

Americans for Democracy



& Human Rights in Bahrain

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**Civil Society Report on the Implementation of Chapter II (Prevention) & Chapter III
(Criminalization and Law Enforcement) of the United Nations Convention Against Corruption
In Bahrain**

By

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I. Introduction

The Kingdom of Bahrain signed and ratified the United Nations Convention against Corruption (“UNCAC”) on February 8, 2005 and October 5, 2010, respectively. This report reviews and assesses Bahrain’s implementation of specific articles contained in Chapter II (Preventive Measures) and Chapter III (Criminalization and law enforcement) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process, to assess the ways in which Bahrain has implemented such articles.

Scope

The UNCAC articles and topics under Chapter II that receive particular attention in this report are:

- Article 5: Preventive Anti-Corruption Policies and Practices;
- Article 10: Access to Information;
- Article 11: Judiciary and Prosecution Service; and
- Article 13.1: Participation of Society.

Moreover, this report also covers specific articles and topics contained in Chapter III of the UNCAC, including:

- Article 17: Embezzlement, Misappropriation or Other Diversion of Property by a Public Official; and
- Article 20: Illicit Enrichment.

Structure

The report begins with an executive summary, which includes the findings of the report, the availability of information, key recommendations, as well as the implementation and enforcement of specific UNCAC articles. The following section discusses the transparency of the review process of Bahrain, as well a more detailed discussion of the issues regarding access to information. The implementation of specific articles from the Convention are then reviewed, with examples of good practices and deficiencies. Recent developments are then discussed,

followed by the provision of recommendations for priority actions which will improve the implementation of the UNCAC.

Methodology

This report has been prepared by Americans for Democracy & Human Rights in Bahrain (ADHRB). ADHRB has strived to obtain information for the report from civil society organizations (“CSOs”), whose names cannot be mentioned for confidentiality reasons; governmental entities such as the National Audit Office and the Supreme Judicial Council; and other Bahraini individuals, including a prominent Bahraini lawyer. Despite efforts to include governmental entities within the report, these offices failed to reply to our requests and are thus not fully represented.

This report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for CSOs, which served as the structure for this report. In preparing this report, ADHRB considered the two UNCAC reviews that have been conducted on Bahrain. However, this was done using only the Executive Summaries found on the UNODC website, since Bahrain did not agree to make the contents of the full government report public.¹

II. Executive Summary

Bahrain has not made any significant progress towards the development of a normative legal framework for the implementation of Chapter II (Preventive Measures) and Chapter III (Criminalization and Law Enforcement) of the UNCAC. Lack of political will constitutes a significant drawback in fostering effective corruption prevention, and the establishment of a clear path to enforce the few existing laws. The results of the current anti-corruption efforts are far from adequate, and a concrete anti-corruption scheme has thus far failed to be implemented. The Government of Bahrain has yet to show interest in, and genuine commitment to, enforcing anti-corruption laws and punishing offenders. The sole ostensible progress made surrounds the adopted of a national anti-corruption strategy by the Ministry of Interior of Bahrain between

¹ United Nations Office on Drugs and Crime, Bahrain’s Country Profile on Corruption, Available online: <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fbhr.html> (Last accessed 2 November 2021).

2013 and 2018. This strategy ranged from establishing a competent authority to combat corruption, to drafting a concrete anti-corruption law. However, the strategy has not been implemented and the promulgation of a coherent and compressive legislative framework for corruption prevention is yet to occur.

Aside from a 2009 draft law on access to information which was never enacted, the institutional arrangements for corruption prevention in Bahrain are reflected in only a few constitutional provisions which aim to ensure the independence of the judiciary. Article 32 of the Bahraini Constitution provides for the separation of the legislative, executive, and judicial powers. Furthermore, the Judicial Authority Act allows for the appointment, qualification, accountability, immunity, and dismissal of judges. However, the constitutional framework aimed at preventing corruption in the judiciary is contradictory, as all judges, including the members of the Constitutional Court, are directly appointed by royal decree. Further, the King chairs the High Judicial Council and holds authority over all administrative matters of the judiciary. As a consequence, it is evident that the constitutional structure aimed at guaranteeing the independence of the judiciary has been adequately regarded, rendering the judicial system in Bahrain fully dependent upon the influence of the royal family.

The situation in Bahrain becomes even worse when it comes to the promotion of active participation of civil society in combating corruption as enshrined in Article 13 of the UNCAC. This article establishes the fundamental role of individuals, civil society organizations, community-based organizations, and non-governmental organizations in preventing corruption and raising public awareness regarding its existence. Despite the Bahraini Constitution's guarantee of the rights to freedom of association and expression, the Bahraini government is far from respecting such provisions. Instead, Bahrain strongly restricts these rights, confining civil society space and severely undermining the activity of CSOs.

The Bahraini government's disregard for UNCAC is also prevalent with regards to Chapter III on Criminalization and Law Enforcement. Articles 194 to 201 of Bahrain's Criminal Code establish the offences of "embezzlement of and damage to public property." However, despite these provisions, there are deeply entrenched mechanisms within the Kingdom which allow the King and members of the Royal Family to take advantage of public property. In addition, Act

No. 32 of 2010 criminalizes illicit enrichment, and establishes that high-ranking public officials must reveal their financial information. Nevertheless, there remains no trace of such actions and transparency remains a fundamental issue in the country.

