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“Bahrain – A show case
for political reform in the Middle East?”

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This diploma thesis is dedicated to my wife Denise.
She was the one who constantly encouraged me
to finalize this thesis besides my job and
who was willing to forego significant time
we could have otherwise spent together

It is also dedicated to the large number of people
I had discussions with in Bahrain,
and who helped me in developing a thesis
that goes beyond reflecting official written sources only

Table of content

Introduction	7
Basic Facts about Bahrain	9
The Development of Bahrain – Historical Context	11
Sunni and Shi’a – The Religious Divide of Bahrain	33
Absolute Monarchies and some Democracy – Bahrain’s Neighbours	36
Introducing Political Reform in Bahrain	44
The 2002 Constitution – Mirror and Indicator of Political Reforms	48
Political Reform as Part of a Comprehensive Reform Approach	90
Time is Moving On – Current Trends and Topics	97
The Journey has begun, but it is still long and stony – Final Conclusions	101
Appendix 1 – The Texts of the 1973 and 2002 Constitutions in Comparison	103
Appendix 2 – The National Action Charter of 2002	151
Register	163
Curriculum Vitae of the Author – Andreas Baumgartner	168
Executive Summary	170
Zusammenfassung	171

Introduction

“Democracy is an evolutionary process that we firmly believe in. At times debate prolongs the process, but it ensures the inclusion of everyone in society. Gone are the days when you simply decree something and then expect it to happen.”

Shaikh Salman bin Hamad Al-Khalifa,
Crown Prince of the Kingdom of Bahrain

Gone are the days when you simply decree something and then expect it to happen – these words by Shaikh Salman bin Hamad Al-Khalifa, the Crown Prince of the Kingdom of Bahrain, in a 2007 interview¹ reflect a new spirit that has taken hold of the small island Kingdom of Bahrain in the Arab Gulf over the last decade.

Bahrain has been chosen as the topic of this thesis as it constitutes a highly interesting case study in a sensitive and politically challenging region, the Middle East. Bahrain is a country with approximately 2/3 of its national population being Shi'a, with the remaining 1/3 being Sunni (and this 1/3 including the Royal Family). It is very close to some of the world's hottest current and potential epicenters of crisis. Yet, over the last decade, Bahrain has managed to move from an authoritarian regime into a phase of comprehensive reform, without revolution or major civil unrest. It therefore doesn't come as a surprise that Bahrain has been repeatedly referred to as the “testing laboratory for change and democratization in the Gulf”. While the reforms and changes in Bahrain already deserve some closer attention per se, their significance goes far beyond Bahrain.

Initial democratic reform efforts, culminating in the promulgation of a Constitution in 1973, soon suffered from a setback by the dissolution of the newly elected National Assembly and decades of absolute reign. But the tide changed when, in 1999, King Hamad bin Isa Al-Khalifa ascended to the throne and started a wave of comprehensive reform, including political reform, that has significantly changed Bahrain's face over the last decade and that is still ongoing.

This thesis will take a closer look at Bahrain and its political system. For this purpose it will first provide the reader with some general context and information about Bahrain. Directly linked to the context setting, an overview of Bahrain's history will provide insights into events that have shaped Bahrain and its political system, and that are quintessential to understanding today's developments.

The emphasis of the thesis will be on the reforms initiated over the last decade. It is important to see those reforms in a comprehensive context, looking at political

¹ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 79

reform, economic reform, education reform, and so on. All of these are happening in parallel and are closely interlinked. Nevertheless, the focus of this thesis shall be mainly on political reforms, namely on the changes to the political system as introduced by the National Action Charter and the new Constitution in 2001/02. To understand the significance of these reforms in the regional context, a short overview over the political system of the other Gulf Cooperation Council states, Bahrain's closest neighbours, is also included in the thesis, before a detailed look is taken at Bahrain's own political arrangements. A chapter towards the end of the thesis is then dedicated to looking at reforms beyond political reform, to provide a comprehensive picture.

The approach chosen for this is a detailed analysis of the current (2002) Constitution of Bahrain, plus a comparison with the 1973 Constitution. As the reader will see, the Constitution, its concepts, and the changes compared to 1973 are an excellent mirror of the nature and the extent of political reforms. To ensure a comprehensive perspective, the analysis of the text of the Constitution has been combined not only with official views and comments from the Government side and other printed documents, but also with extensive coverage of the (mainly Shi'a) opposition movement's perspective. For this purpose, the author of this thesis has been in contact with leading opposition members and actually participated in opposition-organized workshops on Bahrain's political reforms and the current situation. They have also pointed him towards some interesting texts by critics, many of whom still prefer to remain anonymous.

It is quite telling that almost ten years after the promulgation of the Constitution, its legitimacy and its concepts are still among the top of the opposition's priority list. The big questions that come through again and again: What should one really make of the reforms of the last decade? Are they really that democratic and forward-looking? This thesis attempts to shed some more light on those fundamental questions.

Basic Facts about Bahrain

The Kingdom of Bahrain is an archipelago of islands situated in the Middle East, covering an area of approximately 665 square kilometres. It is located off the Eastern coast of Saudi Arabia (which it is connected with via a causeway), and north of Qatar.

Bahrain is a desert country, which has actually been suffering from increasing desertification “resulting from the degradation of limited arable land, periods of drought, and dust storms; coastal degradation (damage to coastlines, coral reefs, and sea vegetation) resulting from oil spills and other discharges from large tankers, oil refineries, and distribution stations; lack of freshwater resources (groundwater and seawater are the only sources for all water needs).”²

The official population of Bahrain is just over 700,000, including approximately 235,000 expatriates.³ However, recent estimates by the country’s Central Informatics Organisation have spoken of approximately 1 million inhabitants, driven by both high birth rates of nationals (in combination with significantly lowered infant mortality and increased average life expectancy)⁴, and a stronger influx of expatriates due to the booming economy.

98% of the national population are Muslims. Approximately 70 % of them are Shi’a, the others – including the Royal Family – Sunni.

In the course of its history, Bahrain has been known under a variety of names, including Dilmun, Tylos, Tlmn, and Awal. Some of the confusion about the names seems to stem from the fact that from early on, the name “Bahrain” sometimes referred to a city and sometimes to the island itself. “Bahrain” was referred to as “capital of Awal”, but also as “capital of Hajar”. At the same time, other sources named Hajar as “the city of Bahrain”, while yet others spoke of “Bahrain and Hajar”, indicating that Bahrain and Hajar were actually two separate areas.⁵

In any case, by 1258, the name of the island seems to have changed to Bahrain.⁶ But strictly speaking, Bahrain was still the name of one island (the biggest one), rather than the archipelago that makes up today’s Kingdom of Bahrain. But by the late 15th century, the author Ahmad Ibn Majid referred to Bahrain clearly as

² CIA World Fact Book Bahrain

³ CIA World Fact Book Bahrain

⁴ Birth rate: 17.26 births/1,000 population; infant mortality rate: 15.64/1,000 births; average life expectancy 72 years (men)/77.5 years (women) (CIA World Fact Book Bahrain)

⁵ Q. Al-Hadithi in A. Al-Khalifa/M. Rice, Bahrain through the ages, 261

⁶ A. Al-Doy in A. Al-Khalifa/M. Rice, Bahrain through the ages, 160

an island with multiple smaller ones, and described it as “perfectly well developed”, with 360 villages and sufficient sweet water.⁷

The name “Bahrain” means “between two waters”, and while one interpretation is that this refers to the location as an island in front of what is today the Kingdom of Saudi-Arabia, the second interpretation is that the name actually originated from the capital city of Hajar, which “was called Bahrain because there was a lake at Al-Hasa’ on one side and the sea on the other”.⁸ Oral tradition also reports that “Bahrain” actually referred to two sweet water springs.

Today, Bahrain’s capital city is Manama, and – despite being relatively small - the country is divided into five governorates (Asamah, Janubiyah, Muharraq, Shamaliyah, Wasat), each of them administered by an appointed Governor.

⁷ P. Kunitzsch in A. Al-Khalifa/M. Rice, Bahrain through the ages, 387

⁸ A. Al-Doy in A. Al-Khalifa/M. Rice, Bahrain through the ages, 160

The Development of Bahrain – Historical Context

BAHRAIN’S EARLIEST PHASES – THE GOLDEN AGE OF DILMUN

Unlike some other countries/cities in the region, however prominent they may have become over the last couple of decades, Bahrain actually features a very proud and long history:

“The history of Bahrain is essentially linked to its seafaring tradition, to the position it occupied in all the trade exchanges in the Arabian Gulf for more than four thousand years”⁹

Bahrain’s early development was largely due to the fact that, at that time, Bahrain had ample fresh water. “This fresh water turned Bahrain into a true oasis, a vast palm grove. The shores were surrounded by lush mangroves, home to a great variety of ecosystems, a great source of nourishment for men.”¹⁰ On top, Bahrain was strategically located between Mesopotamia and Magan (in today’s Oman). Magan was of importance as it was the only country in the region that mined copper at that time – a commodity that was highly sought-after in Mesopotamia, especially to make the bronze statues decorating the temples.¹¹ The trade routes led on land to the port of Umm Al-Naar (in today’s United Arab Emirates), from where the copper was shipped to Mesopotamia. Tablets discovered in Mesopotamia spoke of a stop on the way that served as a major trading post – “Dilmun”. While this location might first have been somewhere on the mainland, it then shifted to an island, today’s Bahrain:¹²

