiveness of the mandate

A national institution should have a broad mandate to protect and promote fundamental rights and freedoms.²² The Paris Principles set out a list of functions that NHRIs should have. These include the power to comment on legislation or draft legislation, to address any situation of violation of human rights which it decides to take up, to prepare reports, advise and draw attention of the government to situation of human rights in the country and to engage with UN human rights mechanisms.

4.1 Legislative work

The Paris Principles state that a NHRI can be vested with the power to recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.

In line with the above principle, article 12 (b) of Law No. 26 of 2014 states that the NIHR shall “examine legislation and regulations enforced in the Kingdom which are related to human rights and recommend amendments as it deems fit”. It is also empowered “to recommend enacting new legislation related to human rights.”

Although the Bahrain NIHR is mandated to “... examine legislation and regulations ...”, scanning the Annual reports published by the Bahrain NIHR shows that they are only expressing NIHR views on issues referred to it by the Council of Representatives and the Shura Council as Advisory Opinions and not taking any in initiative to examine and recommend changes to existing law and regulations themselves.

²² Paragraph A.2 of the Paris Principles.



Since its inception, the NIHR has addressed only fourteen draft laws to the Council of Representatives and the Shura Council.²³ Although, the NIHR has commented on several pieces of legislations pertaining to civil and political rights such as freedom of assembly, we regret that it did not comment on the controversial Bahrain's political isolation laws, passed in June and August 2018, which bars opposition members from fully participating in political and civil life.²⁴

Although it has previously supported legislation that would allow Bahraini women to pass their nationality to their children,²⁵ it has failed to address other issues that are not in line with international standards.

For instance, in its 2018 Concluding Observations, the Human Rights Committee expressed its concern about the restrictions imposed on freedom of expression and the large number of arrests and prosecutions of individuals criticizing state authorities.²⁶ In particular, it recommended that Bahrain "review and amend the provisions of the Criminal Code, Decree Law No. 47 [of 2002, also known as the Press Law] and regulations on digital rights to bring them into line with article 19 of the Covenant and general comment No. 34 (2011)".²⁷

The NIHR has largely failed to propose such amendments – yet criticise these legislations, including a decree that imposes a seven-year prison sentence for publicly insulting the King.²⁸ Instead, in April 2021, the cabinet approved amendments to the existing Press Law.²⁹ The amendments include provisions that would further restrict and control online content by journalists and website hosts and includes criminal penalties for violations.³⁰ Moreover, those tried under the criminal code or antiterrorism laws can face longer sentences than under the Press Law – especially for social media activity, where the press law is not applied.³¹ This framework has not been addressed either by the NIHR.

As such, it has consistently failed to address important restrictive legislations such as – but not limited to: the discrimination against women in the Penal Code;³² the failure to ban corporal punishment against children in Law No.4/2021; the sentencing of those convicted on the basis of the counterterrorism legal framework to the death penalty; Royal Decree No. 1 of 2017, by

²³ A list of the draft laws and advisory opinions submitted to the council of representatives, can be accessed on the official website of the Bahraini NIHR, at: <https://www.nihr.org.bh/EN/Consultative> (accessed 18 May 2023).

²⁴ AP News, *Bahrain king enacts law on banning candidates from elections*, 11 June 2018, available at: <https://apnews.com/article/ecdba3b137c44570bd2b9139373bc1f3> (accessed 24 May 2023).

²⁵ See ADHRB, BCHR, BIRD, *Bahrain's Third Cycle UPR – A Record of Repression*, January 2017, [https://www.adhrb.org/2017/03/11848/#:~:text=Americans%20for%20Democracy%20%26%20Human%20Rights%20in%20Bahrain%20\(ADHRB\)%2C,UPR%3A%20A%20Record%20of%20Repression](https://www.adhrb.org/2017/03/11848/#:~:text=Americans%20for%20Democracy%20%26%20Human%20Rights%20in%20Bahrain%20(ADHRB)%2C,UPR%3A%20A%20Record%20of%20Repression) (accessed on 24 May 2023), p. 91. Article 4 of Bahrain's Decree Law No. 12 amending the Bahraini Citizenship Act of 1963 allows Bahraini mothers to only pass on their citizenship to their children under certain conditions not applicable to Bahraini fathers.

²⁶ Human Rights Committee, *Concluding Observations on the Initial Report of Bahrain*, 15 November 2018, UN Doc. CCPR/C/BHR/CO/1, para. 53.

²⁷ Ibid.

²⁸ See Bahrain Center for Human Rights, *Limited Freedom Of Expression In Bahrain: Arrested For Insulting The King*, 2013, available at: <http://www.bahrainrights.org/sites/default/files/insulting%20the%20king%2C%20Test%20.pdf> (accessed on 24 May 2023).

²⁹ Bawabaa News, *The Bahraini cabinet approves amendments to the press law* [in Arabic], 5 April 2021, available at: <https://bawabaa.org/news/middle-east/829715/> (accessed 18 May 2023).

³⁰ Al-Ayam, *Al-Ayam publishes the new press law* [in Arabic], 18 April 2021, available at: <https://www.alayam.com/alayam/first/903539/News.html> (accessed 18 May 2023).

³¹ Freedom House, *Bahrain*, Freedom on the net 2021, para. C2, available at: https://freedomhouse.org/country/bahrain/freedom-net/2021#footnote6_n7usa0e (accessed 18 May 2023).