1. Conduct of Process

The information contained in this report was compiled without the participation of government entities, who did not respond to requests for information. More details about the level of transparency in Bahrain are provided in Chapter II of this report.

TABLE 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country's focal point?	No
Was civil society consulted in the preparation of the self-assessment?	Unknown
Was the self-assessment published online or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Unknown
Has the government committed to publishing the full country report?	No

1. Availability of Information

Access to information required for this report from government entities was completely absent. Prior to the writing of this report, ADHRB requested that the Bahraini National Audit Office (“NAO”) provide information in the form of financial and performance audits in the last three years. As the NAO did not respond, this has limited government input in the compilation of this

report. In addition, ADHRB contacted the Supreme Judicial Council requesting access to financial disclosures, but did not receive a reply.

1. Implementation into Law and Enforcement

Bahrain’s legislative framework for combatting corruption is fundamentally inadequate and there are no key authorities involved in corruption prevention. Crucial gaps exist in the country’s anti-corruption framework, as evidenced by the lack of coherent schemes to prevent and combat corruption. The lack of institutional willingness, the interference of the royal family in the investigation and prosecution of corruption, as well as the total impunity of perpetrators, are among the persisting issues that must be addressed in order to make the fight against corruption more effective.

TABLE 2: Implementation and Enforcement Summary Table

UNCAC ARTICLE	STATUS OF IMPLEMENTATION (IS THE ARTICLE FULLY / PARTIALLY / NOT IMPLEMENTED?)	HOW ARE THESE PROVISIONS ENFORCED IN PRACTICE? (GOOD/ MODERATE/ POOR)
Art. 5 - Preventive anti-corruption policies and practices	Not implemented	Poor
Art. 10 - Public reporting	Not implemented	Poor

Art. 11 - Measures relating to the judiciary and prosecution services	Partially	Poor
Art. 13.1 - Participation of society	Partially	Poor
Art. 17 - Embezzlement, misappropriation or other diversion of property by a public official	Fully	Poor
Art. 20 - Illicit Enrichment	Fully	Poor

1. Recommendations for Priority Actions

We strongly urge the Government of Bahrain to:

1. Sign the UNCAC Coalition's Transparency Pledge in order to interact with CSOs and to ensure they are being consulted in the UNCAC review process and in the fight against corruption in general;
2. Adopt a new anti-corruption policy and enhance integrity and accountability efforts on all political levels;
3. Enact laws that protect the right of access to information, allowing the public to exercise their civil and political rights and effectively engage in the democratic process in accordance with Bahrain's international human rights obligations;

4. Ensure that its constitutional and conventional obligations are enforced and independently monitored to provide for the independence of the judiciary; and
5. Investigate the unexplainable wealth of the King and members of the ruling elite, as well as cases in which public property has been transferred into private ownership, in order to hold those individuals accountable.

III. Assessment of the Review Process for Bahrain

1. Report on the Review Process

TABLE 3: Transparency of Bahrain’s UNCAC Review Process

TRANSPARENCY OF THE GOVERNMENT’S UNDERTAKING OF THE REVIEW PROCESS		
Did the government disclose information about the country focal point?	No	
Was the review schedule known?	No	

<p>Was civil society consulted in the preparation of the self-assessment?</p>	<p>Unknown</p> <p>If yes, who was consulted? (Please tick)</p> <p><input type="checkbox"/> Access to information groups</p> <p><input type="checkbox"/> Academic networks</p> <p><input type="checkbox"/> Anti-corruption groups</p> <p><input type="checkbox"/> Trade unions</p> <p><input type="checkbox"/> Women's groups</p> <p><input type="checkbox"/> Other (please list)</p>	<p>It is unknown whether civil society was actually consulted since the government is silent in that matter. There is no accessible information published by the government stating if civil society was consulted and if they were no information was published stating who was consulted. Nevertheless, it is important to note that even if civil society was consulted, the only functioning civil societies left in Bahrain are those affiliated to the government as the authorities have shut down all civil society organizations that are critical of the government and has arrested their members.</p>
<p>Was the self-assessment published online</p>	<p>No</p>	

or provided to civil society?		
Did the government agree to a country visit?	Yes	
Was a country visit undertaken?	Yes	It was taken on 11-13 February 2019

<p>Was civil society invited to provide input to the official reviewers?</p>	<p>Unknown</p> <p>If yes, who was invited? (Please tick)</p> <p><input type="checkbox"/> Access to information groups</p> <p><input type="checkbox"/> Academic networks</p> <p><input type="checkbox"/> Anti-corruption groups</p> <p><input type="checkbox"/> Trade unions</p> <p><input type="checkbox"/> Women's groups</p> <p><input type="checkbox"/> Other (please list)</p>	<p>See comment above regarding the participation of civil society.</p>
<p>Was the private sector invited to provide input to</p>	<p>Unknown</p>	<p>As previously mentioned, the government has not published anything in this regard.</p>

the official reviewers?		
Has the government committed to publishing the full country report?	No	

1. Access to Information

Access to information is not a protected right within the Bahraini Constitution. On November 17, 2009, the Bahraini House of Representatives approved a draft law on access to information, which was referred to the Shura Council for approval. In May 2010, the law was discussed by the appointed Shura Council, where its enactment was postponed indefinitely. Ultimately, the Shura Council decided that adopting a law “protecting state information and documents” should precede the adoption of a law guaranteeing the right of access to information. As such, Law No. 16 of 2014 was adopted concerning the protection of state information and documents. Seven years later, any laws surrounding public access to information has yet to be approved.

