

Bahrain's National Charter Referendum

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"It's good news that Bahrainis, for the first time in a long time, can publicly criticize the government one day and still be around to do it again the next day. But many aspects of these political reforms still have to be clarified. It seems that Bahrain is still a long way from democracy."

Hanny Megally, Executive director of the Middle East and North Africa division of Human Rights Watch

On February 14-15, Bahraini citizens will cast "yes" or "no" votes for a National Charter drafted late last year on the instructions of the country's ruler, or amir (prince), Shaikh Hamad bin Isa Al Khalifa. The Charter, a lengthy document that most observers expect to be approved overwhelmingly, calls for the establishment of a two-chamber legislature, with one chamber chosen by popular vote, and for Shaikh Hamad to become the country's first king.

Much of the National Charter, including the proposed elevation of the ruler's title, has excited little controversy. Support for the key proposal, a popularly elected assembly, has been strengthened by the Amir's February 5 announcement of an amnesty for more than 400 persons detained or facing charges for security-related offenses - a category that covers most of Bahrain's remaining political prisoners - and permission to return for some 108 persons who have been exiled. Equally significant is the relatively open debate and discussion about the ruler's initiatives in numerous meetings of social clubs and professional associations, and in the press. While this discussion has been dominated by pro-government voices, for the first time in a quarter of a century critics of the government have been able to publicly speak their minds -- and show up the next day and do it again.

At first glance, such a concession to the principle of popular political participation would put Bahrain far ahead of any other Arab state in the Persian Gulf. Even in Kuwait only a small portion of the population--men who are "first-class" citizens--can vote or run for office. In Bahrain all women and men citizens over the age of 20 will be eligible to vote in the upcoming referendum--an estimated 217,000 persons--and the

same franchise would presumably extend to elections for the proposed National Assembly.

Overall, these steps are a most welcome departure from the Bahraini government's recent history of intolerance for criticism and opposition. At the same time, there is a worrisome ambiguity in the language of the draft National Charter which suggests that it may be intended to secure popular endorsement for consolidation of Al Khalifa family rule and privilege rather than for a form of "constitutional monarchy."

The country's constitution, promulgated in 1972 immediately after Bahrain's independence from Britain, already stipulates a partially-elected National Assembly. That Assembly was dissolved by ruling family decree in 1975 and those articles of the Constitution requiring an election for a new assembly within two months were unilaterally suspended. The National Charter does not specify the role of the new, proposed elected assembly vis-à-vis the 1972-era appointed chamber, or the role of the legislature as a whole in relation to the executive.

The Charter is silent about existing legislation, notably the State Security Law of 1974, which allows for arbitrary and incommunicado detention and grossly unfair trials, and the 1976 Penal Code amendments that have been used systematically to prevent Bahraini citizens from exercising peacefully their rights to freedom of assembly, association and expression.

Lastly, bodies such as the Special Investigation Service, the Criminal Investigation Directorate and the Public Security Force remain in place under the control of Shaikh Khalifa bin Salman the Amir's uncle

who has been prime minister for nearly three decades. Shaikh Khalifa is widely regarded in Bahrain as a strong opponent of meaningful political reform. He and his immediate family are considered to have the most to lose in any serious parliamentary inquiry into corruption and influence-peddling.

Human Rights Watch welcomes the steps taken to release political prisoners and allow those in enforced exile to return to Bahrain. But further steps urgently need to be taken to ensure that Bahraini citizens are able to enjoy the basic civil and political rights endorsed in the National Charter and guaranteed in the country's constitution and international law. These steps include:

1. Abolishing the State Security Court and ending the practice of trying detainees before any tribunal that is closed to the public and in which basic fair trial standards are not guaranteed.
2. Announcing that all those living in involuntary exile are free to return to the country unconditionally.
3. Ending the practice of detaining persons for unlimited or extended periods, without charge or trial, for vaguely defined "acts" or "statements" construed to threaten "state security."
4. Allowing Bahraini human rights activists to establish independent non-governmental groups and to exercise those rights essential to the defense of human rights, including freedom of association and the freedom to seek, receive and disseminate information inside and outside Bahrain.