“It became a real place of exchange where many merchants settled to organize the trade between all the Gulf ports. It is difficult to imagine the quantity of goods that circulated through Bahrain. The ships from Magan came loaded with copper ingots, chromite, oak wood carnelian, turquoise, lapis-lazuli, gold, and precious wood from the Indus Valley. Those sailing from Mesopotamia brought jars full of oil, weaves, jewellery, bronze objects which were then taken to Magan and the Indus Valley. All these ships stocked on fresh supplies in Bahrain: water, vegetables, dates, turtle shells, coconuts, pearls. [...] Soon, Bahrain was controlling all the traffic

⁹ M. Barrault, Regards Bahrain, 13

¹⁰ M. Barrault, Regards Bahrain, 13

¹¹ M. Barrault, Regards Bahrain, 16

¹² M. Barrault, Regards Bahrain, 16

in the Gulf and built its own fleet. Sailors and merchants who arrived in Mesopotamia talked in glowing terms of Dilmun.”¹³

The importance of Bahrain is reflected by numerous archeological findings in Bahrain, among them the layout of whole cities and huge burial grounds, with the oldest thought to date back to approximately 2800 BC. Most findings, however, belong to the so-called “Golden Age of Dilmun”, which refers to the era between 2500 and 1800 BC. Just to give some impression of the dimensions at that stage: A city discovered near today’s Saar village covered a surface of 22,500 square metres, with the main street still clearly visible even today. Also still visible is the huge burial ground, consisting of about 15,000 tumuli, and outdone only by the so-called Royal Graves near today’s A’ali, with 36 burial mounds of up to 12 metres in height and 25 metres in diameter.¹⁴

However, the disappearance of the Indus civilization and the decline of Mesopotamia also led to a rapid decline of Dilmun. No references to Dilmun are found on any tablets etc. dating from the 18th and 17th century BC. It is assumed that during that time, several of the formerly booming cities in Dilmun were actually abandoned.

Dilmun only “reappears” in the 16th century BC, when it became part of the Kingdom of the Kassites. Until 1225 BC, Dilmun remained part of that empire, and the Kassites re-established Dilmun as seat of one of their regional Governors and used it (once again) to control trade flows. In 1225 BC, Assyria captured the Kingdom of the Kassites. The relative importance of Dilmun at that stage can be recognized from the fact that the Assyrian king explicitly added to his titles that of King of Dilmun.¹⁵ However, very little is known about the following centuries. The next known time “Dilmun” is mentioned is not until 709 BC, when a reference is found engraved in the walls of the palace of Khorsabad (Assyria):

“The engravings revealed the great event’s of his [King Sargon II of Assyria’s] reign and amongst them, the submission of Uperi, the king of Dilmun, and the list of gifts that was sent by Dilmun, the vassal, in tribute.”¹⁶

THE GREEK PERIOD

With Alexander the Great, the so-called Greek era began for Bahrain – or Tlmm/Tylos, as it was called at that time. While Alexander the Great himself never set foot in Tylos, it was Androsthene of Thassos who (re)discovered the

¹³ M. Barrault, Regards Bahrain, 16

¹⁴ M. Barrault, Regards Bahrain, 17

¹⁵ M. Barrault, Regards Bahrain, 23

¹⁶ M. Barrault, Regards Bahrain, 23

island in the course of exploring the coasts of the Gulf in a pursuit to establish a new trading route between India and the Mediterranean. From Androsthene's description, it can be taken for sure that, at that stage, Bahrain was still a very fertile island, with "fruit tree orchards, dates, figs, cotton fields, [and] lush forests of mangrove along the coast"¹⁷

Again, archeological artifacts found in Bahrain tell of a culture that was well developed, able to read and write Greek, and prosperous enough to afford pompous burial objects:

"Luckily, these graves had not been plundered and the archaeologists discovered inside magnificent jewellery, beautiful varnished pottery, delicate glass vases, decorated with spirals, zigzags or inlaid with ivory or bone, and elegant alabaster cups. There were also coins, and pearls were placed in the mouth of the dead to facilitate their passage into the other world. Gold leaves sealed their mouth."¹⁸

In the third century AD, the first Arab tribes arrived in Bahrain, the Bani Wa'ils. Over the following centuries, incense trade in particular brought some wealth to Bahrain, which fell under Sassanid rule and was then known as Samahige and Awal.¹⁹

By the early seventh century AD, Bahrain was relatively densely populated, thanks to the availability of water and the fertility of its soils, combined with its good trading position: "At the emergence of Islam all the tribes from Abd al-Quays and the Bedouins of the Tamim, Bakr Ibn Wa'il and al-Azd were present in Bahrain."²⁰ Bahrain was ruled by an Arab named al-Mundhir Ibn Sawi al-Tamimi, who reported to the Munadhira Khammis, who in turn were under the control of the Sassanid Persians.²¹ Religiously, "contact had been made with both Christianity and Judaism while Paganism was widespread."²² This included the growth of horse worship, a belief imported from Persia.²³ Habiba describes Bahrain of those days as an "area [that] was acquainted with all the religions that were practiced in its environs, but [that] did not firmly support any of them as it did not really have any fixed standpoint."²⁴

¹⁷ M. Barrault, *Regards Bahrain*, 23

¹⁸ M. Barrault, *Regards Bahrain*, 23

¹⁹ A. Al-Doy in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 162

²⁰ A. Karim in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 13

²¹ A. Al-Doy in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 162

²² H. Amin in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 25

²³ A. Kanoo in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 279

²⁴ A. Habiba in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 203

THE EARLY ARAB-MUSLIM ERA

In 629 AD, Al-Ala Ibn Al-Hadrami, a companion of Prophet Mohammad, arrived in Bahrain. This year is generally regarded as the start of the Arab-Muslim era.²⁵ It is said that the Prophet sent nine letters calling for conversion to Islam to different rulers, and that Al-Hadrami was specifically sent to Bahrain by the Prophet to deliver one of these letters to Al Munder Bin Sawa, then the Amir of Bahrain.²⁶

Al Munder Bin Sawa converted, and most of his people followed. However, as becomes clear from a second letter from the Prophet to Al Munder Bin Sawa, many Christians and Jews, as well as Magians, chose the option of paying Al Jizia, a religious tax, instead of converting.²⁷

Overall, it is reported that the conversion of Bahrain to Islam took place without any fighting.²⁸ Four additional letters from the Prophet to the Amir of Bahrain, bringing it to a total of six letters, document the importance of Bahrain for Islam in the early days.²⁹

Soon after the quick and peaceful adoption of Islam, Bahrain sent a delegation to meet the Prophet himself:

“The Prophet was delighted with the delegation and their leader of whom he said, “You have the two qualities which are very dear to God”. When Abdallah [Ibn Awf al-Ashaji] asked him what they were he replied “Tolerance and perserverance”. Moreover the Prophet feted the delegation and marked them out for his favour, offering them gifts in appreciation of their efforts and their devotion to Islam”³⁰

Tolerance and perseverance are still two of the key attributes that Bahrainis are proud of and that are frequently used, even today, by Bahrainis to describe themselves and their country.³¹

Interestingly enough, that delegation consisted not only of Muslims, but included the Christian Bishr Bin Amr Bin Hanash Al Jarood. It is reported that he converted upon meeting the Prophet and later became a strong defender of Islam.³²

²⁵ M. Barrault, Regards Bahrain, 25

²⁶ A. Kanoo in A. Al-Khalifa/M. Rice, Bahrain through the ages, 281

²⁷ A. Kanoo in A. Al-Khalifa/M. Rice, Bahrain through the ages, 284

²⁸ Q. Al-Hadithi in A. Al-Khalifa/M. Rice, Bahrain through the ages, 258

²⁹ A. Kanoo in A. Al-Khalifa/M. Rice, Bahrain through the ages, 286

³⁰ H. Amin in A. Al-Khalifa/M. Rice, Bahrain through the ages, 26

³¹ NB: In other sources, the two attributes have been translated as “forgiveness and carefulness” – compare A. Kanoo in A. Al-Khalifa/M. Rice, Bahrain through the ages, 290

³² A. Kanoo in A. Al-Khalifa/M. Rice, Bahrain through the ages, 291

Over the following years, Al-Hadrami acted as a close adviser to Al Munder Bin Sawa and was himself appointed governor of Bahrain by Caliph Abu Bakr after Al Munder's death.³³ During that phase, after the death of the Prophet, Islam went through some difficult times in Bahrain:

“Various reference relate that the people of Bahrain, like many other Arabs after the death of the Prophet, reverted from Islam. Bahrain's reversion took place directly after the death of their Muslim and Arab Amir, Al Munder Bin Sawa, and that was soon after the death of the Prophet.”³⁴

While the people of Abdul Quais stayed with Islam or very quickly returned to it, the other tribes of Bahrain turned away from Islam and Bahrain, like other areas of Arabia, took part in the so-called Riddah, the uprising against Islam. There are some sources that argue that the reason for this were more financial and personal, rather than religious. According to some accounts, the Zoroastrians played a key role in Bahrain's uprise, after refusing to pay Al Jizia, the religious tax.³⁵

In 633 AD, i.e., only four years after Islam had arrived in Bahrain, the first Caliph, Abu Bakr Al Siddiq, saw himself forced to form eleven brigades to fight against “Al Murtadeen”, the revisionists.³⁶ The sixth of these brigades, under al-Hadrami's command, was sent to Bahrain:

“Al-Hadrami knew every corner of the country, its people, its strengths, and its weaknesses, and after a hard-fought jihad was able to return Bahrain to the fold of Islam. It reverted to being a Muslim stronghold and a starting-off point for the Great Conquests.”³⁷

Al-Hadrami remained governor of Bahrain, and extended his term beyond the caliphate of Abu Bakr into that of Omar Ibn Al Khattab, when he was dismissed after a failed raid of Persia from Bahrain that was undertaken by Al-Hadrami without prior consultation of the Caliph.³⁸

