

Parallel Report on The Report of The Kingdom of Bahrain

UPR 4th Cycle

Bahrain Transparency Society(BTS)

- 1) On Mon. 1 May 2017, UPR 3rd Cycle session of The Kingdom of Bahrain was held, where The National Report and other reports were presented and discussed. The UN-UPR experts compiled The Thematic list of 175 recommendations.
- 2) In our parallel report, we will address some recommendations and our observation on issues relevant to our mandate on transparency, good governance, integrity and anticorruption.
- 3) The UN adopted SDGs as a base of UN Strategy 2015-2030, and affirmed that corruption undermines sustainable development which is basic human rights according to ICESR, where The Kingdom of Bahrain is a party. The UN Working Group on Business and Human Rights deals with the undermining of human rights due to corruption in addition to other UN Human Rights mechanisms. In addition, corruption undermines sound, just and efficient system of the state, dismantles the society fabric, and weakens the process of democracy and human rights.
- 4) The Kingdom of Bahrain ranked 78 on CPI for 2021 which is issued by Transparency International and scored 42 /100 which is poor performance. This shows the need for political will and strategy to counter corruption and foster transparency, good governance and integrity.
- 5) The Obligations of The Kingdom of Bahrain According to UNCAC**
- 6) The Kingdom of Bahrain ratified The UN Convention Against Corruption(UNCAC) on 4 Feb 2010 and deposited the ratification on 5 Oct. 2010. UNCAC requires the member state to enact and amend its legislations, rules to be compatible with UNCAC. Accordingly new state agencies are entrusted with dealing with tasks envisaged in UNCAC and relevant national laws. Law Enforcement authorities including judiciary are entitled to undertake responsibility too.
- 7) Fulfilling UNCAC obligations, requires adopting strategy, policies and mechanisms with different ingredients to make UNCAC meaningful and effective instrument to counter corruption, incriminate all forms of corruption and enhance transparency, integrity and good governance (1)
- 8) ONE: Legislations, Strategy, and Policies on Anticorruption and Transparency**
- 9) The Kingdom of Bahrain amended its legislation and issued new legislations in accordance to its obligation to UNCAC, but it is still short of fulfilling UNCAC obligations in this respect. The Kingdom of Bahrain lacks major legislations, where BTS persistently demanded its legislation and addressed The Government and The House of Deputies (The Parliament) on that:
- 10) 1-Comprehensive law which deals with corruption, transparency, governance and integrity.
- 11) The Law No 15/1976 on Criminal Code of and its amendments deals and incriminate bribe in the public sector by public official. It is limited to bribery at the Government

sector and the private sector. Bribery is one form of corruption which includes many forms that are stipulated in The UNCAC but not addressed in the law.

- 12) There is a need for comprehensive law that address all forms of corruption in the public, private and mixed sectors that are detailed in UNCAC, including bribery, manipulation of administrative or otherwise position or entrusted mission for self-interest, contrary to the public interest, bad governance ...etc
- 13) The Law No 46/2002 on Criminal Proceeding Code and its amendments details the proceedings of implementing The Criminal Code, but it has its shortcomings that should be addressed.

14) Recommendation: To legislate comprehensive law on Anti-corruption

15) 2- Law on Money Laundering

- 16) The Kingdom of Bahrain enacted Law on Act on Money Laundering No. 4 /2001, amended by Law No, 25/ 2031 which deals with money laundering, especially in relation to terrorist activities. There is a need for its improvement to be more comprehensive and effective.

17) Recommendation : To amend and enforce The Law on Money Laundering

18) 3- Law on Access to Information

- 19) Access to information is important requirement to fulfill UNCAC obligation. BTS proposed a legislation on The Access to Information to The House of Deputies (The Parliament) and The government. BTS advocated this within the society at large.
- 20) Until now there is no legislation on access to information, while there is a law on restrictions of state information to be provided to the public. There is a need for a Law on Access to Information that does not pose serious threat to national security.

21) Recommendation: To legislate a law on access to information

22) 4-Law on National Commission on Anti-Corruption,

- 23) Some Bahrain partners in The Gulf Cooperation Council have already bureaus dealing with anti-corruption. UNCAC stipulates the need for an independent and worth trust body that overlook the functioning of the state, the private sector and the society, to monitor all acts of corruption, lack of transparency, bad governance, manipulation and exploitation, and to ensure integrity, transparency, and good governance. It should be empowered to investigate cases and persons within its mandate freely, impartially, and objectively. It should be entitled to turn cases with reasonable evidence to The Public Prosecution. As a norm such commission should present Annual Report to The Parliament, Head of The State, The Prime Minister and relevant parties.

- 24) Actually The Kingdom of Bahrain has The National Audit Office (3). The National Audit Office was established by Decree-Law No. (16) issued on the 3rd of July 2002, and as amended by Decree-Law No. (49) issued on the 14th of November 2010. It is limited by its mandate on The Public Sector. It is short of comprehensive mandate on all forms of corruption at all levels and sectors. The Annual Report of The National Audit Office, reveals cases administrative and financial abuses, few of which are transferred to The Public prosecutor, and eventually to the courts but non was revealed to the public or related to top officials.