³² See for instance article 353 of the Penal Code which exempts perpetrators of rape if they marry their victim and article 334 which reduces the penalties for "honor crimes".



which the National Security Agency (NSA), currently the National Intelligence Agency (NIA), re-stored its law enforcement powers³³ contrary to the Bahrain Independent Commission of Inquiry (BICI) recommendation No. 1718³⁴; and the constitutional amendment which opened up military trials to civilians.³⁵

4.2 Individual complaint procedure

Article 12 (e) of Law No. 26 of 2014 states that the NIHR shall “receive, examine, and consider complaints related to human rights, refer the complaints, which NIHR deems necessary, to the relevant authorities, follow-up the complaints effectively, or inform those concerned of the procedures that should be applied, help them take such procedures, or assist in the settlement of complaints with the relevant authorities.” The complaint procedure can be accessed on the NIHR’s website.³⁶

Following the recommendations of the Bahrain Independent Commission of Inquiry,³⁷ the government has created several bodies with which persons deprived of their liberty can file complaints about torture or ill-treatment. These bodies are: the Office of the Ombudsman (General Secretariat of Complaints) of the Ministry of the Interior, the Directorate of Internal Investigations of the Ministry of the Interior, the General Directorate of Reform and Rehabilitation of the Ministry of the Interior, the Ombudsman’s Office of the National Security Agency, the Special Investigation Unit in the Public Prosecutor’s Office, the NIHR and the Prisoners’ and Detainees’ Rights Commission.³⁸

The roles of each of these bodies are not easily delimited and somehow overlap. As the Committee Against Torture previously stated in their 2017 Concluding Observations, “it is concerned that those bodies are not independent, that their mandates are unclear and overlap, and that they are not effective given that complaints ultimately pass through the Ministry of the Interior.”³⁹

³³ Bahrain Center for Human Rights, *Disregarding BICI Recommendation, Bahrain Tightens Powerful Grip of National Security Agency (NSA)*, 18 January 2017, available at: <https://bahrainrights.net/?p=8448> (accessed on 25 May 2023).

³⁴ Bahrain Independent Commission of Inquiry, *Report of the Bahrain Independent Commission of Inquiry*, 23 November 2011, para. 1718, p. 432, available at: <https://www.bici.org.bh/BICReportEN.pdf> (accessed 25 May 2023).

³⁵ Amnesty International, *Bahrain: Disastrous move towards patently unfair military trials of civilians*, Amnesty International, 3 April 2017 available at : <https://www.amnesty.org/en/latest/press-release/2017/04/bahrain-disastrous-move-towards-patently-unfair-military-trials-of-civilians/> (accessed on 18 May 2023).

³⁶ The complaint mechanism can be accessed in English here: <https://www.nihr.org.bh/EN/complaintform> (accessed 24 May 2023).

³⁷ Bahrain Independent Commission of Inquiry, *Report of the Bahrain Independent Commission of Inquiry*, 23 November 2011, para. 1698, p. 418, available at: <https://www.bici.org.bh/BICReportEN.pdf> (accessed 25 May 2023).

³⁸ For a comprehensive overview of each of these bodies, you may refer to Bahrain Center for Human Rights, *Defective and deficient: a review Bahrain’s National human rights bodies*, 2021, available at: https://bahrainrights.net/wp-content/uploads/2021/05/A-Review-of-Bahrain-National-Human-Rights-Bodies_210421_RM.pdf (accessed 25 May 2023).

³⁹ Committee Against Torture, *Concluding observations on the second and third periodic reports of Bahrain*, 2017, para. 28, available at: file:///Users/falabsayed/Downloads/CAT_C_BHR_CO_2-3-EN.pdf (accessed on 1 June 2023)



In fact, the NIHR has regularly referred complaints to the Office of the Ombudsman, which is directly under the Ministry of Interior.⁴⁰ The Office of the Ombudsman is responsible for receiving complaints from detainees, their families, and human rights organizations and referring them to the appropriate investigating authorities.⁴¹ It seems as if their functions are quite vague and the collaboration between the two entities is unclear, leaving room for loopholes. There is a serious risk that each entity divest itself from addressing individual cases of torture and ill-treatments by simply saying that they have referred it to the other. There must be a clear differentiation between the two entities so that the NIHR cannot hide behind a referral to the Ombudsman in order to close a case.

Since 2016 and based on the data provided in its Annual Reports, the NIHR has addressed a fair number of complaints.⁴² In 2021, it received 98 complaints; in 2020 it received 53 complaints, mostly related to the COVID-19 pandemic; and according to the 2019 Annual Report, it received 793 complaints over the period of 2011-2019. According to the Bahrain Centre for Human Rights, the reports do not provide any information on the outcomes of these complaints, or the steps taken to resolve them if any.⁴³

The NGOs and human rights defenders we have consulted with were very critical of the NIHR's complaint mechanism and pointed to its lack of effectiveness. They claim to have no trust in this institution and that they do not see their complaint mechanism as an effective remedy. Some civil society organisations have reportedly tried to file complaints on behalf of victims' families, but unsuccessfully as there is a clear lack of trust from their side as well. We have had reports of a stateless child who had filed a case with the NIHR through its complaint mechanism. The Institution was later contacted and denied they received the case.

In their 2021 Annual Report, the NIHR has given an overview of each complaint it has received and how it has responded.⁴⁴ Many of the cases that are mentioned are health-related complaints, namely that the complainant or a member of his family did not receive the proper medical attention or medication.

Although the efforts of the NIHR in publishing information about the complaints received must be commended, it should be noted nonetheless that there is an apparent lack of information and transparency regarding their response. In 2018, the Human Rights Committee has in fact,

⁴⁰ National Institution for Human Rights, *Ninth Annual Report of the National Institutions for Human Rights in the Kingdom of Bahrain, 2021*, available at: https://www.nihr.org.bh/MediaHandler/GenericHandler/2022/NIHR_Annual%20Report%202021%20EN.pdf (accessed 25 May 2023).

⁴¹ For a comprehensive overview of each of these bodies, you may refer to Bahrain Center for Human Rights, *Defective and deficient: a review Bahrain's National human rights bodies*, 2021, p. 17, available at: https://bahrainrights.net/wp-content/uploads/2021/05/A-Review-of-Bahrains-National-Human-Rights-Bodies_210421_RM.pdf (accessed 25 May 2023).

⁴² All Annual Reports of the Bahraini NIHR can be found here in English: <https://www.nihr.org.bh/EN/eLibrary/?category=65> (accessed on 25 May 2023).

⁴³ Bahrain Centre for Human Rights, *A Review of Bahrain's National Human Rights Bodies, 2021*, https://bahrainrights.net/wp-content/uploads/2021/05/A-Review-of-Bahrains-National-Human-Rights-Bodies_210421_RM.pdf (accessed 25 May 2023).