In addition, following both UNCAC reviews of Bahrain, the government did not agree to publish the full country report to the public, making it more difficult for individuals and CSOs to assess in detail what was discussed in the review process. This has notably made it more difficult for ADHRB to compile this report, as we were forced to rely only on the government’s executive summary and expert list. As such, we have sourced our information from a range of sources, including individuals in Bahrain, other CSOs, the media, and information provided by a prominent Bahraini lawyer whose name cannot be mentioned due to security and confidentiality reasons.

Information on cases and state reports was difficult to obtain as it is not an established practice of the government to publish public reports. Further, as mentioned above, ADHRB's inability to retrieve a response from the NAO and Supreme Judicial Council portrays the unwillingness of the government to provide NGOs with information, or to cooperate with them in tackling corruption in the Kingdom.

III. Implementation and Enforcement of the Convention

1. Chapter II: Preventive Measures

1.1. Article 5: Preventive Anti-Corruption Policies and Practices

Interpretation of the Article

Article 5 of the UNCAC encourages State Parties to “develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.” Moreover, State Parties are encouraged to promote effective practices aimed at the prevention of corruption.

Implementation of the Article

Between December 9, 2013 and December 9, 2018, Bahrain's Ministry of Interior adopted a national anti-corruption strategy. The strategy covered multiple areas, including strengthening the role of national anti-corruption campaigns; involving the public and private sectors in their development; establishing a competent authority to combat corruption; developing educational curricula with integrity and anti-corruption measures, and the drafting of a concrete anti-corruption law. The strategy also included the amendment of private and public codes of conduct.² Since the adoption of the strategy, special attention has been placed upon the

² United Nations, Conference of the State Parties to the United Nations Convention against Corruption; Vienna 8-10 July 2020; Available online:

preparation of national campaigns and lectures to promote integrity and combat corruption. However, the strategy did not announce clear time frames for when the stated objectives should be achieved, nor did it develop indicators to measure progress in the implementation of the respected goals. Finally, no authorities were tasked to supervise and enforce the implementation.³ In cooperation with the Legislation and Legal Opinion Commission, the General Directorate was supposedly working on the development of a new strategy, however so far, no new strategy has been officially adopted by the Cabinet.

Through regular participation in relevant conferences, meetings and forums, and its membership in the International Anti-Corruption Academy (IACA)⁴ and the Arab Anti-Corruption and Integrity Network (ACINET), Bahrain contributes to promoting regional and international cooperation in the fight against corruption. The national authorities have also signed bilateral cooperation agreements, participate in training, and exchange information about combating corruption with foreign counterparts.⁵ Examples for such corporations include the Middle East and North Africa Financial Action Task Force (MENAFATF), the Egmont Group of Financial Intelligence Units, INTERPOL, and the GCC.

Deficiencies

As no new anti-corruption strategy has been officially adopted, former efforts to raise awareness and fight corruption have come to halt. There are no current national anti-corruption campaigns, and it is questionable if the established hotlines and report practices are actively used. The General Directorate was originally primarily responsible for contributing to the establishment of preventive measures by raising awareness through national campaigns to fight corruption and enhance integrity. While the General Directorate has adequate training and resources, as well as operational and financial independence, no measures exist to ensure legal independence to

<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V2000137e.pdf> (last accessed 13 September 2021).

³ Idib.

⁴ IACA, 2016, Kingdom of Bahrain joins IACA, Available online: <https://www.iaca.int/resources/news-articles/175-2016/640-kingdom-of-bahrain-joins-iaca.html>.

⁵ UNODC, 2019; CAC/COSP/IRG/2019/CRP, Available online: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/17-18December2019/V1910900e.pdf>, (last accessed: 4 November 2021).

provide continuity of such operational and financial independence in the future.⁶ Furthermore, whilst the Chamber of Deputies studied the possibility of establishing an anti-corruption authority, a proposal contained in the previous strategy, they eventually decided not to proceed. However, Bahrain has the obligation to inform the Secretary-General of the United Nations of the updated name and address of the authority or authorities able to assist other States Parties in developing and implementing anti-corruption measures. Presently, Bahrain does not fulfill this obligation.

1.2. Article 10 - Public Reporting

Interpretation of the Article

This article aims to uphold the decision-making process by ensuring its efficiency, transparency, and accountability, in order for public organizations to be more open and responsive to the needs and aspirations of the communities they serve. In addition, it requires state institutions to publish regular reports on their work, including the risks of corruption associated with their activities. By doing so, the state administration permits citizens to check what the administration itself is doing on their behalf, thus aiming to enhance their trust in institutions. According to Article 10, citizens have a right to information within clearly defined criteria, together with a defined path to facilitate access and recourse procedures for refusals.