In the subsequent decades, Bahrain became an important catalyst for the spreading of Islam in the Arab world, both in an intellectual way as a centre of arts and sciences, and in a military way as the hub for multiple expeditions. At the same time, Bahrain saw a number of revolts and uprising. Among the more significant of them was an (unsuccessful) uprising against the caliphate in Baghdad in 868 AD. Around 900 AD, Bahrain fell under the rule of the Karmathians, a religious movement that started in southern Iraq and spread over the Gulf region. In 1058, a local leader of Bahrain, Abu Al-Bahlul, successfully

³³ A. Kanoo in A. Al-Khalifa/M. Rice, Bahrain through the ages, 286

³⁴ A. Kanoo in A. Al-Khalifa/M. Rice, Bahrain through the ages, 292

³⁵ V. Strika in A. Al-Khalifa/M. Rice, Bahrain through the ages, 508

³⁶ A. Kanoo in A. Al-Khalifa/M. Rice, Bahrain through the ages, 293

³⁷ H. Amin in A. Al-Khalifa/M. Rice, Bahrain through the ages, 26

³⁸ A. Kanoo in A. Al-Khalifa/M. Rice, Bahrain through the ages, 294

revolted against the Karmathians – and named himself “Amir over Bahrain”.³⁹ However, he was quickly ousted again, and a time of significant chaos and disruption then followed until the Al-Uyunis managed to establish a state in Bahrain that lasted almost one and a half centuries.⁴⁰ A number of short annexions and protectorates followed before the Al-Usfuriyin established their reign for the subsequent approximately 150 years.

During this period, Bahrain also (re-)gained increasing importance as commercial trading post, and by the early 13th century, Bahrain was once again a major trading hub. Trading became even more intense with the building of Basra to supply Baghdad:

“All the ships docked in Bahrain to get fresh supplies and buy pearls. As in the days of Dilmun, there were merchants from all countries of the Gulf in Bahrain”⁴¹

Bahrain grew into sufficient importance to make it a severe competitor for Hormuz, then the controlling power of trade flows. After a series of conflicts, a truce was reached in the late 1480s. It provided for the “continuation of the administrative powers of the Al-Jubur in Bahrain provided that they undertook to pay a certain part of their revenues to Hormuz and that nominal recognition of ultimate authority be vested in the Shaikhdome of Hormuz”.⁴² From Hormuz’ point of view, the key interest was in ensuring that Bahrain could no longer trade directly (and independently) with the merchant fleet of the Gulf. And while Hormuz owed nominal allegiance to the King of Persia at that time and paid some annual taxes, it was the de facto ruler of all islands and ports in the Gulf.⁴³

PORTUGUESE OCCUPATION

In 1497, the Portuguese rounded the Cape of Good Hope, and in 1498, Vasco da Gama reached India. Given the revenues to be gained through controlling the spice trade from India to Europe, the Portuguese aimed not only to rule trade centres in India itself, but also the trading routes. Francisco de Almeida was appointed commander-in-chief of the Portuguese colonies in India, and was also given responsibility to gain control over Hormuz and Aden. At that time, a Muslim naval force set out from the Gulf to help some Muslim princes in India, but faced a bitter defeat against the Portuguese.

In 1506, the Portuguese appointed Alfonso de Albuquerque as commander of a fleet that should take care of the Arabian Gulf.⁴⁴ The key city of interest at that

³⁹ A. Al-Doy in A. Al-Khalifa/M. Rice, Bahrain through the ages, 163

⁴⁰ A. Al-Doy in A. Al-Khalifa/M. Rice, Bahrain through the ages, 163

⁴¹ M. Barrault, Regards Bahrain, 26

⁴² A. Al-Anani in A. Al-Khalifa/M. Rice, Bahrain through the ages, 36

⁴³ A. Busharb in A. Al-Khalifa/M. Rice, Bahrain through the ages, 147

⁴⁴ A. Al-Anani in A. Al-Khalifa/M. Rice, Bahrain through the ages, 41

stage was Hormuz, to allow monitoring and controlling all navigation in and out of the Gulf:

“In view of the political, strategic and commercial importance of Hormuz, the Portuguese made it one of their most important cities in the Levant and strove to bring it under their control. Perceiving that direct occupation might only lead to the ruination of the city and bring harm to its trade, Albuquerque preferred a policy of indirect rule.”⁴⁵

The exact developments and the series of events and fightings are not fully documented, and it is still subject to some disputes whether the Portuguese voluntarily chose these tactics, or whether they had to as they initially suffered heavy losses.⁴⁶ In any case, by September 1507, de Albuquerque signed a treaty with Shaikh Sayf al-Din of Hormuz, who became subject to the Portuguese crown, rendered de facto control to Portuguese officials and agreed paying an annual tax to the Portuguese.⁴⁷

From Hormuz, attention turned to Bahrain. A letter from Alfonso de Albuquerque, dated 1508, already showed the strong desire of Albuquerque to set sail towards Bahrain.⁴⁸ In 1513, Albuquerque had to apologize to the Portuguese crown that he had still not put Bahrain under full control, and one year later he wrote again that for him, Bahrain would be of key importance as soon as he would return to the Gulf. In 1515, he stated in writing: “Bahrain is as important as it could possibly be [...]. We have been able to dominate all the areas where the kingdom of Hormuz rules with the exception of Bahrain [...].”⁴⁹ In that year, Albuquerque himself led an expedition to Bahrain to establish full Portuguese authority.

However, the Portuguese did not manage to establish full authority over Bahrain in a sustainable way, despite repeatedly sending expedition forces, especially so in 1521 and 1529. While in 1521, the Bahrainis suffered a defeat with their Amir killed in a bloody battle,⁵⁰ in 1529, the Portuguese received a heavy blow as they had to retreat after an unsuccessful siege. Out of the 450 soldiers, 200 had died and another 200 were close to death by the time the Portuguese fleet returned to Hormuz. But it was not only the strong resistance by the Bahrainis: The plague had hit the ships.⁵¹

Unrest continued, and it would actually take the Portuguese until approximately 1560 to really establish full authority.⁵² The most visible trace of the Portuguese

⁴⁵ A. Busharb in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 147

⁴⁶ A. Al-Anani in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 45

⁴⁷ A. Busharb in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 147

⁴⁸ A. Busharb in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 147

⁴⁹ Quoted after A. Busharb in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 147

⁵⁰ A. Tazi in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 516

⁵¹ A. Busharb in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 152

⁵² M. Barrault, *Regards Bahrain*, 26

occupation is Bahrain Fort, built on the site of multiple older forts, and today one of Bahrain's major tourist attractions. However, at the time, the Portuguese occupation was a very difficult one for Bahrain, and it is still considered one of the darkest chapters in Bahrain's history:

“The period of the Portuguese presence in the Arabian Gulf represents one of the blackest on record in the history of this part of the Arab world. Filled with an intense hatred towards Muslims, they came as invaders, thirsting to shed Muslim blood and pillage Muslim homes”⁵³

Portuguese rule did not last long. A popular uprising in 1602, strongly supported by the Persians, saw the Portuguese retreating from Bahrain.

Subsequently, Bahrain fell under Persian rule, until it was taken by the Omanis in 1716. In 1722, it was handed back to the Persians.⁵⁴ Over the coming years, many Arab tribes, including those of Bahrain, were acquiring increasing amounts of independence, a trend that the Persians tried to stop with military action in 1736:

“Bahrain was taken in June 1736, but the new Persian governor came under heavy pressure when more and more Arab tribes entered into hostilities against the Persians. Bahrain was plundered by the Huwala Arabs of Tahiri, and its fortress was besieged.”⁵⁵

Again some years later, around 1754, the Dutch considered occupying Bahrain. At that stage, Bahrain was formally a Persian possession, but in reality one of Shaikh Nasra of Bushire.⁵⁶ However, the plan was rejected for a variety of reasons, and the Dutch influence on Bahrain over the course of history remained limited to some trade contacts via the Dutch East India Company.

THE EARLY YEARS OF THE AL-KHALIFA DYNASTY

At the beginning of the 18th century, a severe drought hit the high plains of the Arabian Peninsula. This forced the Utub (or Utrub) tribes living there to move away from their traditional homelands. Three families split off the main group (the Al-Khalifa, the Al-Sabah, and the Al-Jalahma) and went to settle in what today is Kuwait, before partially moving on to today's Qatar, and finally Bahrain.

At that stage, Bahrain was ruled by a Persian governor, and the Al-Khalifas settled in Zubara, on today's Qatari coast. Their relationship with the Persians was reported to be very close – until one of the Persian governors of Bahrain,

⁵³ A. Al-Anani in A. Al-Khalifa/M. Rice, Bahrain through the ages, 31

⁵⁴ B. Slot in Al-Khalifa/M. Rice, Bahrain through the ages, 499

⁵⁵ B. Slot in Al-Khalifa/M. Rice, Bahrain through the ages, 500

⁵⁶ B. Slot in Al-Khalifa/M. Rice, Bahrain through the ages, 500

Shaikh Nasr Al-Madhkur, decided to attack and capture Zubara.⁵⁷ At that stage, Shaikh Ahmed Al-Fateh, the then-leader of the Al-Khalifa family, hit back and not only defended Zubara, but also took Bahrain from the Persians in 1783.⁵⁸ This year marks the beginning of the Al-Khalifa presence in and rule over Bahrain.