⁴⁴ National Institution for Human Rights, *Ninth Annual Report of the National Institutions for Human Rights in the Kingdom of Bahrain, 2021*, available at: https://www.nihr.org.bh/MediaHandler/GenericHandler/2022/NIHR_Annual%20Report%202021%20EN.pdf (accessed 25 May 2023).



pointed out that “it regrets the lack of information on the complaints it has received and the investigations it has carried out in response to those complaints “. ⁴⁵

4.3 Responding to human rights violations

The efforts of the NIHR in making sure that detainees do not suffer from medical negligence while in detention is a positive act, although very much insufficient considering the human rights record of Bahrain during that year. For instance, the NIHR failed to address the case of 58 people who were arrested, detained, or prosecuted because of their online activities. ⁴⁶ Similarly, 13 prominent dissidents have been serving lengthy prison terms since their arrest in 2011 and 51 individuals have been sentenced to death since the uprising in 2011. ⁴⁷

In December 2017, a military court sentenced six men to death and revoked their citizenship on charges of forming a “terrorist cell;” the death penalty of four of them was later commuted to life imprisonment by the King of Bahrain. As a result, the NIHR issued a Fact-Finding Report of the National Institution for Human Rights on the Allegations of Torture and Enforced Disappearance Crimes against a number of convicts in the case known as (1/Terrorism/2017). ⁴⁸ In its report, the NIHR considered that “the referral of the case to the Military Justice is in accordance with the law.” ⁴⁹

According to Human Rights Watch, each of the eight defendants had credibly alleged that their confessions were extracted through torture and ill-treatment but the prosecution and courts failed to investigate these allegations and concluded that no ill-treatment or abuse had occurred in inconsistent and summary rulings. ⁵⁰ The Bahraini courts also consistently violated fundamental due process and fair trial rights during the prosecutions as none of the defendants were given access to a lawyer during interrogations, or to prosecution evidence used at trial or even witnesses. ⁵¹

Moreover, before his release in June 2020, the NIHR failed to address the case of prominent human rights defender Nabeel Rajab. ⁵² Rather, it commented on his trial as consistent with the principles of human rights and the legal rules and parameters, despite wide international call to the contrary. ⁵³

⁴⁵ See, Human Rights Committee, *Concluding Observations on the Initial Report of Bahrain*, 15 November 2018, UN Doc. CCPR/C/BHR/CO/1, para. 9.

⁴⁶ Human Rights Watch, *World Report 2022, Bahrain – Events of 2021, 2022*, available at: <https://www.hrw.org/world-report/2022/country-chapters/bahrain>.

⁴⁷ Human Rights Watch, “*The Court is Satisfied with the Confession*”: *Bahrain Death Sentences Follow Torture, Sham Trials*, 10 October 2022, available at: <https://www.hrw.org/report/2022/10/10/court-satisfied-confession/bahrain-death-sentences-follow-torture-sham-trials> (accessed on 24 May 2023).

⁴⁸ National Institution for Human Rights, *Fact-Finding Report of the National Institution for Human Rights on the Allegations of Torture and Enforced Disappearance Crimes against a number of Convicts in the case known as (1/Terrorism/2017)*, 2018, available at: http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/nihr1r_en.pdf (accessed on 25 May 2023).

⁴⁹ *Ibid.*

⁵⁰ Human Rights Watch, *Bahrain: Death Sentences Follow Torture, Sham Trials Court Records Show Pervasive Rights Violations*, 10 October 2022, available at: <https://www.hrw.org/news/2022/10/10/bahrain-death-sentences-follow-torture-sham-trials> (accessed 25 May 2023).

⁵¹ *Ibid.*

⁵² Front Line Defenders, *Case History: Nabeel Rajab*, available at: <https://www.frontlinedefenders.org/en/case/case-history-nabeel-rajab> (accessed on 24 May 2023).

⁵³ 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, p. 53, para 10, available at



Importantly, the NIHR did not comment on the court order to dissolve *Al-Wefaq* group on 14 June 2016; a dissolution that was addressed by the UN Secretary General as “the latest in a series of restrictions of the rights to peaceful assembly, freedom of association, and freedom of expression in Bahrain.”⁵⁴

There is a clear lack of effective action from the NIHR on various cases related to freedom of expression and a large margin of discretion left to decide about which complaint should be followed up with. Therefore, the NIHR clearly does not constitute an effective remedy for victims of human rights abuses in Bahrain.

4.4 Visits to places of deprivation of liberty and challenges

According to the Paris Principles, NHRIs are entitled to freely consider any situation falling within their competence and, for that end, to hear any person and obtain any information and any documents necessary for assessing the situation in question. This includes the ability to visit places of deprivation of liberty.⁵⁵

Article 12 of Law No. 26 of 2014 was amended by Decree-Law No. 20 of 2016 to include announced and unannounced visits in the scope of the mandate, pursuant to the SCA recommendation made in 2016. According to the amended article, the NIHR is able to “perform announced and unannounced field visits, to monitor human rights situation in correction institutions, detention centres, labour calls gathering, health and education centres, or any other public place in which it is suspected that human rights violations are taking place.” This amendment brings Law No. 26 of 2014 in line with the Paris Principles. However, it only does so in law, but not in practice.

Although the amendments of 2016 allow the Bahrain NIHR to conduct declared visits (prearranged) and non-declared visits (surprise visits) to places of detention, their annual reports do not provide detail of any surprise visits. As was noted by the SCA in 2016, there are continuous evidence showing that visits are not carried out in a spontaneous and adequate manner and there is not enough transparency in the documentation.

In fact, since 2017, human rights defenders and civil society organisations have been reporting harsh and life-threatening conditions in prisons and detention centres in Bahrain, specifically in three places which we will further examine in this report: the Jaw prison, Isa Town Prison and Dry Dock Detention Centre.⁵⁶

The Bahraini NIHR has conducted a field visit to Jaw Correction and Rehabilitation Centre on April 2021 after receiving reports by the General Directorate of Reformation and Rehabilitation

http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/NIHR_2017_En.pdf (accessed 24 May 2023).

⁵⁴ United Nations, *Secretary-General Deplores Dissolution of Main Opposition Party in Bahrain, Warning that Restrictions Risk Escalating Already Tense Situation*, 18 July 2016, available at: <https://press.un.org/en/2016/sgsm17935.doc.htm> (accessed on 24 May 2023).