Implementation of the Article

In implementing Article 10, State Parties may wish to consider means of reviewing existing regulations, and the impact of new legislation, whilst also assessing the inclusion of procedures to consult civil society and legal entities. State Parties must ensure that the purpose of combatting corruption is reflected in the administration's decision-making process. In doing so, elements which should be assessed include: procedural complexity; the degree of discretion in decision making; transparency in relation to access and the provision of public information; whether codes of conduct exist and are enforced, and how they are related to service delivery. Bahrain

⁶ United Nations, 2020, Conference of the State Parties to the United Nations Convention against Corruption, Available online: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V2000137e.pdf>, (last accessed: 4 November 2021).

has taken steps to simplify administrative procedures and facilitate the provision of public services, including through government websites, electronic applications that simplify administrative procedures, expedited public service delivery, and allowance of access to certain information. However, it has not introduced regulations with regards to access to information, and there are crucial shortcomings in protecting this right within the general legal framework. In 2014, Law No. 16 regarding the protection of state information and documents was finally adopted, but access to information law has yet to be approved. Article 3 of Law No. 16 created three levels of classification: “top secret,” “secret,” and “restricted.” The law establishes different grades of penalties for disclosing documents and information according to the degree of their confidentiality. However, it does not provide any criteria for classifying documents into the three levels, leaving wide amounts of discretion for the concerned government body. Article 4 of Law No. 16 also stipulates that documents and information not classified within the three mentioned levels are “regular” and “may not be disclosed to anyone other than those concerned.”

The operation of Law No. 16 fundamentally restricts the right of access to information. By giving government agencies the power to classify official documents and information without clear criteria, the law grants the government the right to disclose only the information it wishes to disclose. This reduces and restricts the enjoyment of the right of access to information to the discretion and authority of the government. The right of access to information is further constrained by the overall restrictions on the right to freedom of expression. The government has conducted a relentless crackdown on freedom of expression and has systematically closed the civil and political space. Numerous provisions in Bahrain’s Penal Code criminalize criticism of government officials and agencies, in disregard of the person’s right to express opinions and to hold authorities accountable. Hundreds have been prosecuted and imprisoned on charges related to freedom of speech, including actions related to highlighting corruption in state bodies.⁷ Since the purpose of the right of access to information is to enable the public to scrutinize the decisions of the authorities, hold government officials accountable for their actions, and to

⁷ Consult <http://bhmirror.myeffect.net/en/news/60036.html>.

prevent abuse of power; any restrictions on the right to freedom of expression contradicts its main objectives.

Deficiencies

Even though the Government of Bahrain has ostensibly set up a legal anti-corruption framework, any existing laws are inadequately enforced. Bahrain has also failed to establish any special procedures or regulations on public access to information. Further, there have been no recent studies or assessments of corruption risks in public administration. Therefore, Bahrain has not taken any steps forward in the implementation of this Article in its administrative framework.

The failure of the Government of Bahrain to enact laws that protect the right of access to information is a continuation of their lack of transparency in conducting public affairs. This is in addition to a complete disregard for public opinion, and a refusal to be criticized and held accountable. This lack of transparency is also portrayed in the government's refusal to collaborate with non-governmental organizations and civil society at large. As mentioned above, ADHRB attempted to cooperate with the Bahraini NAO by requesting that it share the corruption report, but we did not receive a response. In the current atmosphere of repression, and as long as the government continues to suppress the right to freedom of expression, the right of access to information cannot be achieved.⁸

1.3. Article 11: Measures Relating to the Judiciary and Prosecution Services

Interpretation of the Article

Article 11 establishes the crucial role of the judiciary in combating corruption and the importance of maintaining the independence of the judges. It further obliges State Parties to create mechanisms to strengthen the principle of the integrity of judges and to prevent corruption amongst the judiciary. State Parties are advised to regulate this through their national legislation, and also through by-laws in the form of codes of conduct. Additionally, State Parties can enforce this article through the creation of special bodies with the aim of monitoring its implementation.

⁸ Bahrain Centre for Human Rights, 2021, "Bahrain has yet to enact access to Information law", Available online: <https://bahrainrights.net/?p=136325>.

Implementation of Article

The Bahraini Constitution provides for the independence of the judiciary. While Article 32 allows for the separation of the legislative, executive, and judicial powers, Chapter IV of the Constitution concerns the judicial branch of power. More precisely, Article 101 states that “*the honour of the judiciary and the integrity and impartiality of judges are the base of rule and a guarantee of rights and liberties.*” It further indicates that “*in the administration of justice, judges shall not be subject to any authority. No interference whatsoever shall be allowed in the conduct of justice. The law shall guarantee the independence of the judiciary and shall state the guarantees and provisions relating to the judges.*”⁹ In addition to the Bahraini Constitution, the Judicial Authority Act establishes rules and conditions for the appointment and qualification of judges (Articles 22–25) and for their accountability, immunity, and dismissal (Articles 34–43).¹⁰

The Supreme Judicial Council (SJC)

Article 102(d) of the Bahraini Constitution provides for the establishment of the Supreme Judicial Council (SJC), who are responsible for managing the functional and personal affairs of judges and public prosecutors, including the selection, appointment, promotion, suspension, and removal of judges.¹¹ The Judicial Authority Act further defines the composition and functioning of the SJC. The SJC is composed of 12 judicial members, led by the head of the Court of Cassation, the Attorney General, and ten judicial authority members. They are appointed by Royal Decree for a period of three years. The Judicial Authority Act also establishes the Secretariat, headed by a judge as an administrative structure.¹²

⁹ Constitution of the State of Bahrain; Adopted on 26 May 1973; Effective since 6 December 1973; Available online: https://www.concourt.am/armenian/legal_resources/world_constitutions/constit/bahrain/bahran-e-old.htm (last accessed 31 August 2021).