25) Recommendation:

26) To amend the National Audit Office such that it will be able to transfer cases to public prosecutor.

27) Establishment of National Commission on Anti-Corruption as per UNCAC recommendation.

28) 5-There is an urgent need for Law on Protecting Witnesses and Informers in corruption cases who should be secured and protected for providing information, revealing cases and presenting testimony before the courts in cases of corruption of all forms. Law on Criminal Proceeding Code , provide some protection but not legal protection.

29) Recommendation: To legislate a law on protect witnesses and informers.

30) 6- The Law on Financial Assets Declaration (LFAD)No. 32/2010 by Royal Decree covers senior officials in the legislative, executive and judicial authorities. Each person covered by The LFAD is to present written Assets Declaration of himself, wife and dependents .This is to be updated during January in 3 years lapse renewable or upon leaving the service. The Supreme Council of Judiciary was entrusted with the implementation of The LFAD.

31) Since the enactment of The LFAD in 2010, none of those under its mandate was investigated, prosecuted or penalized and no information on its process was revealed to the public. We think that the LFAD should be supported by real political will of the state leadership to be effective.

32) Recommendation: To authorize the proposed National Commission of Anti-Corruption to deal with Financial Asset Declaration.

33) TWO: Corruption Undermining Human Rights

34) Objective 16 of SDGs highlights the need to build accountable, effective and inclusive institutions. This requires countering corruption, favoritism, manipulation, exploitation and instead ensure integrity ,transparency, good governance, and competence.

35) According to Transparency International annual report Corruption Perception Index for 2021 The Kingdom of Bahrain according to CPI issued by Transparency International ranked 78 with score of 42/100, where there is no government revelation of the extent of corruption, and its negative impacts on the welfare of the state, the development and the credibility of the state system. No serious measures to counter corruption and to promote transparency, governance. Integrity and accountability.

36) Corruption undermines wide range of human rights that are stipulated at UDHR, ICCPR, ICESCR and other UN conventions on human rights the cost of corruption which reflects lack of will to combat corruption. Corruption not only undermine economic

development and growth but exacerbate disparity in the society at all levels and aspects such as income, housing, education, health leisure and others.

37) Recommendation:

38) Involvement of civil society in improve Bahrain rank on CPI.

39) THREE: Restricting Civil Society Organizations

40) There are several restriction on The Civil Society Organizations (CSOs) amongst Bahrain Transparency Society, which undermine its activities and deter potential members, especially youth, to join these CSOs as follows:

41) 1-The Political Isolation, Defacto Isolation of Civil Society Activists

42) The Law on Practicing Political Rights No 14 /2002 as such to stipulates on the conditions required for citizen to practice full political rights . *The following are prohibited from running for the candidacy of The House of Deputies (The Parliament):*

43) 1-A person convicted of a felony, even if a special pardon is issued for the penalty or he/she has been rehabilitated.

44) 2- A person who has been sentenced to imprisonment for more than six months, even if a special amnesty is issued for him/her.

45) 3- Anyone who willfully harms or disrupts the functioning of constitutional or parliamentary life by terminating or leaving the parliamentary work in the Council or whose membership has been revoked for the same reasons.

46) The Law on Practicing Political Rights No 14 /2002 was amended in 2018 to add to those denied of practicing their political rights

47) 4-“ Actual leaders and members of political societies dissolved by court sentence for violating the provisions of the Kingdom's Constitution or any of its laws.”

48) Item 4 is unconstitutional according to Article 20 and Article 31 of The Constitution of The Kingdom of Bahrain.

49) Article (20) of the Constitution stipulates that “

50) No crime or penalty is only based on law and no penalty except those for acts pursuant to the activation of the law that state it “

51) There was no such law that penalize members of political societies when dissolved. Dissolving political society does not incriminate its members.

52) Article (31) of The Constitution stipulates that :

53) “ The regulation of the rights and the freedoms stipulated in this Constitution or limitation is only by law or based on it . The regulation and limitation should not touch the essence of the right or freedom”

54) What is more abusing is that the government interpreted Item (4) means that the citizen of this category lacks the full political competence. As the full political competence is conditional for candidacy to administration in CSOs, then the citizen within this category is not eligible for candidacy.

55) Recommendation: to abolish the amendment of law of political Isolation

56) 2- Law on Societies, The Social and Cultural Clubs and Organizations For Youth and Sport No (21) year 1989 amended by Law (44) year 2002

57) 1-In view of the above , article (43) of the Law 21/ 1989 was amended by Law No. (36) year 2018 where it stipulate “ It is conditional for a member of administration to enjoy fully all civil and political rights”

58) Based on the above amendments of The Law on Practicing Political Rights , The Ministry of Labor and Social Development (MLSD) considered citizens who belonged to the dissolved political societies do not enjoy full civil and political rights , thus not eligible for candidacy to societies and clubs within the mandate of Law 21/1989 and its amendments.