⁵⁵ Paris Principles A.3 and D (d); SCA General Observations 1.6 on “Recommendations by NHRIs.”

⁵⁶ U.S Department of State, *2018 Country Reports on Human Rights Practices: Bahrain*, 2019, p. 3, available at: <https://www.state.gov/wp-content/uploads/2019/03/BAHRAIN-2018.pdf> (accessed on 24 May 2023).



indicating that there have been disturbances with inmates protesting. There have also been other visits over the year, namely on the 15, 17 and 18 August 2021.⁵⁷

The NIHR found that the detention of inmates at the Jaw prison “is done in accordance with a legal and civilised way, as well as with a high degree of self-restraint.”⁵⁸ It called on inmates themselves to refrain from protesting at the risk of depriving the provision of health and other services and strongly urged them to cooperate with directorate of the prison.⁵⁹

This finding is not in line with reports from civil society that recount a different reality. These include overcrowding, unsanitary conditions, lack of access to basic supplies such as drinking water and hygienic equipment, inadequate food and several instances of medical negligence.⁶⁰ These issues have not been addressed and have not been properly investigated by the NIHR.

In February 2023, the NIHR conducted another visit to the Jaw correction centre where it found that “all inmates enjoy their basic rights guaranteed by the law” and “in a manner that guarantees the preservation of the security of the centre and the safety and health of its inmates, in accordance with relevant international human rights standards”.⁶¹

This finding is contrary to several reports of medical negligence and mistreatments that were documented by civil society organisations in 2023: in May 2023, families of political detainees have announced that they lost contact with death row political detainees in Jaw prison;⁶² in April 2023, *Al Wefaq* and Salam for Democracy and Human Rights have documented several cases of arbitrary arrests of peaceful dissidents, instances of torture and ill-treatments and use of excessive force as a means to restrain them;⁶³ and in March 2023, there was several instances of medical negligence that were revealed such as the case of Mohammad Hasan Najjar who has been prevented from getting any medical treatment for the past three years.⁶⁴

Moreover, multiple UN human rights bodies have found that the standards of treatment in Jaw prison are not met. For instance, in a recent communication to the government of Bahrain, five special rapporteurs and the UN Working Group on Arbitrary Detention (WGAD) have found that they have received concerning allegations of torture, ill-treatment and punishment of human rights defender Abdulhadi Al-Khawaja while he is detained in the Jaw prison and a violation of his right to maintain contact with his lawyer.⁶⁵ In March 2023, the WGAD found that Naji Fateel

⁵⁷ National Institution for Human Rights, *Ninth Annual Report of the National Institutions for Human Rights in the Kingdom of Bahrain, 2021*, p. 180, available at: https://www.nihr.org.bh/MediaHandler/GenericHandler/2022/NIHR_Annual%20Report%202021%20EN.pdf (accessed 25 May 2023).

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ U.S Department of State, *2018 Country Reports on Human Rights Practices: Bahrain, op. cit.*, pp. 3-5.

⁶¹ National Institution for Human Rights, *NIHR Conducts an Announced Visit to the Correction and Rehabilitation Centre in Jaw Region*, 11 February 2023, available at: <https://www.nihr.org.bh/EN/News/11Feb2023.aspx> (accessed 24 May 2023).

⁶² Bahrain Mirror, *BFHR: 7 Days since Contact Lost with Death Row Political Detainees*, 22 May 2023, available at: <http://bahrainmirror.com/en/news/62877.html> (accessed 24 May 2023).

⁶³ Bahrain Mirror, *Al Wefaq: More Than 120 HR Violations During April 2023*, 11 May 2023, available at: <http://bahrainmirror.com/en/news/62820.html> (accessed on 23 May 2023); Bahrain Mirror, *"Rapid Intervention Forces" Target Jaw Prisoner with Pepper Spray*,

⁶⁴ Bahrain Mirror, *Detainee Mohammad Hasan Najjar: Jaw Prison Administration has been Preventing Me from Medical Appointments for 3 Years*, 5 April 2023, available at: <http://bahrainmirror.com/en/news/62631.html> (accessed on 23 May 2023).

⁶⁵ UN Special Procedures Communications Report, *Joint Communication to the government of the Kingdom of Bahrain*, 17 February 2023, available at:



was arbitrarily detained and tortured while in Jaw prison.⁶⁶ We may also recall the Human Rights Committee's concerns "about reports of torture in prisons, particularly in the Ja[w] prison."⁶⁷

On 30 September 2018, the NIHR has also conducted a visit to Isa Town Prison Centre. After it visited the prison, the NIHR determined that prison guards' actions were within the limits of reasonable force.⁶⁸ However, several female inmates held hunger strikes to protest detention harsh conditions in Isa Town Centre. They claim they were also subjected to other acts such as unwarranted strip searches, arbitrary revocation of family visitation rights and telephone calls, in retaliation for their political views. None of these issues were addressed or investigated by the NIHR.

In 2021, the NIHR also visited the Dry Dock Pretrial Detention Centre and the Youth Centre mainly to ensure that all inmates practice their religious rights in accordance with international standards.⁶⁹ The recommendations that were made after the visit are to have a "unified organisational preparations for the Ashura season in advance" and to "provide payer rugs and prayer stones for all inmates".⁷⁰ The visit was declared beforehand by the NIHR.⁷¹

Although the free practice of religious rights is a fundamental component of detention, the NIHR failed to identify important instances of violations and mistreatment suffered by individuals once transferred to Dry Dock Detention Centre. In particular, they failed to mention the lengthy detention awaiting trial (which usually amounts to several months), the prohibition of communication with the lawyer, the reports of overcrowding, medical negligence and lack of sanitation which led to multiple epidemics including COVID-19 and scabies outbreak.⁷²

A final issue to be noted in that matter is that the NIHR reports do not mention those detained on death-row at all and does not mention any special mechanism that aims to assess their detention conditions or to review that the guarantees of fair trial are respected, namely that they are provided with legal assistance. They have also continuously failed to provide opinions or issue statements on such cases.

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27854> (accessed on 23 May 2023).