¹⁰ United Nations, Conference of the States Parties to the United Nations Convention against Corruption; CAC/COSP/IRG/II/2/1/ADD.9*; 10 January 2020; Available online: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V2000137e.pdf> (last accessed 31 August 2021).

¹¹ Human Rights Council; Report on the Special Rapporteur on the independence of judges and lawyers; A/HRC/38/38; 2 May 2018; Available online: https://www.ohchr.org/Documents/Issues/Judiciary/JudicialCouncils/Bahrain_2.pdf (last accessed 2 September 2021).

¹² Ibid.

Generally speaking, the SJC is responsible for supervising the proper functioning of the courts and their affiliated bodies, and for recommending the appointment and promotion of judges and members of the Public Prosecution Service (Articles 69–73 of the Judicial Authority Law).¹³ Article 22 of the Judicial Authority Law outlines the basic criteria for the appointment of a judge, and ensures that the selection process is based upon criteria established by the International Organization for Training. Candidates go through a strict assessment to evaluate their skills and personality. The assessments are supervised by a committee, composed of lawyers, judges, psychologists, and legal academics.¹⁴

Appointment of Judges

Judges in Bahrain are eventually appointed by royal order, guaranteeing life tenure and immunity from detention and prosecution (stated in Article 34 of the Judicial Authority Law). This immunity can only be lifted upon request of the Attorney General and the decision of the SJC judges, who themselves are restricted by the Judicial Authority Law and their code of conduct. It is not permitted for a judge to involve himself/herself in any commercial activities and membership of political parties, and it is the duty of the judge to inform the SJC of any real or perceived conflict of interest.¹⁵ Furthermore, Article 44 of the Judicial Authority Act provides for the creation of a Judicial Inspection Department connected to the President of the Court of Cassation, in order to supervise the work of judges. It conducts regular and unscheduled technical inspections. A disciplinary board holds judges accountable and the latter can be subjected to disciplinary sanctions.¹⁶

Article 27 of the Judicial Authority Act prohibits prosecutors and judges from carrying out any actions which are incompatible with the independence and dignity of the judiciary to avoid conflicts of interest. The Judicial Authority Act establishes the conditions and rules for the qualification, appointment, accountability, and dismissal of members of the Public Prosecution

¹³ United Nations, Conference of the States Parties to the United Nations Convention against Corruption; CAC/COSP/IRG/II/2/1/ADD.9*; 10 January 2020.

¹⁴ Human Rights Council; Report on the Special Rapporteur on the independence of judges and lawyers; A/HRC/38/38; 2 May 2018.

¹⁵ Ibid.

¹⁶ United Nations, Conference of the States Parties to the United Nations Convention against Corruption; CAC/COSP/IRG/II/2/1/ADD.9*; 10 January 2020.

Service, which is a core division of the judiciary (Articles 57–66).¹⁷ The work of members of the Public Prosecution Service is inspected by a Judicial Inspection Department, connected to the Public Prosecutor. Matters concerning judges and members of the Public Prosecution Service are regulated by the Supreme Judicial Council Decree No. 49 of 2014. The SJC issued the Code of Conduct for Judges and Prosecutors in 2007, and stated that the competent authority to apply this code would be the Judicial Inspection Department.¹⁸

Deficiencies

The constitutional obligation of maintaining the independence of the judiciary has not been adequately implemented in Bahrain. The judicial system in Bahrain is neither independent, nor free from the influence of political decision-makers, and is subject to the control of the royal family.¹⁹ As all judges, including the members of the Constitutional Court, are directly appointed by royal decree, the judiciary is inevitably linked to the executive power. In addition, the King chairs the High Judicial Council and holds authority over all administrative matters of the judiciary.²⁰ Neither the Parliament, nor any other branch of the government, has the authority over the approval of judges. Due to the immunity of judges, accountability is largely limited, and the law does not provide the possibility of impeaching judges. In 2017, the King ratified a constitutional amendment, granting military courts the authority to try civilians “accused of threatening the security of the state.”²¹ This decision further deteriorated the rule of law in Bahrain, as military courts do not provide the same guarantees of a fair trial for defendants as civilian courts. Despite such fair trial guarantees, military and civilian courts alike have regularly issued controversial sentences, targeting activists, journalists, human rights defenders, and opposition figures. The ongoing crackdown on political dissidents has also been characterized by the creation of mass trials, the utilization of coerced confessions, and the systematic denial of access for defendants to consult their lawyers. This clearly indicates that the judiciary performs their duties chiefly for the benefit of the ruling class. Members of the royal family are

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Bertelsmann Stiftung, Transformation Index: Bahrain Country Report 2020; Available online: <https://www.bti-project.org/en/reports/country-report-BHR-2020.html#pos5> (last accessed 2 September 2021).

²⁰ Ibid.

²¹ Ibid.

also represented in the judicial system, and while state officials have lost legal battles cases, the Al Khalifa family enjoys de facto immunity.