The emergence of the Al-Khalifa shaikhdom “was closely related to widespread tribal stirrings that were then taking place in the desert heartlands of the Arab East.”⁵⁹ At the same time, it marked an end to the unrest for the area of Bahrain as, until 1828, “the ancient pattern whereby the archipelago was periodically and, in some periods, more or less continually subjected to attack, invasion, and occupation by succeeding groups of claimants, gradually faded as the Al-Khalifa hold over the islands was essentially established.”⁶⁰

Over the subsequent decades, the strategic position of Bahrain in the Gulf once again allowed Bahrain to gain a major role in international trading:

“In the course of the first twenty or thirty years of the rule of the [Al-Khalifa] family, Bahrain achieved swift progress commercially and was occasionally on the verge of wresting from Muscat its importance as a trade centre in the Gulf.”⁶¹

This threat was so real that the Omanis, then one of the strongest powers in the region, decided to capture Bahrain in 1799. However, their rule over Bahrain lasted for only one decade, as already in 1809, the sons of Shaikh Ahmed, by the names of Salman and Abdullah, took the island back and became its joint rulers.

The Omani attempts to reestablish their rule over Bahrain finally led to Bahrain’s leadership approaching the East India Company for assistance. In 1820, Bahrain – like several other regional powers – signed a “General Treaty of Peace” with England.⁶² This was the first step into a protectorate that would last until 1971, and that significantly shaped Bahrain.

THE BRITISH PROTECTORATE ERA

The years of the British protectorate, from 1820 to 1971, marked important changes for Bahrain, and the transition into a modern-day state. Building on the General Treaty of Peace, “by the late 1820s the British realized that if they stood by when any local state, even a friendly power such as Oman, upset the peace of

⁵⁷ M. Barrault, *Regards Bahrain*, 27

⁵⁸ A. Al-Khalifa/A. Hussein in A. Kanoo in A. Al-Khalifa/M. Rice, *Bahrain through the ages*, 313

⁵⁹ K. Salibi in Al-Khalifa/M. Rice, *Bahrain through the ages*, 469

⁶⁰ R. Landen in Al-Khalifa/M. Rice, *Bahrain through the ages*, 402

⁶¹ K. Al-Khalifa in Al-Khalifa/M. Rice, *Bahrain through the ages*, 339

⁶² R. Landen in Al-Khalifa/M. Rice, *Bahrain through the ages*, 405

the Gulf proper, Britain's overall imperial interests could be endangered".⁶³ In consequence, Britain enforced a number of regional truces in the subsequent decades, which were eventually superseded by a "Perpetual Treaty of Peace" in 1853. Bahrain officially joined this system with the First Anglo-Bahraini Treatment in 1861.⁶⁴

However, the first decades of the protectorate were internally unstable times for Bahrain. From 1828 until 1869, the country endured a period of severe and damaging internal conflicts caused by rivalry among leading Al-Khalifa shaikhs.⁶⁵ Violence was particularly intense from 1834 to 1846 and from 1867 to 1869, until the establishment of Shaikh Isa Ibn Ali Al-Khalifa as ruler in 1869.⁶⁶

Starting around 1861, the Al-Khalifas also reluctantly submitted to British pressure to assert their supremacy over large parts of Qatar. By 1875, the British decided to disallow any claims of the Al-Khalifa family over any parts of Qatar,⁶⁷ de facto forcing the Al-Khalifas to concentrate on Bahrain and a number of smaller dependent islands.

On the positive side, the period of relative peace and stability that followed allowed Bahrain to (re-)start flourishing as a trading post, now with increased European (and American) influence. In 1899, the then English Resident (i.e. representative of the Crown) in Bushehr observed:

"British trade has flourished greatly in Bahrain over the last decades and the appointment of a British official in Bahrain will further the expansion of this trade since most British companies will turn towards Bahrain."⁶⁸

While already a protectorate since 1820, it was only in the context of a tour of the Viceroy of India, Lord Curzon, to the Arabian Gulf in 1903, that Bahrain's first full British Political Agent, Captain Prideaux, was actually appointed.

Around the same time, correspondence archived by the Arabian Mission of the Dutch Reformed Church of North America documents the gradual advances in the development of an educational as well as a healthcare system in Bahrain.⁶⁹

By 1918, after World War I, the dismemberment of the Ottoman Empire, the defeat of Germany and its allies, and the collapse of Czarist Russia, Great Britain was in clear and unchallenged charge of the Gulf:

"There can be little doubt that in 1918 the Gulf had become, to all intents and purposes, a British lake. All the states on the Arab side, from Oman to

⁶³ R. Landen in Al-Khalifa/M. Rice, Bahrain through the ages, 405

⁶⁴ R. Landen in Al-Khalifa/M. Rice, Bahrain through the ages, 405

⁶⁵ R. Landen in Al-Khalifa/M. Rice, Bahrain through the ages, 402

⁶⁶ K. Al-Khalifa in Al-Khalifa/M. Rice, Bahrain through the ages, 346

⁶⁷ R. Landen in Al-Khalifa/M. Rice, Bahrain through the ages, 403

⁶⁸ K. Al-Khalifa in Al-Khalifa/M. Rice, Bahrain through the ages, 346

⁶⁹ T. Anthony in A. Al-Khalifa/M. Rice, Bahrain through the ages, 62

Kuwait, had special treaty relations with Britain that controlled their foreign affairs and a fair amount of their internal affairs as well. Within a short time, Iraq became a British mandate, and the rich oilfields of southern Iran were controlled by the British Government through their majority holding of the Anglo-Persian Oil Company, which was acquired in 1914.”⁷⁰

By 1926, Prideaux had moved on to be responsible for British interests in the whole of the Gulf, and a certain Captain Daly was Political Agent in Bahrain, an Irishman who was described as “peppery and short-tempered”.⁷¹ At that time, the British had moved from their reluctance to become embroiled in internal affairs of Bahrain, which had characterized the earlier phases of the protectorate, to a more pro-active role:

“By the time he [Daly] reached Bahrain, three new sources of concern had been added to the traditional [British] interests to maintain the peace of the Gulf and protect trade [...]. These concerns were: the rival ambitions of Persia, and of Ibn Saud, to fill the vacuum caused by the collapse of the Ottoman Empire; the newly-perceived potential for the development via the Gulf of the air route to India; and oil.”⁷²

This more pro-active role by the British can be seen in the fact that “Shaikh Isa bin Ali had, very unwillingly, been persuaded by the British to retire from active control of affairs after ruling the country for fifty-five years and his son Shaikh Hamad who had been heir apparent since 1893 had assumed control in 1923.”⁷³ On top, the British seconded some British officials to the new Amir to help him run Bahrain. Initially, three key strategic posts were claimed by the British under this heading: chief of customs (the sole revenue source of the country at that time), chief of police, and a financial advisor.⁷⁴ This came in addition to keeping jurisdiction over all non-Bahrainis in Bahrain.

On March 21st, 1926, a British man arrived together with his wife. He should play a key role in the development of Bahrain: Sir Charles Dalrymple Belgrave. Over the subsequent years, Sir Belgrave gained the full trust of the Bahraini leadership – so much so that, on some occasions, the British were actually worried about his loyalties. But Sir Belgrave played a key role in strengthening and balancing the relationship between Bahrain and Great Britain:

“With the departure of Daly, and the retirement of Prideaux as Political Resident, there developed a less ambiguous relationship between Britain as the protecting power with responsibility for dealings with external

⁷⁰ R. Zahlan in Al-Khalifa/M. Rice, Bahrain through the ages, 567

⁷¹ R. Belgrave in A. Al-Khalifa/M. Rice, Bahrain through the ages, 106

⁷² R. Belgrave in A. Al-Khalifa/M. Rice, Bahrain through the ages, 106

⁷³ Quoted according to R. Belgrave in A. Al-Khalifa/M. Rice, Bahrain through the ages, 107

⁷⁴ R. Belgrave in A. Al-Khalifa/M. Rice, Bahrain through the ages, 107

affairs and jurisdiction over non-Bahrainis on the one hand, and the internal government of Bahrain as an independent state on the other.”⁷⁵

This relationship was that successful that Sir Denys Bray, Foreign Secretary of the Government of India, reported in 1929, that “Bahrain has obviously become the keystone of our position in the Gulf. [...] Our aim should be to demonstrate that an Arab state can advance on Western lines under British protection and yet retain its Arab character.”⁷⁶

Over time, Belgrave held positions not only as Financial Advisor (the role he was hired for), but as de facto Prime Minister, Head of Finance, Chief of Police, magistrate, etc.,⁷⁷ and thereby truly shaped Bahrain and its history.