⁶⁶ Working Group on Arbitrary Detention, *Opinion No. 65/2022 concerning Naji Fateel (Bahrain)*, 15 March 2023, UN doc. A/HRC/WGAD/2022/65, <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session95/A-HRC-WGAD-2022-65-AEV.pdf> (accessed on 23 May 2023).

⁶⁷ Human Rights Committee, *Concluding Observations on the Initial Report of Bahrain*, 15 November 2018, CCPR/C/BHR/CO/1, para. 37.

⁶⁸ U.S Department of State, *2018 Country Reports on Human Rights Practices: Bahrain*, p. 4.

⁶⁹ National Institution for Human Rights, *Statement by NIHR on Male and Female Inmate Practicing Ashura Rites*, 22 August 2021, available at: <https://www.nihr.org.bh/EN/News/22Aug2021.aspx> (accessed 24 May 2023).

⁷⁰ National Institution for Human Rights, *Ninth Annual Report of the National Institutions for Human Rights in the Kingdom of Bahrain, 2021*, pp. 180-181, https://www.nihr.org.bh/MediaHandler/GenericHandler/2022/NIHR_Annual%20Report%202021%20EN.pdf (accessed 25 May 2023).

⁷¹ National Institution for Human Rights, *Ninth Annual Report of the National Institutions for Human Rights in the Kingdom of Bahrain, 2021*, p. 180, https://www.nihr.org.bh/MediaHandler/GenericHandler/2022/NIHR_Annual%20Report%202021%20EN.pdf (accessed 25 May 2023).

⁷² For a detailed report of conditions of detention in Dry Dock Detention Centre, you may refer to ADHRB, *Chronology of Violations: from Arrest to Detention*, 5 April 2022, available at: <https://www.adhrb.org/2022/04/chronology-of-violations-from-arrest-to-detention/> (accessed 24 May 2023).



4.5 Reporting and interaction with human rights bodies

The SCA states in its General Observation 1.11 that “in publishing and widely disseminating its annual report, the National Institution will play an extremely important role in educating the public on the situation of human rights violations in the country”.⁷³

According to article 21 of Law No. 26 of 2014, as amended by Decree-Law No. 20 of 2016, the Council of Commissioners of the NIHR shall produce an annual report on the efforts, activities and work streams of the Institution. According to Article 12 item (d) of Law No. 26 of 2014, the NIHR shall also submit parallel reports which the Kingdom is obliged to submit periodically for the implementation of human rights conventions.

4.5.1 Annual Reports

The NIHR website contains a list of its annual reports from 2013 until 2022.⁷⁴ Overall, the reports document several human rights violations (for instance, the right to health or religious freedoms), however, it clearly misrepresents the situation in Bahrain as it relates to the right to freedom of expression, the practice of torture and arbitrary detention.

Several of such cases have never been mentioned in any annual report issued by the NIHR. Most importantly, the prolonged detention and ill-treatment of human rights defenders of Naji Fateel⁷⁵, Abdulhadi Al-Khawaja⁷⁶ and Abduljalil Al-Singace.⁷⁷ In June 2021, the UN Special Rapporteur on the situation of human rights defender called on the government of Bahrain to immediately release them and expressed her serious concern about the deterioration of their health after reports of torture and ill-treatments.⁷⁸ The clear criminalisation of human rights defenders in retaliation for their peaceful and legitimate activities was never addressed by the NIHR.

Moreover, throughout the different Annual reports of the NIHR we may see a listing of recommendations addressed to the competent authorities, per Topic.⁷⁹ Many of these recommendations relate to the lack of timely response from the authorities to address a certain human rights issue. In the following year reports, there is no follow up and no information on whether they did get any response. The NIHR does not provide any comment on the reply of the government to their recommendations.⁸⁰ The NIHR does not state whether it accepts the reply, or whether further action is necessary; it simply recounts the reply.

⁷³ See ICC SCA General Observations No. 1.11, p. 38.

⁷⁴ All the reports published in English are available on the website of the NIHR, here: <https://www.nihr.org.bh/EN/eLibrary/?category=65> (accessed 24 May 2023).

⁷⁵ Front line Defenders, *Case history: Naji Fateel*, available at: <https://www.frontlinedefenders.org/en/case/case-history-naji-fateel> (accessed on 24 May 2023).

⁷⁶ Front Line Defenders, *Detained human rights defender Abdulhadi Al-Khawaja begins hunger strike*, available at: <https://www.frontlinedefenders.org/en/case/detained-human-rights-defender-abdulhadi-al-khawaja-begins-hunger-strike> (accessed on 24 May 2023).

⁷⁷ Front Line Defenders, *Dr Abduljalil Al Singace*, available at: <https://www.frontlinedefenders.org/fr/profile/dr-abduljalil-al-singace> (accessed on 24 May 2023).

⁷⁸ United Nations Human Rights, *Bahrain: UN expert alarmed by prolonged detention of human rights defenders*, 22 June 2021, available at: <https://www.ohchr.org/en/press-releases/2021/06/bahrain-un-expert-alarmed-prolonged-detention-human-rights-defenders> (accessed 24 May 2023).

⁷⁹ The Annual Reports are usually organized per Chapter and per Topic.

⁸⁰ See, for instance, National Institution for Human Rights, *Ninth Annual Report of the National Institutions for Human Rights in the Kingdom of Bahrain*, 2021, pp. 42 ss.



The NIHR's Annual Reports do not mention any direct meetings with the authorities to discuss human rights issues, no reference to any agenda or minutes taken during such meetings and no concrete action plan that is agreed upon with the governing entity in Bahrain.

4.5.2 Reporting to UN bodies

As for its engagement with UN bodies, the NIHR has regularly submitted parallel reports to Treaty Bodies and in the course of the Universal Periodic review of the Kingdom of Bahrain.⁸¹ The NIHR has been submitting reports to Treaty Bodies only since 2017. It has submitted to the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of Persons with Disabilities, the Committee on the Rights of Child, the Human Rights Committee and the Committee Against Torture. It is striking to see however, that a number of the concerns expressed by the Human Rights Committee in its Concluding Observations were reflected in the parallel report submitted earlier by the NIHR.