BACKGROUND: PROTESTS AGAINST SUSPENDED CONSTITUTION

Bahrain, a small island state of some 700,000 persons, about a third of them expatriate workers, serves as the major port for United States naval forces in the Persian Gulf. The country experienced serious domestic unrest throughout much of the 1990s. The ruling Al Khalifa family resorted to torture, forced exile, arbitrary detention, and secret security court trials to contain the unrest, and exploited fears of the dominant Sunni minority that demands of the Shi'a majority for a share in political and economic power would lead to an repressive theocracy.

The key demand shared by virtually all the opposition has been restoration of the partially-elected National Assembly established by the Constitution of 1972. In August 1975, after the National Assembly refused to approve a law that would allow for arbitrary arrest and imprisonment for undefined "acts" or "statements" that could be construed to threaten "state security," the government dissolved the assembly by decree and suspended the provision of the constitution stipulating elections for a new assembly within two months.

Additional decrees expanded the jurisdiction of the state security court and eliminated in practice virtually all the civil and political rights enumerated in the constitution, making Bahrain a country where citizens risked search and seizure and extended incarceration without trial for criticizing the government. Communications were monitored and the media heavily censored. Freedom of association and assembly have been tightly restricted, and political parties banned. Abuses categorically forbidden by Bahrain's constitution, as well as international law, such as torture and forced exile, were practiced routinely as matters of state policy. State security court trials were closed to the public. Judges routinely convicted on the basis of confessions obtained under duress during extended periods of incommunicado detention and did not meet the most elementary international fair trial standards.

Bahrain's intifada, or uprising, erupted at the end of 1994, after efforts to petition the government peacefully on issues of political reform and discriminatory social policies seemed to reach a dead end. The opposition refused to accept a newly formed appointed Shura (Consultation) Council as an acceptable substitute for the elected assembly. Street clashes between demonstrators and security forces led to thousands of arrests, and Shi'a neighborhoods and villages were put under extended periods of siege. Those the government considered to be key leaders of the protests were in some cases

held for more than five years without trial, and in several cases forcibly deported. In March 1996 the state security court was expanded from one to three chambers to cope with increased numbers of persons charged under the state security law. By mid-1997 the last remaining international news agency bureau, the German Press Agency, was forced to leave the country.

By early 1998 extensive street clashes between demonstrators and security forces had subsided, though several thousand persons remained in jail on loosely defined security charges. Arrests and security court convictions continued, though at a lower rate.

NEW RULER, NEW INITIATIVES

Shaikh Hamad, 50, took over as Amir in March 1999 on the death of his father. He began to identify himself in very general terms with aspirations for political reform. His most tangible initiative was the release of more than 800 political detainees and convicted prisoners in several stages from June 1999 through late 2000. There was also a noticeable decline in the use of the state security courts. A handful of convictions in early 2000 appear to be the last on record.

Until the campaign for the National Charter commenced, however, the government continued to restrict public meetings and to harass and detain its most vocal critics when they attempted to speak out. Several Shi'a leaders who had been arrested with Shaikh al-Jamri in January 1996, such as community activist and teacher Abd al-Wahab Hussain, remained in detention because they refused to sign written apologies or commitments to refrain from political activity. Defense lawyers faced harassment for attempting to fulfill their duties on behalf of their clients in political cases, and were forbidden from providing information about arrests and security court trials to the press or to international human rights monitors. This September, a university economist and writer on Gulf affairs for the Economist Intelligence Unit, Jasim Ali, was arrested and his computer files seized, apparently as a result of his writings and contacts with the Bahraini opposition abroad.