However, the probably most important development for Bahrain during that period was linked to natural resources. The first oil well was discovered in Bahrain in 1932, and significantly changed Bahrain’s fortunes for the following decades:

“It was under the reign of [...] Shaikh Hamad bin Isa, that the first oil well was discovered (1932). The discovery came at the right time to alleviate the hardship caused by the collapse in the whole region of the Gulf of the pearl fishing industry because of the Japanese cultured pearls.”⁷⁸

During that period, the United States of America started to strive for a stronger role in the Gulf. That was strongly influenced by the increased interest in oil, in addition to (or closely linked with?) the USA’s growing international influence and role:

“It was only after the war [World War I] when the importance of oil as a strategic weapon was fully recognized, that the US government became directly involved in challenging Britain’s hold over the oil-producing regions of the world.”⁷⁹

Actually, the first oil concession for Bahrain was granted to a small British company, the Eastern and General Syndicate (EGS) in 1925. In 1926, EGS offered to sell the concession to the British APOC, but as APOC was not interested, EGS sold it to Gulf Oil Corporation (GOC), a US company, in 1927. GOC in turn sold the concession to the Standard Oil Company of California (SoCal) when GOC became a party to the so-called Red Line Agreement by acquiring shares in the Turkish (later Iraq) Petroleum Company. That agreement

⁷⁵ R. Belgrave in A. Al-Khalifa/M. Rice, Bahrain through the ages, 120

⁷⁶ Quoted according to R. Belgrave in A. Al-Khalifa/M. Rice, Bahrain through the ages, 120

⁷⁷ R. Belgrave in A. Al-Khalifa/M. Rice, Bahrain through the ages, 104

⁷⁸ M. Barrault, Regards Bahrain, 27

⁷⁹ R. Zahlan in Al-Khalifa/M. Rice, Bahrain through the ages, 569

stipulated that all of TPC/IPC's shareholders would not seek their own oil concessions within a defined area which included Bahrain.⁸⁰

At this stage, the British Colonial Office became active and imposed a number of conditions on SoCal regarding its Bahraini concession. A compromise was reached in 1930. This was the birth of BAPCO (Bahrain Petroleum Company). BAPCO had to be founded as a British company registered in Canada, despite being a subsidiary of SoCal. One of its directors always had to be British, and so on.⁸¹ However, by 1932 and after intense diplomatic negotiations, the British finally accepted an "open door" policy (i.e., allowed companies of other than British nationality to seek oil concessions), virtually on the eve of commercial exploitation of oil, which started in Bahrain in May 1932.

Needless to say that this rivalry didn't help the American-British relationships in the Gulf, and in Bahrain in particular. While "in the field", the (at that stage tiny) British and American expatriate communities had always formed a lot of social links, the official perspective, especially of the British, was of more suspicious nature. A nice anecdote is told that is considered quite typical of a period during which the (British) Political Agent in Bahrain performed consular acts for the American expatriate community, while at the same time being haunted by the fear that the American community could actually grow to strong:

"In late November [1934], he [the Political Agent] received a telegram from the British Consul in Baghdad that he had issued a visa to Bahrain to a Mr. Harding of the American Express Company. The Agent assumed that Harding was an American who wanted to open a branch of American Express in Bahrain. He decided to prevent him from entering the country. [...] So the Agent went to the Bahrain airport and prepared to send Harding back immediately after his plane landed. To his surprise and relief, he discovered that Harding was British; since an Englishman did not warrant expulsion, the Political Agent allowed him in."⁸²

A few years after the start of commercial exploitation of oil, the Second World War broke out, and also affected Bahrain. From the beginning, Bahrain clearly sided with the British. Immediately after Great Britain's declaration of war upon Germany, Shaikh Hamad bin Isa Al-Khalifa, under the strong influence of Sir Charles Belgrave, sent a telegram to King George VI:

"For nearly a century the Khalifa Shaikhs of Bahrain have been on terms of friendship with the British Government. [...] Our sympathies in this war which is now being waged against the evil forces of Nazism are with

⁸⁰ R. Zahlan in Al-Khalifa/M. Rice, Bahrain through the ages, 569

⁸¹ R. Zahlan in Al-Khalifa/M. Rice, Bahrain through the ages, 571

⁸² R. Zahlan in Al-Khalifa/M. Rice, Bahrain through the ages, 575

Great Britain. If we possessed an army, we would offer it to the British Government.”⁸³

Instead, Bahrain sent £ 30,000. Over the coming years, Bahrain did not see fighting except for one Italian air attack on the Awali refinery in October 1940, which did not cause serious damage. In 1941, the situation seemed to become more critical as Iraq became increasingly anti-British, but the regime of Rashid al-Gaylani was quickly overthrown. Also in 1941, the British, together with Soviet forces, decided to invade Persia and overthrow the government of Reza Shah, who sided with the Axis. For Bahrain, this actually meant a reduction of danger, as Persia could no longer attack its territory. However, with the entry of Japan into the war in December 1941, the perceived risks for Bahrain increased again. The British feared in particular that Japanese parachutists would drop into Bahrain because of its strategic location. In 1942, rumors of naval action in the Gulf were widespread.⁸⁴ On April 16th, 1942, Bahrain’s Government saw itself forced to announce that “Bahrain has come within the zone of operations”.⁸⁵ Defense systems were systematically strengthened, and the local population drilled, once again under the leadership of Sir Charles Belgrave. Increasing numbers of British and American military arrived in Bahrain. However, after the increasing nervousness in 1942, including a false air attack alert on the refinery, 1943 saw a turn in the tide of the war. Germany and Italy were not longer able to attack the Gulf region, and the Japanese had lost their original momentum as well. As of spring 1943, the fears declined, and the troops in the Gulf suddenly found themselves in relatively secure back-waters (and faced being transferred to other theatres of war). In hindsight, Bahrain was spared from any military fights (except for the one air attack in 1940), but its civilian population suffered heavily from the rationing of food, as Bahrain depended strongly on imports.

From an economic point of view, the production and refinement of oil remained of key importance during the War, and naturally even gained in significance. On top, the smuggling of goods, first into Bahrain, and later on, as the situation gradually improved, out of Bahrain became de facto one of the key economic activities of parts of Bahrain’s population (as well as of expatriates stationed in Bahrain).⁸⁶

A non-war related event during those years of the second World War was the death of Shaikh Hamad in 1942. His son Shaikh Salman bin Hamad Al-Khalifa succeeded to the throne. Sir Belgrave continued to act as key advisor (and de facto prime minister) for the new ruler.

⁸³ Telegram of Shaikh Hamad bin Isa Al-Khalifa to King George VI., quoted according to R. Bidwell in A. Al-Khalifa/M. Rice, Bahrain through the ages, 123

⁸⁴ R. Bidwell in A. Al-Khalifa/M. Rice, Bahrain through the ages, 126

⁸⁵ R. Bidwell in A. Al-Khalifa/M. Rice, Bahrain through the ages, 126

⁸⁶ R. Bidwell in A. Al-Khalifa/M. Rice, Bahrain through the ages, 129

After the Second World War, Bahrain remained under the protectorate of Great Britain. The fears of the war removed, a period of strong economic development followed, driven mainly by the exploration of oil. The growth in economic strength came hand in hand with increasing self-consciousness of Bahrain's people – and an increasing sensitivity regarding being dependent on the British, rather than a fully independent Arab nation. The step-wise dismantling of British political control started, and found its culmination in Bahrain's independence in 1971.⁸⁷

During those years, starting from the mid-1950s, Bahrain witnessed some first democratic movements, at that stage still under British rule/protectorate. People from a variety of political and religious backgrounds rallied behind the so-called High Executive Commission, which was later renamed the National Union Commission (NUC) and consequently gained government recognition as the first political organization. The NUC's demands focused on a constitution for Bahrain, including the establishment of a legislative council, and the right to unionize, as well as the modernization of governmental bodies, a reform of the judiciary, and increased Bahrainisation of jobs.⁸⁸

INDEPENDENCE FROM THE BRITISH AND THE FIRST CONSTITUTION

In 1961, Shaikh Salman bin Hamad Al-Khalifa died and was succeeded by his son, Shaikh Isa bin Salman Al-Khalifa. Shaikh Isa's vision for Bahrain was that of independent statehood. And this vision became reality ten years after he ascended to the throne. After years of negotiations and preparations, Bahrain left the British Protectorate and Shaikh Isa declared himself Amir of the sovereign Arab State of Bahrain on August 14th, 1971.

Despite the cordial separation from and continued friendly relationship with Britain (expressed, among others, in a Treaty of Perpetual Friendship) and Bahrain without delays joining the United Nations and the Arab League, sustainable independent statehood saw a lot of pressure early on:

“Now that the British no longer held control in their hands, there were new bidders for leadership of the island. [...] The first such bidder was the Schah of Iran who made an attempt to return Bahrain to Iranian rule. Bahrain's prudence in joining the United Nations and the Arab League now paid off. Under the leadership of Prime Minister Shaikh Khalifa, with strong support from the Kingdom of Saudi Arabia and ultimately from the United Nations (UN), Bahrain's negotiators were able to ward off the take-over bid. [...] When the UN conducted a survey of the Bahraini population, it found them

⁸⁷ R. Landen, in A. Al-Khalifa/M. Rice, Bahrain through the ages, 394

⁸⁸ Anonymous group of lawyers, paper published on the internet, Legal Opinion Concerning the Constitutional Matter Of the Kingdom of Bahrain, Section 1

totally committed to independent statehood as a member of the Arab League, not as subjects of Iran.”⁸⁹

With the independence from Great Britain, and the full end of the British protectorate on December 16th, 1971, a new phase of history started for Bahrain. A strong loyalty of the Bahraini people to their newly independent country characterized this phase:

“The people of Bahrain also confronted Iran’s allegations of sovereignty over Bahrain, and they rallied behind the ruling family when they responded to a referendum held by the Fact-Finding Committee chaired by Mr. Jino Spardy, the representative of the UN Secretary General. The people of Bahrain explicitly expressed their wishes to have an independent Arab state under the rule of the late Amir with a democratic form of government.”⁹⁰

Strong trends towards constitutionalization and democratization were other characteristics of that phase. In this spirit, a Constituency Council started its work on a Constitution in December 1972. Bahrain’s third anniversary of the full end of the British protectorate should become a day of high significance: On December 16th, 1973, the newly elected National Assembly convened for the first time and the new Constitution came into force. This Constitution was considered a “masterly work [and] a model to be followed by the Arab world.”⁹¹ As subsequent chapters of this thesis will show, the 1973 Constitution still serves as yardstick for many opposition politicians today, who would love to return to the provisions of that Constitution:

“The 1973 Constitution is held to have been the result of a contract between the people and their rulers, and is therefore seen as more legitimate and enduring, despite its suspension for more than a quarter century, than the recently promulgated [2002] constitution that is seen as merely the government's constitution.”⁹²

However, the phase of democratization did not last long. Already in 1975, Parliament was dissolved by the Amir, Shaikh Isa bin Salman Al-Khalifa, after the Prime Minister resigned with his whole Cabinet (only to be reappointed again immediately after Parliament had been dissolved). While the formal reason for dissolving Parliament was the Prime Minister’s resignation, the content reason behind all this maneuvering was Parliament’s objection to the so-called 1974 State Security Law, and in general an impression on the leadership side of having gone too far with democratic reforms.⁹³

⁸⁹ R. Abraham/L. Bonapace, *The Journey Begins*, 10

⁹⁰ Anonymous, *Legal Opinion Concerning the Constitutional Matter Of the Kingdom of Bahrain*, Section 1

⁹¹ R. Abraham/L. Bonapace, *The Journey Begins*, 10

⁹² Melia, *The People of Bahrain Want to Participate*, 6

⁹³ A. Tschentscher, ICL, www.servat.unibe.ch/icl

MODERN-DAY BAHRAIN – 1975 UNTIL TODAY

After Parliament's dissolution and the suspension of the Constitution, it should then take 20 years of absolute rule until first steps were (re-)taken towards some kind of representation. "During this period, demands for the activation of the constitution and the return of the parliamentary life were continuous," it reads in an extensive paper critically analyzing the (2002) Constitution and the path leading to it.⁹⁴ In 1993, a Shura (Consultative) Council was established in reaction to increasing pressures to somewhat open the system. However, it was far from any sort of real democratic representation. The Amir appointed all Council members, and their role was strictly consultative only.

Not surprisingly, this "solution" did not satisfy the call for more democracy:

"However, this form did not meet the acceptance, or the credibility, by the people of Bahrain. For this reason, the calls for constitutional life and the return of the parliament, with the resistance by the Government, starting from 1994, took certain forms of violence."⁹⁵

In December 1994, a petition was presented to the Amir, demanding a Constitution, women's suffrage, and an elected assembly. The original petition was initially signed by 14 opposition politicians signed the original petition. Later on, approximately 25,000 people endorsed it.⁹⁶ The upcoming hopes for change were however crushed when, in 1995, violent clashes between protesters and security forces led to 38 deaths and more than 15,000 arrests. Many of the leading opposition members were put under arrest in desert prison camps for extended periods of time (even years), without or with only very limited contacts to even their closest relatives and under often very difficult circumstances in terms of water, food, and hygiene, especially so during summers without air-conditioning in Bahrain's soaring heat of 40 – 50 degrees Celsius.⁹⁷

1996 proved to be another difficult year, with Bahrain's security forces conducting a large number of raids, arresting multiple clerics and other activists, and ensuring "stability" by the use of force. It mirrors the dark situation during those years that, in March 1997, the State Security Court began closed-door trials against 59 people who "were arrested in June 1996 and paraded for public confessions of recruitment by Iran and training by Lebanese Hizbullah to overthrow the Bahraini regime."⁹⁸

The situation only changed when, unexpectedly, Shaikh Isa bin Salman Al-Khalifa died in March 1999. His son, Shaikh Hamad bin Isa Al-Khalifa (the

⁹⁴ Anonymous, Legal Opinion Concerning the Constitutional Matter Of the Kingdom of Bahrain, Section 2

⁹⁵ Anonymous, Legal Opinion Concerning the Constitutional Matter Of the Kingdom of Bahrain, Section 2

⁹⁶ A. Tschentscher, ICL project, www.servat.unibe.ch/icl

⁹⁷ Based on description by a former political prisoner who is now playing a key role among the opposition political societies

⁹⁸ A. Tschentscher, ICL project, www.servat.unibe.ch/icl

current King) succeeded in the rulership as Amir (not as King at that stage). Shaikh Hamad immediately promised a turn towards democratisation: “One of his first actions on becoming Amir in 1999 was to promise his people the restoration of democracy.”⁹⁹ Even more noticeably, he did not only make such announcement, but shrank back from using the State Security Court and also started releasing political detainees from June 1999 onwards, culminating in the release of hundreds of political prisoners on February 5th, 2001.¹⁰⁰

This release of prisoners came in parallel to the announcement of a National Action Charter, and its approval by public referendum on February 14th and 15th, 2001 (which became known as the “Valentine’s Referendum” in Bahrain). That Charter had been prepared by the so-called Supreme National Committee, the members of which had been appointed by the King in 2000. With approximately 90% turnout and 98% approval, there was an overwhelming vote in favour of a constitutional monarchy, modelled after Great Britain or the Netherlands.

On February 17th, 2001, Shaikh Hamad declared Bahrain a constitutional monarchy, changed his title from Amir to King, and made his son, Crown Prince Shaikh Salman bin Hamad Al-Khalifa, the head of a committee to implement the charter. One year later, on February 14th, 2002, the (new) Constitution was unilaterally promulgated by King Hamad Bin Isa Al-Khalifa.

However, the new Constitution was immediately met with hefty criticism:

“Shia, in particular, feel they offered an olive branch to the government and royal family by going out in large numbers to vote for the National Charter in 2001, and are frustrated that this good will is not being reciprocated in 2002. Indeed, some men say that the government has exploited the large vote for the National Charter by taking it as a *carte blanche* to follow through in ways that deliver much less than was promised in the National Charter.”¹⁰¹

Shortly thereafter, already on May 9th, 2002, municipal elections were held, followed by parliamentary elections on October 24th, 2002, with run-off elections on October 31st, 2002.

These elections were widely regarded as a key turning point that moved the Constitution from a theoretical document to a political reality. King Hamad bin Isa Al-Khalifa addressed his nation with grand words in the morning of October 24th:

“I urge you today to answer the call of Bahrain. The call of action and hope for the sake of the future. The call of Bahrain today is to take part in the parliamentary elections in order to elect the candidate you deem best fit to

⁹⁹ R. Abraham/L. Bonapace, *The Journey Begins*, 12

¹⁰⁰ A. Tschentscher, ICL project, www.servat.unibe.ch/icl

¹⁰¹ Melia, *The People of Bahrain Want to Participate*, 6

assume responsibilities, achieve participation, and really represent you so that your voice reaches us, through the national council, loud and clear, and we can take it into consideration in the comprehensive building process for your own sake and the sake of future generations [...]. Let us continue the march together to fulfil our aspirations for freedom, dignified lives and moving into the 21st century on robust bases. No-one should abandon the march of this nation at this historic stage, loaded with great promises.”¹⁰²

At the same time, not all groups were participating in the elections – the opposition movements were deeply split about how to react. Dr. Mansoor Al-Jamri, editor of Al Wasat newspaper, explained the situation as follows:

“In Bahrain, there are two schools of thought within the pro-democracy movement. One that says the movement must begin with the 1973 constitution. Even if they want to change the constitution, they should change it using the constitution and they should change it using the procedures available in that constitution. Unless Government does that, they (this school of thought) will not join in the process because that is procedurally not right. [...] The other school of thought believes that the country has reached rock bottom level. Now there are only two choices – either we go below that surface and go into a brutally governmental form of society or we accept whatever is available even if it is a half solution and try to climb out and work from there to find better solutions to the problems.”¹⁰³

On election day, about 130,000 people (or 53.5% of the electorate) casted their votes, and the elections were officially celebrated as a big success:

“The country celebrated. As fireworks lit up the midnight sky, processions and exuberance marked the night. [...] The day had passed peacefully, unmarred by protest or violence. Even more significantly, more than half the population had shown their support.”¹⁰⁴

However, there was a large shadow over those elections and the celebrations: The largest Shi’a opposition movements – including Al Wefaq National Islamic Society – had not participated in elections they had not trusted. They had felt that they had been short-changed by gerrymandering already in advance of the actual elections, and had expected actual election procedures to be far from fair. On top of it all, they had feared that the elections would be not more than an alibi show used by the Government to legitimize itself.¹⁰⁵

¹⁰² Address by His Majesty King Hamad bin Isa Al-Khalifa on the parliamentary elections, as reported by Bahrain Tribune, October 24th, 2002, Special Supplement, 1

¹⁰³ R. Abraham/L. Bonapace, *The Journey Begins*, 25

¹⁰⁴ R. Abraham/L. Bonapace, *The Journey Begins*, 46

¹⁰⁵ Concern described by an active opposition member, August 2008

Four years later, the strategy of those opposition movements, including Al Wefaq, had changed. When the second elections were held in November 2006, all significant opposition groups decided to participate. Al Wefaq National Islamic Society, the main Shi'a opposition group, won this election by a landslide, securing 17 of the 40 seats available at the elected Chamber of Deputies (while still claiming to have faced some very difficult circumstances, including issues around the division into electoral precincts favouring Sunnis, which cost them some seats). Al Minbar Sunni Muslim Brotherhood came in second with 7 mandates, Al Asala (Sunni Salafi) claimed five seats. 11 seats went to candidates who ran as independents.