For instance the Human Rights Committee expressed its concern about the allegation of torture committed by law enforcement officials, in prison and detention centres, including the lack of information on investigations regarding these allegations.⁸² The NIHR summarily mentioned such allegations of torture by stating in its parallel report that it had received 19 complaints during 2017.⁸³ However, it held that "in some cases the allegations were inaccurate" without substantiating their finding, and that in other cases, it referred the case to the Special Investigation Unit at the Public Prosecutor Office (PPO).⁸⁴ The PPO has long been failing to hold accountable perpetrators of such acts and prosecutors have continued to work closely with the security force and are often complicit in their abuses.⁸⁵ The NIHR should therefore not consider the PPO as an effective remedy to rely upon by referring cases of torture.

Similarly, it failed to mention the cases of Nabeel Rajab, Zainab al-Khawaja, Ghada Jamsheer, Qasim Zainal Deen, Ahmed al-Fardan, Faisal Hayyt and others who were wrongfully arrested for exercising their right to freedom of expression, including the suspension of *Al-Wasat* (which was said to be the country's only semi-independent newspaper). These violations were later mentioned by the Human Rights Committee its Concluding Observations.⁸⁶

https://www.nihr.org.bh/MediaHandler/GenericHandler/2022/NIHR_Annual%20Report%202021%20EN.pdf

(accessed 25 May 2023).

⁸¹ All the parallel reports are published in English and available on the website of the NIHR, here: <https://www.nihr.org.bh/EN/About/Reports> (accessed 24 May 2023).

⁸² See, Human Rights Committee, *Concluding Observations on the Initial Report of Bahrain*, 15 November 2018, UN Doc. CCPR/C/BHR/CO/1, para. 37.

⁸³ See National Institution for Human Rights, *Parallel Report submitted by the National Institution for Human Rights on The Initial Report of the Kingdom of Bahrain regarding the progress made in the implementation of the provisions of the International Covenant on Civil and Political Rights*, 2018, para 3.13, available at: https://www.nihr.org.bh/EN/About/Reports/MediaHandler/GenericHandler/2022/Reports/06_EN.pdf (accessed 24 May 2023).

⁸⁴ Ibid. The PPO was made responsible of addressing cases of torture and ill-treatment through Royal Decree No. 52.

⁸⁵ Americans for Democracy & Human Rights in Bahrain (ADHRB) and Bahrain Center for Human Rights (BCHR), *For consideration at the 27th session of the UN working group in April-May 2017*, 22 September 2016, para. 15, available at: https://www.upr-info.org/sites/default/files/documents/2017-04/js15_upr27_bhr_e_main.pdf (accessed 25 May 2023).

⁸⁶ See, Human Rights Committee, *Concluding Observations on the Initial Report of Bahrain*, 15 November 2018, UN Doc. CCPR/C/BHR/CO/1, para. 53.



5 Membership

5.1 Appointment process

The mechanisms for the selection and appointment of members are among the most important elements to ensure the independence, diversity and accessibility of NHRIs.

The SCA states in its General Observation 1.8 that the selection and appointment process of the decision-making body of the NHRI should be “characterised by openness and transparency, i.e., it should be under the control of an independent and credible body and include open and fair consultation with NGOs and civil society.”

The NIHR is headed by the Chairperson. It is composed of eleven members, including the Chair-person and the Vice-Chairperson, constituting the Council of Commissioners (the decision-making body).⁸⁷

The process for selecting the members is not specified in Law No. 26 of 2014 as amended by Decree-Law No. 20 of 2016. The amendments simply mention that the Members of the Council of Commissioners shall be appointed by a Royal Decree,⁸⁸ i.e., by the King. There is no procedure or independent entity that oversees appointing the members and reviewing their candidacy. The names of the members are spontaneously published by a royal decree at the end of each term.

According to article 3 (c) of Law No. 26 of 2014 as amended by Decree Law No 20 of 2016:

Article 3

(...)

(c) A Royal decree shall be issued to determine the mechanisms, procedures and the selection process of members of the Council of Commissioners.”

This provision constitutes the legal basis for the enactment of Royal Decree No. 17 of 2017, according to which it is supposed to provide “mechanisms & procedures for selecting the commissioners”. However, clearly the royal decree has largely failed to do so and as such, does not satisfy the requirements set by the Paris Principles. Royal Decree No. 17 is composed of four summary articles, none of which touch upon the procedural aspect of the selection of members.

Therefore, based on this legal framework, the King has the sole power to name the members of the NIHR without any external oversight.⁸⁹ We therefore believe that Law No. 26 should be further amended to bring legal clarity regarding the selection of the members and to install a procedure that would ensure the independence and impartiality of the selected members.

⁸⁷ https://bahrainrights.net/wp-content/uploads/2021/05/A-Review-of-Bahrain-National-Human-Rights-Bodies_210421_RM.pdf

⁸⁸ See Article 5 item (a) of Law No. 26 of 2014: “Members of the Council of Commissioners shall be appointed by a Royal Decree for a similar renewable period of four years, after consultation with civil society.”

⁸⁹ Ibid. Civil society simply has a consultative status in these appointments, and in any case, organisation that are considered critical of the government have all been banned since 2017 and 2018 with the “political isolation law” (see Section 2 of this report).



Although Members of the Council of Commissioners are appointed by Royal Decree after consultation with civil society under article 5 (a) of Decree-Law No. (20) of 2016, civil society members we have consulted have never been approached regarding the appointment of the Council of Commissioners. If there is a consultation of civil society, it is closely overseen by the government of Bahrain who will choose to consult with a selected number of organisations that are in line with their policies. In fact, Bahraini civil society has shrunk considerably since 2011, partially due to the political isolation laws that were enacted in 2018.⁹⁰

It is therefore clear that in practice, the selection is made by the King only, who is vested with legislative and executive powers according to the Bahraini Constitution, acting with no external oversight.

We therefore affirm that appointment process currently in place is not in line with the General Observation, which provides that the selection and appointment process of the decision-making body of the NHRI should be “characterised by openness and transparency, i.e. it should be under the control of an independent and credible body and include open and fair consultation with NGOs and civil society.”