Some of the limits of the new Amir's program were especially evident around human rights issues. The government has not allowed Bahraini citizens to monitor and report on human rights issues in the country, and has not allowed international rights organizations to visit the country to investigate abuses. In October 1999, the Amir authorized the establishment of a human rights committee within the Shura Council, but the committee has taken no public initiatives and there is no indication that it has done any more behind the scenes than pass on individual complaints to relevant ministries, with no effort at follow-through. In October 2000, the Minister of Labor and Social Affairs rejected the application of a dozen Bahraini citizens to establish an independent non-governmental human rights monitoring organization on the grounds that it would only duplicate the work of the Shura Council committee.

In late 1999 the Amir announced that local municipal elections would be held and that women would be allowed to vote and stand as candidates, but no date for these elections was ever set. In May 2000 he announced that the Shura Council would become an elected body in 2004. In September he appointed a new Shura Council, keeping some former members but also including as new members several women and representatives of non-Muslim communities. In late November he appointed a forty-six-member Supreme National Committee, headed by Minister of Justice Shaikh Abdallah bin Khalid Al Khalifa, a member of the royal family, to draft a national charter that would then be submitted to "a general congress" of two thousand citizens representing "all social sectors," also to be appointed by the government. Six members of the Supreme Committee resigned in early December, reportedly over the Amir's insistence that the Charter reflect his desire to be elevated to king. Some elements of the draft were leaked to the press following criticism of the closed-door drafting process.

In his annual National Day speech on December 16, the Amir outlined his proposal for a two-chamber legislature with one elected and one appointed body. The Amir's plan elicited outspoken criticism from Bahraini critics at home and abroad, who pointed out that in democratic countries both houses of bicameral legislatures are elected or, as in Britain, the unelected body has limited and well-defined

powers.

The decision to submit the Charter to a popular referendum appears to have been taken in response to these criticisms. Critics have hinged their support for the Charter on the Amir's addressing three demands. Two of these demands -- release of all remaining political prisoners and permission for political exiles to return home -- appear to have been largely met by the February 5 amnesty mentioned above. The amnesty did not include some twenty to thirty persons convicted of murder or attacks that resulted in serious injuries, but did include Abd al-Wahab al-Hussain and three other Shi`a leaders who had spent more than five years in jail without trials. A week earlier the government had relaxed the heavy surveillance and restrictions around the home of the elderly and ailing Shaikh Abd al-Amir al-Jamri, who had been released earlier but kept under house arrest. The amnesty also did not include hundreds of other political exiles. Officials have indicated that they too would be welcome to return once they had indicated their acceptance of the existing order (nizam)--i.e., the monarchy--and legislation. Many of the exiles insist that the state security law, which they contend is unconstitutional, be repealed before they make any such commitment.

Critics also asked the government to provide assurances that National Charter would not supplant the 1972 constitution. The text of the charter actually appears to be fairly clear: the preamble states that "implementation of some of the essential ideas included shall require constitutional amendments," and specifies in particular those articles pertaining to the composition of the legislature.

Instead, the problem is that the Charter is disturbingly vague when it comes to the role and powers of the legislature. It neither proposes nor assigns numbers to either chamber, nor does it indicate how differences between them will be resolved. It also does not set a target date for elections. And while it proclaims to promote a checks-and-balances type of division between executive, legislative, and judicial branches, it also stipulates that the Amir-become-King is in charge of all the branches, including the appointment and dismissal of the prime minister and the cabinet. It is not clear what power, if any, will reside in the legislature. Reform advocates fear that what citizens will get will be essentially two advisory bodies, one elected and one appointed.

To these critics, the Amir's son, Crown Prince Salman, asserted on February 4 somewhat implausibly that "nowhere in the world" does an appointed chamber have the power to block the will of an elected body. He urged Bahrainis to vote "yes" in order to lay the foundations of a new political framework. "It will give the Amir a mandate to act on concepts described in the Charter and, stage by stage, they will be implemented in their entirety by 2004," he said. "Specifics still have to be gone into."

Source: <http://www.hrw.org/legacy/background/mena/bah-bck-0212.htm>