59) This means that tens of thousands of citizens who belong to dissolved political societies are not eligible to candidacy to the Board in hundreds of civil societies in Bahrain, including Bahrain Transparency Society.

60) In view of this, and according to the directions of The Ministry of Labor and Social Development to CSOs, a list of the candidates for the society administrations must be sent to The Ministry of Labor and Social Development, to be scrutinized by The Ministry of Justice , to ensure that non was a member of the dissolved political societies. In several cases candidates were rejected, which forced several CSOs in limbo, to finalize accepted list of candidates to The Ministry .

61) Recommendation: to abolish the amendment of law of political Isolation

62) 2-The Law No 21/1989 and its amendments by Law by Decree No (44) / 2002 imposes severe restrictions on the foundation and running CSOs which puts The CSOs under the scrutiny and control under The Ministry of Labor and Social Development.

63) 2.1:The CSO intending to hold its General Assembly should present 1- Activities Report 2- Audited Financial Report and 3- List of Candidates 4- List of Eligible Members, 5- Proposed estimated Budget for the coming year all of that 15 days prior to General Assembly Meeting . It is up to The Ministry to approve these reports or to object to one or more of the above items, thus holding The General Assembly is conditional to the approval of the above items. Representative of The Ministry could attend The General Assembly.

64) 2.2:The formation of local federation or union of CSOs requires licensing by The Ministry of Labor and Social Development.

65) Membership of foreign network, association or union requires prior approval of The Ministry of Labor and Social Development.

66) 2.3:Restrictions on CSOs finance are so severe . Local collection of donation requires prior permit by The Ministry of Labor and Social Development. Any project with external partner , requires the approval of The Ministry of Labor and Social Development.

67) According to Ministerial Decision No 65 / 2012 , any finance by foreign or

international organization requires the approval of The Ministry of Labor and Social Development, which is usually referred to other relevant ministries. It takes months to get an answer and in many cases it is disapproval which means crippling CSOs projects, and activities, thus undermining the Bahraini society progress. The local sources of finance for CSOs are very limited and The Ministry of Labor and Social Development do not offer an alternative funding.

68) 2.4:Article 18 Of Law 21/ 1989 stipulate that CSOs under its mandate “Do not engage in politics” which is vague and very restrictive . As CSOs are involved in the public sphere and address issues that links to politics in the broad sense and not political parties politics, The Ministry of Labor and Social Development, interpret many activities and acts to be sanctioned accordingly. It restricts engaging with foreign agencies in consultation and cooperation, including meeting foreign representatives, as apolitical act.

69) Recommendation: A new Civil Societies law to be legislated with the participation of civil societies.

70) 3: Abiding by The Constitution and International Conventions

71) Some of the above legislations , official directions , policies and practices contravene with The Constitution of Bahrain and UN International Conventions ratified by The Kingdom of Bahrain

72) Article 27 of the Constitution stipulates “ The establishment of societies and syndicates on national bases , for legitimate objects and peaceful means is secured in accordance to the conditions and status indicated by the law”

73) Article (31) of the Constitution stipulates “ The regulation of the rights and the freedoms stipulated in this Constitution or limitation is only by law or based on it . The regulation and limitation should not touch the essence of the right or freedom”

74) The International Covenant on Civil and Political Rights , ratified by The Kingdom of Bahrain by Law (56) year 2006 stipulates in Article (22 para1 &2)’(4)

75) “1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

76) 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order ...”

77) Recommendation :The legislations , policies ,directions and measures in dealing with The CSOs and the civil society at large should be compatible with the Constitution and the ratified international conventions relevant to the civil society and CSOs in particular.

78) FOUR: National Strategy For Human Rights

79) The Kingdom of Bahrain lacks National Strategy on Human Rights till now. Among the recommendations to The Kingdom of Bahrain during UPR 3rd Cycle in May 2017 was the need to adopt National Strategy of Human Rights .

80) Actually The Ministry of Foreign Affairs undertook consultations on The National Strategy on Human Rights (NSHR) during 2019-2020 with relevant stakeholder's institutions. Bahrain Transparency also called in written statement for National Strategy on Human Rights. This was highlighted in the concluding recommendation at the end of the meeting. It is to be noted that there was no draft of The (NSHR) before the participants in the consultation meeting. Until the date of this report we, along with other Bahraini NGOs have not been shown a version of The NSHR.

81) Recommendation : The Ministry of Foreign Affairs is to present draft version of The NSHR to all Bahraini human rights stake holders.

82) <https://www.unodc.org/unodc/en/treaties/CAC/>

83) https://menarights.org/sites/default/files/2016-12/BHR_PenalCode_1976.EN_.pdf

84) <https://www.nao.gov.bh/en/>

85) <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>