During the COVID-19 pandemic, access to justice has been further diminished and the provision of fair trials has been de facto suspended. During an interview with a prominent Bahraini lawyer, the lawyer described that all trials are currently being held virtually. However, the lawyer stated that many judges are not well-trained and lack the experience to provide fair sentences, especially under the complicated conditions of virtual hearings. Judgments are sent swiftly, and in some cases even by text message, leaving no room for lawyers to defend their clients. According to the lawyer, some judges are even ordered in advance what sentence to issue. Additionally, defendants are systematically denied access to their lawyers under the justification of sanitary precautions.

1.4. Article 13.1: Participation of Society

Interpretation of the Article

Article 13 of UNCAC acknowledges the paramount role that civil society plays in fighting corruption. The article stipulates that States Parties must undertake the necessary measures to open up a space for individuals, CSOs, community-based organizations, and non-governmental organizations to help fight corruption, prevent it, and to increase public awareness about the existence, causes, seriousness, and threats of corruption. To achieve this, the Convention proposes several measures, including enhancing the transparency of, and promoting the contribution of, the public to decision-making processes; ensuring that the public has effective access to information; and promoting, respecting, and protecting the freedom to seek, receive, publish and disseminate information regarding corruption. The important role that CSOs play in the fight against corruption can be further depicted in Article 63 of UNCAC, which allows for such organizations to take part in the meetings of the Conference of the States Parties to the UNCAC (COSP).

Implementation of the Article

Article 27 of the Bahraini Constitution guarantees the right to freedom of association, with Article 23 also guaranteeing the right to freedom of expression. Furthermore, Law 21 on

Associations, Social and Cultural Clubs, Special Committees Working in the Field of Youth and Sports, and Private Foundations (also known as Law of Associations), provides details on the registration process of associations; issues related to funding; what associations are prohibited from engaging in; and the circumstance under which the government has the authority to dissolve an association.

Deficiencies

Although the rights to freedom of expression and association are guaranteed in the Bahraini Constitution, the government has implemented a series of extensive restrictions on these rights, confining civil society space and undermining the activity of CSOs. Bahraini authorities consistently utilize the Law of Associations and the Ministry of Labor and Social Development (MLSD)'s CSO registration process as a means of restricting, monitoring, or outright dissolving CSOs that they deem critical of the government.²² Based on Legislative Decree No. 21 of 1989, all CSOs are obliged to register with the MLSD. Article 9 of the Legislative Decree states that if the MLSD does not reply within 60 days, then the request is automatically denied. This provision portrays just how arbitrary the process can be, with the denial of applications occurring without legitimate reasons.

Furthermore, if a CSO does succeed in registering, they become subject to regular official inspections and are prohibited from engaging in any activity interpreted to be political. Furthermore, Article 50 of the Legislative Decree allows the MLSD to dissolve CSOs that it considers to be “unable to achieve its aims” or if they violate “the law, public order and norms.” This vague wording portrays the uninhibited power of the MLSD as the sole and ultimate arbitrator in dissolving CSOs. Such provisions constrain the activities of CSOs to a substantial extent, leaving them with limited room to function effectively and placing them under the mercy of the government.

The government has a long history of closing down CSOs and rejecting their registration.²³ This was notably seen when the Bahrain Center for Human Rights (BCHR) was closed down due to

²² Americans for Democracy and Human Rights in Bahrain (ADHRB), 2017, “Crushing Civil Society: Bahraini Government Reprisal for International Engagement”, Available Online: https://usercontent.one/wp/www.adhrb.org/wp-content/uploads/2017/06/2017.6.5_crushing-civil-society_web.pdf, (Last accessed: 1 June 2021).

²³ Ibid.

critical remarks made by its co-founder towards the prime minister. This was also seen when the registration application of the Bahrain Youth Society for Human Rights (BYSHR) was rejected. In addition, the government dissolved the Bahrain Nursing Society and the Bahrain Teachers Association. The government has also disbanded political opposition groups, such as the Islamic Action Society and Al-Wefaq National Islamic Society. All of these organizations have been critical of the government, and are stark examples of the refusal of the government to accept dissent and accountability in the country. This makes it impossible for CSOs to take part in the fight against corruption, considering the exposure of corruption or criticism of the government leads to imprisonment or shutdown of the organization.

In addition, Bahrain has yet to sign the Transparency Pledge created by the UNCAC Coalition, further indicating its lack of will to increase transparency and civil society participation in UNCAC's review mechanism and in addressing corruption more generally.

Furthermore, the government fails to publish information regarding corruption, making it difficult to assess the true circumstances of its influence in government activities. For example, the NAO, which is one of the bodies responsible for uncovering cases of corruption, does not publish any of the audits that it conducts on its official website in Arabic or in English.²⁴ This lack of transparency in its functions makes it difficult to determine the efficiency of the body.

Moreover, there are several cases in which anti-corruption activists were harassed by the government for their activism and prohibited from traveling abroad and taking part in UN meetings.²⁵ There have even been instances in which anti-corruption activists were detained for exposing corruption. For example, Ghada Jamsheer was arrested in 2014 on charges of defamation after she exposed corruption within the management of King Hamad Hospital on Twitter.²⁶

²⁴ Kingdom of Bahrain National Audit Office, <https://www.nao.gov.bh/en/category/annual-reports>.