By February 2007, some shifts of association of members of the Chamber of Deputies had changed the distribution to the following: Al Wefaq 17, Al Asala 8, Al Minbar 7, Al Mustaqbal (moderate pro-government Sunnis) 4, one independent affiliated with Al Wefaq (a Sunni), and three unassociated independents (all Sunnis).¹⁰⁶

THE FUTURE

Khalid Ahmed Junan of Miracle Publishing wrote in 2005:

“The accession to the throne of His Majesty King Hamad bin Isa Al-Khalifa and the subsequent sweeping democratic reforms within Bahrain have been among the most significant developments in the Middle East for many years. [...] The nature of the reforms – and indeed the way they have been implemented – ensures that Bahrainis can be proud of their country [...]. This is perhaps the world's first major constitutional reform in the 21st century [...].”¹⁰⁷

Bahrain is certainly proud of what has been achieved over the last years – and rightly so. Despite (or maybe because of?) being a small country, it has taken a regional lead in changing its society and political system, and in including a variety of groups in its political processes:

“The Kingdom has a whole series of Gulf ‘firsts’ under its belt - from discovering oil, to diversifying the economy, to providing education for both males and females from the 1920s onwards, to becoming the first democracy with universal suffrage in the region.”¹⁰⁸

A lot of things are at the same time certainly still far from great:

- A strong divide between the Sunni and Shia'a groups is a strong challenge for the future – as the next chapter will show.

¹⁰⁶ CIA World Factbook

¹⁰⁷ Khalid Ahmed Juman, on the cover of R. Abraham/L. Bonapace, *The Journey Begins*

¹⁰⁸ “Bahrain at a glance” on www.bahrain.com (website run by Bahrain's Economic Development Board)

- The demographic growth of the population – combined with the general perception that a significant number of jobs are “not acceptable” for Bahrainis (e.g., in construction and wide parts of the service industry) – has resulted in youth unemployment, especially in some of the more traditional Shi’a villages.
- In light of general developments in the Arab region, it is not surprising that some more fundamentalist Islamic groups are increasingly gaining influence (even though that influence is still relatively contained).
- Women’s participation in the political life as well as in the workforce is still low in international comparison (although high if comparing with neighbouring countries).

These are just some exemplary challenges that show that Bahrain’s “experiment” of step-wise democratisation in an “Arabic way” is still fragile, and things might easily still go wrong. As a very high ranking Government official put it in a conversation, the idea is to “slowly let out the steam by gradual reforms – because if we keep the lid closed, the pressure cooker will explode at some stage”. It is not so easy to determine the right speed of “letting out the steam”, i.e., driving reform – if there is such a right speed at all.

But there is strong hope, and, most importantly, still a drive for further change and reform. A drive (and pride) that is fuelled not only by the current top leadership of the country, but reflected through most classes of society. The high oil prices and related economic boom of the region have certainly helped to facilitate reform (and soften many of the hardships that could otherwise have led to further radicalisation), but there is more to this than simple pragmatism. When talking with Bahrainis at varying ranks throughout the society, there is a pride of what has already been achieved, and the conviction to succeed going into the future. Many of the opposition politicians the author of this thesis talked to, had a lot to criticize, but at the end of the day, they all declared how proud they were to be Bahrainis, and how determined they were to help leading this country into a brighter future.¹⁰⁹

For many, the symbol and trustee of hopes has become the current Crown Prince, Shaikh Salman bin Hamad Al-Khalifa. Western educated, he has been strongly involved in political reforms, and has become a driver of reform across various areas over the last years – education, labour markets, economic development, etc., to name just a few. Bahrainis therefore pay a lot of attention to his outlook and his ambitions going forward:

“We aim towards further growth, development and change. We look forward to working with our partners from the public and private sectors on new and exciting projects that will reap positive results, create employment

¹⁰⁹ Based on discussions with opposition politicians in July 2008.

and opportunities, and bring sustainable success to our society. In doing so, we aim to shape a more secure and more rewarding future for our people, for generations to come.”¹¹⁰

In shaping this future, overcoming the religious, political and economic divide between Sunni and Shi’a parts of the population will be another one of the major challenges Bahrain will face on its path into a successful future, as the subsequent chapter will show.

¹¹⁰ Economic Development Board, Operating Review 2007, 9 (Chairman’s Statement)

Sunni and Shi'a – The Religious Divide of Bahrain

Of Bahrain's national population, approximately 98 percent are Muslims. The remaining 2 percents include Jews and Christians. Among the Muslims, citizens are split into the Shi'a and Sunni branches of Islam. Among the expatriates, approximately half of them are Muslims, while the rest are Christians and other religions. The Constitution of Bahrain – as will be explained in detail in a later chapter – guarantees freedom of religion, and gives all religions the right to exercise their faith, even though there are some factual restrictions:

“The Constitution states that Islam is the official religion and that Shari'a (Islamic law) is a principal source for legislation. Article 22 of the Constitution provides for freedom of conscience, the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings, in accordance with the customs observed in the country; however, the Government placed some limitations on the exercise of this right. There was no change in the status of respect for religious freedom by the Government during the reporting period. The Government continued to exert a level of control and to monitor both Sunni and Shi'a Muslims, and there continued to be government discrimination against Shi'a Muslims in certain fields. Members of other religious groups who practice their faith privately do so without interference from the Government.”¹¹¹

Although positive in general, the above report points at the split between Sunni and Shi'a Muslims, which is not only of religious significance, but also of very political nature. The report becomes even clearer:

“There were occasional reports of incidents between the Government and elements of the Shi'a majority population, who were often critical of the Sunni-controlled Government's rule. Problems continued to exist, stemming primarily from the Government's perceived unequal treatment of Shi'a in the country.”¹¹²

While approximately 70% of the national Muslim population are Shi'a, the royal family, and many other influential families, are Sunni. Most of the members of Bahrain's elected Chamber of Deputies, on the other hand, are Shi'a. In fact, most of Bahrain's political societies define themselves along the lines of Shi'a

¹¹¹ US International Religious Freedom Report – Bahrain, September 2007

¹¹² US International Religious Freedom Report – Bahrain, September 2007

and Sunni. Also, most of the unrest Bahrain has experienced over the last years has taken place in Shi'a villages, which are (on average) poorer than Sunni neighbourhoods.¹¹³

The split – and allegations of preferential treatment of one group over the other – is not all that much of a new claim, as the following report about the situation during World War II shows:

“A group of leading citizens set up a committee to assist the Sunni [sic!] poor by purchasing unclaimed rations and distributing them free and this was followed, after much ill-feeling, by another committee for the Shi'i. The Al-Khalifa and BAPCO contributed to both funds but after some weeks the Shaikh sent for the members of both committees and persuaded them to amalgamate in the general interest”¹¹⁴

This religious divide between Bahraini Muslims is often considered one of the most critical and explosive issues Bahrain faces, and a potential threat to national unity and stability – especially given the developments in other mixed Sunni-Shi'a countries in the Middle East. A sequence of events in 2006 that became known as “Bandergate” clearly demonstrated the explosivity:

In September 2006, street violence hit Bahrain, when a report prepared by Dr. Salah Al Bander, then Chancellor at the Council of Ministers Affairs, was leaked and distributed by the Gulf Centre for Democratic Development. Dr. Al Bander, a British citizen, was deported to Great Britain, distribution (and, some claim, possession) of the report were declared illegal, websites were blocked, including the one of the Bahrain Center for Human Rights, and multiple arrests were made by the security forces. The claims of the 216 pages long, Arabic report, including almost 200 pages of cheques, receipts, letters, bank statements and account sheets to support the claims,¹¹⁵ were strong:

“A secret web lead by a high government official, who is a member of the royal family, has been operating in Bahrain with an aim to manipulate the results of coming elections, maintain sectarian distrust and division, and to ensure that Bahrain's Shias remain oppressed and disenfranchised. [...] The secret web works through a media group, an electronic group, an intelligence team, a newspaper, a Shia to Sunni conversion programme, and civil societies to carry out these activities, the report says. The total cost of these activities (so far) is said to be more than BD 1 million [...]. It seems that the secret organization is established and has built its strategies based on the analysis and recommendations of a confidential study written

¹¹³ The Economist, April 3rd, 2008

¹¹⁴ R. Bidwell in A. Al-Khalifa/M. Rice, Bahrain through the ages, 128

¹¹⁵ The full report, albeit in Arabic and including the attachments, is available on the internet, when searching for “Al Bander Report Bahrain” or “Bandergate”(e.g., via wikileaks.org). It is also available via the Bahrain Center for Human Rights, www.bahrainrights.org

in September 2005 entitled A Proposal to Promote the General Situation of the Sunni Sect in Bahrain.”¹¹⁶

Further details are available on the internet, especially on the webpage of the Bahrain Center for Human Rights (www.bahrainrights.org). This thesis will not dwell deeper on this topic. However, it considers it essential to keep the religious divide between Shi’a and Sunnis, and the tensions and concerns associated with it, in the back of the mind in the subsequent discussions about political reforms, including with respect to the split of powers between the King and Government on the one hand, and the elected Chamber of Deputies on the other. Without this background knowledge, many of the debates, and the lack of trust between groups, would be difficult to understand and follow.

Going forward, one can only hope that this divide can be overcome in the best interest of Bahrain, rather than deepening further (as appeared to have been the case over the last years). A statement by the Crown Prince, Shaikh Salman bin Hamad Al-Khalifa, actually gives hope that this is also a top priority of the country’s leadership, including the future King:

“What we need to focus on is the building of a national identity. We need to move away from the Sunni-Shi’a divide. It was not there in the past and has been exacerbated by the political situation of our neighbours. The age-old power struggle between Persia and the Arab world is reaching a frenzy, as you can see in Iraq. It’s a situation that is not helping us, but it is something I will continue to fight. We are all Bahrainis here; we are all citizens and should not differentiate between Sunnis and Shia. I don’t think we should allow this to dominate our political discourse. We should focus on policy, not on religion.”¹¹⁷

¹¹⁶ Z. Sitari, The Al Bander Report, 1

¹¹⁷ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 82

Absolute Monarchies and some Democracy – Bahrain’s Neighbours

THE GULF COUNTRIES – RAPID ECONOMIC SHIFTS

The previous chapters have already touched on key factors that have shaped Bahrain, and still do so, and that one needs to be aware of to understand dynamics of the reform efforts. However, to put Bahrain’s political system – and reform efforts – into the right perspective, it is important to look not only at Bahrain itself, but also at its neighbours. This is even more important given the small size of Bahrain. Therefore, this chapter will focus on an overview of the systems and their key characteristics adopted by the other GCC¹¹⁸ countries, and use this opportunity to point out some of the features that are typical across most of the countries, as well as focus on differentiating factors. Contrary to typical perception especially in Europe and the United States of America, there actually is a wide variety of systems among the monarchies of the GCC.