5.2 Independence of members

5.2.1 Qualifications of members

Article 4 of Law No. 26 of 2014 stipulates the membership conditions of the NIHR’s Council of Commissioners:

The Members of the Council of Commissioners shall meet the following conditions:

- a. To be a Bahraini national;
- b. To have completed at least thirty calendar years;
- c. To have knowledge of and concern with human rights issues;
- d. To be of good conduct and reputation; and
- e. Not to have been convicted by a final decision with a criminal punishment or a freedom constraining punishment in a crime against honor or honesty, unless the Member has been rehabilitated.

The amendments in question do not specify the “merits” to be considered, respectively which criteria should be taken into account when selecting a member of the Council of Commissioner, such as skills, gender, expertise, membership to a national minority, etc. For this reason, the government of Bahrain has adopted Royal Order No. 17 of 2017 Determining the Controls Governing the Appointment of Members of the Council of Commissioners at the National Institution for Human Rights, according to which:

Article 2:

The selection of members of the Council of Commissioners shall be based on the following considerations:

1. To represent all spectrums of society without any discrimination on the basis of gender, origin, religion, creed or disability.
2. Women are to be properly represented.

⁹⁰ See contextual background in Section 2 of this report.



3. Minorities to be represented.
4. The inclusion among the above categories an appropriate number of specialists in the legal, human rights and other fields that fall at the core work of the NIHR.
5. Conflict of interests are to be prevented, either directly or indirectly.

The amendments as they are formulated, does not ensure that the selection is carried out on the basis of clarity and transparency. It simply lays out potential background of candidates to be considered, but it does not set objective criteria, level of expertise and educational qualifications as was required by the SCA in its recommendations.

The terminology currently used is quite vague; for instance: “knowledge and concern with human rights issues” in article 4 of Law No. 26 of 2014 does not ensure that the members will in fact hold the government of Bahrain accountable when there are violations of human rights.

According to Article 1 of Royal Order No. 17:

To ensure their independence, a member of NIHR’s Council of Commissioners and in addition to membership conditions stipulated in Article (4) of Law (26) of 2014 on the Establishment of the NIHR, he/she shall fulfil the following requirements:

1. Not to belong to any political society, excluding members of the legislature who shall have the right to debate without voting.
2. Full-time members shall have a higher academic qualification and shall speak one of the official languages of the United Nations in addition to the Arabic language.
3. For those appointed from civil society organizations, and professional and trade union organizations, they shall have been members for a minimum of two years.
4. For those appointed from academic bodies, they shall be at least at an assistant professor rank.
5. They shall have clear and concrete contributions in the area of human rights.

The wording of this law is kept intentionally restrictive. Although some qualifications are indeed mentioned such as professorship and linguistic capacities, these do not ensure that the members selected will carry out their mandate independently. In fact, the requirement according to which full-time members shall have a higher academic qualification is quite restrictive and does not reflect the demographic spectrum of Bahraini society and the range of professionals in civil society organisations who are qualified without a “higher academic qualification”. This requirement does indeed aim to preserve a certain level of expertise within the NIHR, however it does not ensure the independence of these individuals.

The participatory selection is not sufficiently provided for either. Although it is provided in the law in article 5 item (a) that “appointments shall take place after consultation with relevant civil society organisations and various other groups”, none of the civil society organisations we have contacted have ever been consulted on the selection of members. Moreover, civil society organisations simply have a consultative status in that regard.

Moreover, Article 1, Item 5 of Royal Decree No. 17 of 2017 provides that those appointed as Commissioners “... must have Clear and tangible prior contributions in the area of human rights.”



None of the current commissioners show any such prior tangible contributions (before joining the NIHR). In fact, current sitting commissioners do not necessarily have a corresponding background and experience for their position. For instance, Chairman Ali Ahmed Al Derazi does not have a previous background in the human rights field. His area of expertise is related to civil engineering and his main occupation is a civil contractor.⁹¹ He clearly does not have experience in addressing complaints of victims or investigating human rights violations, let alone correctly identify situations where human rights may be at risk.

The same observation can be made about several other commissioners. For instance, Dr. Fawzeya Saeed Abdulla Al-Saleh is an assistant professor in chemistry with a background that is exclusively scientific and no apparent experience in furthering human rights in Bahrain. Only one commissioner has a background in civil society and in the field of human rights.⁹² Most of them have a background in business and economics without any experience in the field of human rights.

In fact, according to some of the organisations we have consulted with, several previous Chairmen were later appointed to higher positions within the government. Membership to the NIHR is perceived as merely a step for higher government appointments. For instance, Mr. Ahmed Abdulrahman Mahmood Alsaati was nominated as commissioner at the NIHR by Royal Order No. 7 of 2013⁹³ and was later appointed as Ambassador of the Kingdom of Bahrain to the Russian Federation.⁹⁴

5.2.2 Members who hold governmental or legislative positions

It is important to reiterate the SCA's recommendation regarding members of the Council of Commissioners who are simultaneously sitting members in the legislative. On that note, the SCA held that "members of parliament should not be members of, nor participate in, the decision-making organs of an NHRI."

Despite this recommendation, article 3 of the Law No. 26 provides that "members may be selected from members of the legislative authorities". Although it provides that they cannot form a majority and are not able to vote, they are explicitly allowed to "participate in discussions" nonetheless.

Here we may recall that the Bahraini parliament is simply a mock parliament that is under the direct authority of the King.⁹⁵ Commissioners in the NIHR who are simultaneously sitting parliamentarians, are themselves under the direct authority of the King who embodies the legislative and the executive which considerably undermines the independence of the NIHR as a whole.

This is unfortunately not a strong guarantee that they will not inappropriately influence the discussions and the decision-making. The participation of such representatives is not even

⁹¹ The resumes of the all the commissioners are accessible on the NIHR's website, here: <https://www.nihr.org.bh/EN/Organisation/CommissionerMain>.

⁹² See resume of lawyer Deena Abdulrahman Alladhi, available at: https://www.nihr.org.bh/MediaHandler/GenericHandler/2023/CV/08_Deena/Mrs%20Deena_EN.pdf.

⁹³ See Article 1 of Royal Order No. 7 of 2013 re-forming the national institution for human rights, available at: <https://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/9-%20NIHR%20Book.pdf> (p. 20, accessed on 25 May 2023).