²⁵ Transparency International, 2017, "Transparency International Calls on Bahrain to Stop Harassing Anti-Corruption Activists", Available online: <https://www.transparency.org/en/press/transparency-international-calls-on-bahrain-to-stop-harassing-anti-corrupti>, (Last accessed: 1 September 2021).

²⁶ Front Line Defenders, "Case History: Ghada Jamsheer", Available Online: <https://www.frontlinedefenders.org/en/case/case-history-ghada-jamsheer>, (Last accessed: 1 September 2021).

2. Chapter III: Criminalization and Law Enforcement

2.1. Article 17: Embezzlement, Misappropriation or Other Diversion of Property by a Public Official

Interpretation of the Article

Article 17 requires State Parties to criminalize the offences of embezzlement, misappropriation, or other diversion of property by a public official. The required elements of the offence are embezzlement, misappropriation or other diversion by public officials of items of value entrusted to them by virtue of their position. Items of value consist of any property, public or private funds, securities, or any other thing of value. The offence must cover instances where these acts are for the benefit of the public officials or another person or entity.

Implementation of the Article

Articles 194 to 201 of the Bahraini Criminal Code establishes the offences of “embezzlement of and damage to public property.” Based upon these articles, the punishment ranges from a fine, up to a maximum of ten years’ imprisonment.

Deficiencies

The King of Bahrain and members of the royal family have a record of transferring public property into their own private one. This was most notably recognised in an investigation that the Financial Times conducted into the wealth of the Bahraini royal family, in which it found that the family “has built up vast private wealth, including a \$900m portfolio of UK real estate, after embarking on development projects on disputed land in the Gulf Kingdom”.²⁷ The investigation revealed that this is all done through an investment company known as Premium Group, which is allegedly owned by the King and members of the royal family. Premium Group becomes the owner of various undersea plots which are then used to obtain stakes in land reclamation joint ventures to build office buildings, housing, and luxury hotels. The investigation revealed that over a decade, such deals have cost the public treasury a total of USD \$40 billion. Such deals were made with no payments to the Treasury, despite the fact that these

²⁷ Kerr Simeon and O’Murchu Cynthia, Financial Times, 10 December 2014, ”Disputed land development boosts wealth of Bahrain royals”, Available Online: <https://www.ft.com/content/51943274-73fb-11e4-b444-00144feabdc0>, (Last accessed: 29 October 2021).

lands are public property. In 2002, King Hamad issued a law giving himself the sole authority to grant state land rights. On several accusations, he has used this power to transfer plots to companies linked to Premier Group.²⁸

Moreover, in 2012, a leader of the political opposition revealed documents portraying members of the royal family and the ruling elite transferring public property into private property.²⁹ Examples of such property transfers included a property in Galali, covering an area of twenty-one square kilometers, and properties in Al Qadam, Karranah, and in Busaiteen, covering an area of more than twenty square kilometers.³⁰ Another stark example of the royal family's abuse of power was made public by opposition leader Ali Salman, who exposed the previous prime minister Sheikh Khalifa bin Salman Al Khalifa purchasing the land on which Bahrain's Financial Harbor site was built on for only one Bahraini dinar.³¹

2.2. Article 20: Illicit enrichment

Interpretation of the Article

This article stipulates that all State Parties to UNCAC must adopt laws and measures that establish illicit enrichment that is committed intentionally, as a criminal offence. According to Article 20 of UNCAC, illicit enrichment is “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.”

Implementation of the Article

The Kingdom of Bahrain criminalizes illicit enrichment under Articles 6, 9, and 11 of Act No. 32 of 2010 on financial disclosure. Article 9 of the aforementioned law states that the penalty of illicit enrichment is a minimum of five years in prison and a fine of at least 5,000 Bahraini Dinar.

²⁸ Ibid.

²⁹ Ali Murad, Al-Akhbar, 15 February 2016, “The Bahraini regime: Naturalizing foreigners and robbing resources” [title translated from Arabic], Available online: <https://al-akhbar.com/Arab/4235>, (Last accessed: 29 October 2021).

³⁰ Ibid.

³¹ Amira Al Husaini, Global Voices, 7 March 2011, “Bahrain: The One Dinar Protest”, Available Online: <https://globalvoices.org/2011/03/07/bahrain-the-one-dinar-protest/>, (Last accessed: 29 October 2021).

Good Practice

Act No. 32 of 2010 was amended in Act No. 82 of 2012, and later by Act No. 23 of 2017, to include the wife and the minor children of public officials. This restricts public officials from attempting to conceal their money and assets by placing them under the names of their wives and children.

Deficiencies

Despite the fact that all high-ranking public officials are obliged to hand in financial disclosures to the SJC under Article 1 of Act No. 32 of 2010, these financial disclosures are not published online, and the public has no access to them. It is also unknown if these officials abide by the law and whether they actually provide their financial disclosures in practice. Our organization has contacted the SJC requesting access to the financial disclosures but have not received a reply.

Furthermore, the King of Bahrain, in addition to the royal family, has acquired vast amounts of wealth throughout his ruling years that cannot be explained. For instance, The Al-Khalifa family owns the yacht “Al Salamab,” which was valued at \$314 million. Furthermore, the family’s aircraft fleet consists of six aircrafts: a Boeing Business Jet BBJ2, two Boeing 747-400s, a Boeing 767-400ER, a Gulfstream G-IV private jet, and a Bell 430 helicopter.³² The Boeing 767-400ER alone is valued at \$250 million.³³ Moreover, in February 2021, King Hamad and Crown Prince Salman purchased a 2,000-acre UK estate that dates back to the 18th-century, in the northwest of London for more than £120 million.³⁴

³² Americans for Democracy & Human Rights in Bahrain (ADHRB), 8 April 2019, “Bahrain’s hidden economy”, Available online: <https://www.adhrb.org/2019/04/bahrains-hidden-economy/>, (Last accessed: 7 September 2021).

³³ Milligton Alison, Business Insider, 10 June 2017, “The private jets and airplanes of 13 world leaders, monarchs, and billionaires”, Available online: <https://www.businessinsider.com/private-jets-of-world-leaders-monarchs-and-billionaires-2017-6?r=US&IR=T>, (Last accessed: 7 September 2021).

³⁴ Daily Mail, 6 April 2021, “Saudi Prince sells Cotswold country pile to King of Bahrain for £120million: 2,000-acre Glympton Park - including 39 cottages and Norman parish church - changes hands after being bought for £11m in 1990s”, Available online: <https://www.dailymail.co.uk/news/article-9439687/Saudi-Prince-sells-Cotswold-country-pile-King-Bahrain-120million.html>, (Last accessed: 29 October 2021).

These purchases are also in addition to the previously mentioned \$900 million of UK real estate exposed by the investigation of the Financial Times.³⁵ This was acquired by selling public lands in Bahrain to investors who then build office buildings, housing, and luxury hotels. Moreover, the Pandora Papers revealed that Zayed bin Rashid Alzayani, Bahrain's Minister for Industry, Commerce, and Tourism, holds the controlling stake in a British Virgin Islands company called Romanstone, through which he has spent more than £60 million buying UK commercial property over the past nine years.³⁶

It is not clear how King Hamad and the ruling elite in Bahrain have acquired this vast wealth with their public salaries, which are not revealed to the public. This is particularly concerning considering the government remains 13,464.80 BHD million in debt.³⁷

V. Recent Developments

At the beginning of October 2021, Bahrain attended an online meeting of the GCC anti-corruption ministerial committee. During this meeting, the heads of the integrity, protection and anti-corruption authorities in the GCC region met to reinforce awareness on anti-corruption issues and to discuss the Gulf's efforts in combating corruption.

VI. Recommendations

1. Recommendations under Chapter II of the UNCAC

It is strongly recommended that the Government of Bahrain:

- Adopt a new anti-corruption policy and enhance integrity and accountability efforts on all political levels;
- Provide the General Directorate with legal independence to provide continuity of adequate training and resources, as well as operational and financial independence in the future;

³⁵ Kerr Simeon and O'Murchu Cynthia, Financial Times, 10 December 2014, "Disputed land development boosts wealth of Bahrain royals", Available online: <https://www.ft.com/content/51943274-73fb-11e4-b444-00144feabdc0>, (Last accessed: 9 September 2021).

³⁶ Middle East Eye, 4 October 2021, "Pandora Papers and the Middle East: Which leaders are implicated?", Available Online: https://www.middleeasteye.net/news/pandora-papers-middle-east-leaders-implicated?fbclid=IwAR0z_G26q-i6fu4s_maafenprZ10j6GoBa3gnmk3Yteq2r3V89BqYbMRWe4, (Last accessed: 29 October 2021).

³⁷ Trading Economics, 2021, "Bahraini Government Debt", Available online: <https://tradingeconomics.com/bahrain/government-debt>, (Last accessed: 9 September 2021).

- Inform the Secretary-General of the United Nations of the updated efforts and information of the authorities able to assist other State Parties in developing and implementing anti-corruption measures;
- Enact laws that protect the right of access to information, allowing the public to exercise their civil and political rights and effectively engage in the democratic process in line with Bahrain's international human rights obligations;
- Respect the right to freedom of expression;
- Ensure that its constitutional obligations are enforced and independently monitored to provide full and protected independence of the judiciary;
- Amplify efforts to guarantee fair and impartial trials, particularly by providing defendants with access to consult their lawyers and to plan their defence strategy;
- Protect defendants from torture and other forms of ill-treatment, train judges in detecting coerced confessions, and enhance mechanisms to report and investigate torture allegations;
- Stop the arbitrary rejection of CSO registration, as well as the arbitrary dissolution of associations;
- Amend its Law of Associations to offer clear guidelines on the registration process, particularly regarding the conditions in which registration might be rejected, to make the process more transparent;
- Create space for CSOs to function effectively and freely without restricting their activity and funding;
- Sign the UNCAC Coalition's Transparency Pledge in order to further interact with CSOs, and ensure that they are being consulted in the UNCAC review processes and in the fight against corruption more generally; and
- Stop harassing and detaining anti-corruption activists and offer them protection in their fight against corruption.

1. Recommendations under Chapter III of the UNCAC

It is strongly recommended that the Government of Bahrain:

- Investigate the cases in which public property has been transferred into private ones and holds those individuals accountable;

- Establish an impartial oversight body responsible for administering public property;
- Increase transparency by publishing the financial disclosures of public officials included in Article 1 of Act No. 32 of 2010;
- Conduct impartial investigations into the wealth of the King and the members of the royal family; and
- Return the proceeds of the deals made that were based on selling public property to the treasury of the government.