⁹⁴ See list of ambassadors, Ministry of Foreign Affairs, Heads of Diplomatic Missions of the Kingdom of Bahrain, available at: <https://www.mofa.gov.bh/Default.aspx?tabid=12269&language=en-US> (accessed on 25 May 2023).

⁹⁵ See Section 3.1 of this report.



restricted to those whose roles and function are of direct relevance to the mandate of the NIHR.

Finally, it is important for the SCA to take note of current commissioners who are simultaneously holding a governmental position. In this regard, we have found that all commissioners, except for Mr Daniel Cohen, hold such a position which considerably undermines their independence and their ability to hold the government accountable when necessary. For an overview of the background of each commissioner and their Royal or governmental appointments, you may refer to the table found in Annex 1 of this report.⁹⁶

6 Conclusions and recommendations

In order to comply with the Paris Principles, the NIHR should demonstrate real independence in the exercise of its mandate and ensure that it remains neutral and impartial in all circumstances in order to benefit from the confidence of citizens and civil society as a whole.

The NIHR has been operating in a context of widespread violations of human rights and where civic space is severely restricted.

As a result, we ask the SCA to address the following recommendations to the Bahraini NIHR and King Hamad Bin Isa Al Khalifa:

a) Effectiveness of the mandate and independence from other branches

1. Allow any individual to run for candidacy for the Council of Commissioners, including individuals who are considered to be in opposition with the government.
2. Ensure that changes in the law that restrict fundamental freedoms, be addressed by the NIHR.
3. Review and propose amendments with regards to the criminal code, the Press Law and any other framework that may result in a violation of fundamental rights by the Bahraini government.
4. Ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously and with consistency.
5. Refrain from being overly selective in addressing complaints.
6. Encourage the NIHR to conduct more unannounced visits to places of detention and to monitor, investigate and report on the human rights situation in such places.
7. Encourage the NIHR to make their full reports on monitoring detention facilities public instead of issuing public statements.
8. Encourage the NIHR to investigate individual cases and bring them to the attention of international human rights bodies in its reporting activities.

b) Membership

⁹⁶ Page 23 of this report.



9. Put in place a merit-based selection process.
10. Remove the obligation to hold a higher academic qualification to reflect the demographic makeup of Bahraini society and the wide range of professionals in civil society organisations who do not hold a university degree.
11. Ensure that the nomination process includes requirements for broad consultation and participation of civil society representatives in the screening and selection process.
12. Establish an independent and credible body responsible of the appointment process.
13. Restrict the participation of individuals who are simultaneously sitting parliamentarians, by at least ensuring that they do not participate in important discussions.

ANNEX 1⁹⁷

Commissioner Name	Date Joining	BSc Degree	Royal and Government appointments	Comments
Ali Ahmed Alderazi	2021	Civil Engineer	Member of the Advisory Body, The Supreme Council of the Gulf Cooperation Council (GCC), (2017-2020) Member of the National Committee to Follow up on Implementation, the Bahrain Independent Commission of Inquiry (2011)	No prior Human Rights activities. No NGO activities Member of House of Representatives (2011 - 2014).
Khalid Abdulaziz Al Shaer	2015			Member of House of Representatives (2011 - 2014). Head of Committee on Human Rights in House of Representatives. No other Human Rights activities. No NGO activities
Fawzeya Saeed Al-Saleh	2013 to 2015. Since 2019	Chemistry	Member of the Supreme Council for Women (2010-2013) Member of the Shura Council (2002-2010)	No prior Human Rights activities. No NGO activities
Malalla Alhammadi	2019	Law	Board of Directors of Social Insurance Organization (Current)	No prior Human Rights activities. No NGO activities

⁹⁷ Table drafted from the resumes of the commission available on the NIHR's website.



			<p>Director of the Legislation and Official Gazette Department of the Legislation and Legal Opinion Commission (Current)</p> <p>Board of Directors – Bahrain Tender Board (2003-2006)</p> <p>Member of VAT Appeals Review Committee – National Bureau of Revenue (Current)</p> <p>Worked in the Bahrain Defence Force (1979 to 1995)</p>	<p>Represented the Government in many local and GCC committees and events.</p> <p>Was Member of the Government team for negotiation of the free trade agreement with the USA</p>
Rawdha Salman Alaradi	2017	Analytical Chemistry	<p>HR & Training Manager, Aluminum Bahrain (ALBA) (Current)</p> <p>Board of Trustees – Nasser Vocational Training Centre (NVTC) (Current)</p>	<p>No prior Human Rights activities.</p> <p>No NGO activities</p>
Deena Abdulrahman Alladhi	2017	Law	<p>Senior Lawyer at the Survey and Land Registration Bureau (past)</p>	<p>Chairperson of the Manama Centre for Human Rights (registered as an NGO)</p> <p>Twitter & Instagram (@mchr_bahrain)</p> <p>Deena has many articles in local papers and social media praising the government and all its activities. Many articles also denounce reports from International HR organizations</p>

Bader Mohamed	2014	Law	Assistant Professor of Law, University of Bahrain	No prior Human Rights activities No NGO activities
Hooreya Abbas Hasan	2021	Arabic Language and Education	Member of the Supreme Council for Women (since 2019) Board of Trustees of the Bahrain Institute for Political Development (since 2019) (Under the appointed Shura Council)	No prior Human Rights activities Deputy Chairperson of ALWANE Society (NGO), a women empowerment society Not very active and is not member of the Bahrain Women Union
Hala Ramzy Fayez	2021	Business Admin.	Member of Shura Council (Since 2010) Director General, Planning & Administrative Affairs, Customs Affairs, Ministry of Interior (2006-2010)	Member of the Bahrain Society of Human Rights Watch, dealing with Women and Minorities Affairs (2003- 2008) Information from the Bahrain Ministry of Social Development website shows no details of this NGO. No recent Board elections. No activities has been observed of this NGO in recent years.
Ahmed Subah Alsloom	2021	Information and Systems Management	Member of the Advisory Body, The Supreme Council of the Gulf Cooperation Council (GCC), (since 2020)	No prior Human Rights activities. Member of House of Representatives (since 2018).



				Member of National Committee of Standardization and Metrology (since 2017).	Board Member of Bahrain Chamber of Commerce (since 2018).
Daniel Cohen	M.	2021	Economics		No prior Human Rights activities.



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