However, more or less rapid (economic) development seems to be the common denominator. For all of the Gulf countries, the last decades have been decades of enormous change. Small fishing villages (at best) have developed into cities that aspire to develop into key urban centres of the 21st century on the global scale. Economies that – besides trade in some cases – have relied on a very small base of natural resources (basically fishing, some pearl diving, some farming in oasis areas) suddenly featured what should become two of the world’s most important natural resources: oil and gas. Trade that used to be important but difficult given the harsh conditions has become much easier, thanks to aviation, improved road networks, and ameliorated port infrastructure. Water – for a long time the natural limitation to further expansion – has suddenly become less of a restraint (or at least so it seems), due to water desalination. And so on, and so forth. In a nutshell, the whole environment has changed at a rapid pace, and it continues to do so.

This has of course also had implications on the social and political structures. While traditionally, (Bedouin) tribal structures have dominated, they have been replaced by more “modern” ways of living.

¹¹⁸ Cooperation Council for the Arab States of the Gulf, commonly known as Gulf Cooperation Council
- 36 -

UNITED ARAB EMIRATES

Looking around the region, one still sees mainly absolute monarchies. The UAE and its seven Emirates, as modern as they are perceived by many (at least when thinking of Dubai, which in many aspects is far from representative of other, less well known Emirates), are characterized by seven families dominating and determining the political scene: one from each Emirate, with the ruling families of Abu Dhabi and Dubai the most prominent and influential ones. Separation of power is a concept that is still widely unknown (especially between the legislative and the executive branch). It tells a lot that for example in Dubai, the perceived epitome of liberalism and progress in the Gulf (and in many business aspects rightly so, while looking at other areas, a wide variety of laws are still relatively conservative but not fully enforced), there still isn't a strict separation between the state budget and the funds of the Ruler of Dubai. And looking at Dubai's development, this approach of a "benign and visionary leader", who takes full responsibility for his state and doesn't really make a distinction between his own good and that of his country, seems to have worked well over the last decades, and has made Dubai an icon on the global map. However, the introduction of elections doesn't seem to feature high on the list of immediate reforms (despite some considerations towards a more constitutional framework).

KINGDOM OF SAUDI ARABIA

Continuing to look around the Gulf, the Kingdom of Saudi Arabia is by far the largest and most important country. It characterizes itself as a "monarchy based on Islam".¹¹⁹ The government is headed by King Fahd bin Abdulaziz of the ruling Al Saud Family, the Custodian of the Two Holy Mosques, who enjoys de facto absolute powers. Not only is he heading the Cabinet, but he is also the commander in chief of the armed forces. In 1992, King Fahd promulgated a new Basic Law for the System of Governance introducing, among other changes, the Majlis Al-Shura. However, this did not mean him giving up ultimate control: The Majlis Al-Shura has been designed as a consultative body, consisting of 150 members that are appointed by the King for renewable four-year terms:

“[The Majlis Al-Shura] is a modern version of a traditional Islamic concept – an accessible leader consulting with learned and experienced citizens”¹²⁰

While originally a purely consultative body, since 2004, the Majlis Al-Shura may also propose new legislation, or amend existing legislation. However, its powers do not go beyond that - the power to pass new laws is still the prerogative of the King. And as the legislative and executive branches are combined this way, the judicial branch is also under the King, who is at the top of the legal system by

¹¹⁹ www.saudiembassy.net

¹²⁰ www.saudiembassy.net

acting as final court of appeal. The concept of separation of power is certainly not followed in the Kingdom of Saudi Arabia. Nevertheless, the last years have seen certain carefully measured and balanced (one might even say very cautious) reforms even in the Kingdom of Saudi Arabia. The two most important signs have been the introduction of partial elections on the municipal level, and a change in the succession rules to the throne:

- In October 2003, procedures were approved to have half of the members of the municipal councils elected by the public.
- Since 2006, the King may not select and appoint the Crown Prince purely at his own discretion. Instead, an Allegiance Commission has been formed that has the right to vote on the King's proposal for the position of Crown Prince. The Commission members are, however, appointed (which happened the first time in 2007) – and they are all members of the Al Saud family.

From a Western point of view, one might be tempted to laugh those steps off easily, and there is certainly a very long way to go towards a more Western-style democracy approach (which is not considered that desirable by many in Saudi Arabia, anyways). However, given the extreme sensitivities and the often very delicate balance within the country, combined with a strongly religious self-understanding, these steps are not all that insignificant, and they are fuelling the energy of those who are demanding further steps.

OMAN

Like Saudi Arabia, Oman is also a monarchy, reigned by Sultan Qaboos bin Said Al-Bu Said since his coup d'état in 1970. There is no real constitution to this stage, although Oman considers a royal decree issued by the Sultan on 06 November 1996 of constitutional nature. This decree promulgates a “basic law [...] which, among other things, clarifies the royal succession, provides for a prime minister, bars ministers from holding interests in companies doing business with the government, establishes a bicameral legislature, and guarantees basic civil liberties for Omani citizens”¹²¹. However, the Sultan still holds absolute powers, and no political parties are allowed. The influential Majlis Al-Dawla (State Council) consists of 57 appointed, not elected, tribal and religious leaders. On the other hand, the Majlis Al-Shura's (Consultative Council's) 84 members are actually elected,¹²² although they only have advisory functions:

“A process of limited democratic reform has been underway over the last several years including the introduction of direct elections for members of the Consultative Council in 2000 and universal suffrage in 2003. In recent October 2007 elections, Oman recorded a strong 68% voter turnout. While

¹²¹ CIA factbook on Oman

¹²² looklex.com

Oman is steadily moving forward on political liberalization efforts, the Council's role remains largely advisory. Decision-making authority rests with the Sultan with input from his advisors, the appointed Majlis al-Dawla, and members of Oman's influential merchant families."¹²³

QATAR

Compared to Oman, Qatar has taken one more step in the sense that it actually has a constitution, which entered into effect on June 9th, 2005 – more than 2 years after it was approved by public referendum in April 2003. Consequently, Qatar characterizes itself as a hereditary constitutional monarchy:

“The Amir is the head of state. In accordance with the modified provisional constitution, the Amir decrees laws on the recommendation of the Council of Ministers and after consultation with the Advisory Council. The Council of Ministers, appointed by an Amiri decree, is the highest executive authority in the land. However, laws are not enacted until after Amiri consent.”¹²⁴

The Advisory Council – or Majlis Al-Shura – the text refers to currently consists of 35 members who are all appointed by the Amir. However, the Advisory Council, according to the new constitution, should actually consist of 45 members, two-thirds of whom should be elected. But so far, council members have simply had their terms extended every year, and while preparations for elections are “under way”, no such elections have been held yet.¹²⁵ Elections were only held for a 29-member Central Municipal Council (CMC), the last time so far in 2007 (the first elections took place in 1999). But this Council only holds limited consultative powers aimed at improving the provision of municipal services.¹²⁶

Therefore, looking at it from a “Western-style democracy/constitutionalization” angle, Qatar's actual system is not so much different from that of, e.g., Oman, the UAE, or the Kingdom of Saudi Arabia. In all four systems, the ruler – whatever his title is – holds (quasi-)absolute powers, with representative assemblies (usually called Majlis Al-Shura) only having limited, consultative powers.

KUWAIT

The picture changes when looking at Kuwait. Kuwait has had a constitution for over 45 years: In 1962, a constituent assembly, consisting of 20 elected members

¹²³ EDC paper on Oman (Susanna Campagna), November 2007

¹²⁴ www.qatar-info.com

¹²⁵ CIA Fact Book Qatar

¹²⁶ CIA Fact Book Qatar

and 11 ministers, prepared a draft constitution and took a vote on it (with all ministers abstaining as a conscious symbol to have this decision taken by the elected members only). On November 11th, 1962, the Amir at that time, Shaikh Abdullah Al -Salem Al-Sabah approved the constitution draft without any changes, which enabled the Constitution to come into effect on January 29th, 1963 as the first National Assembly convened.¹²⁷ As opposed to most other GCC countries, this Constitution actually separates the executive and legislative branch, and gives genuine powers to the legislative branch. In Kuwait's own description, this reads as follows:

“Kuwait is an Arab State, independent and fully sovereign; the government system is democratic, and sovereignty is, for the nation, the source of all authority. The system of government is based on the principle of separating the powers, functioning in cooperation with each other. The legislative authority is taken by the Amir and the National Assembly, while the executive authority is taken by the Amir, the Council of Ministers, and the Ministers.”¹²⁸

While the Amir – currently Shaikh Sabah al-Ahmad al-Jabir al-Sabah – still plays a key role in the overall political system, both in terms of powers according to the Constitution, and de-facto influence because of his position, Kuwait's system stands in sharp contrast to the system of most other GCC countries. At this stage in history, it would be unthinkable that anyone wrote about the Kingdom of Saudi Arabia, or the United Arab Emirates, for this respect, what was written about Kuwait's system by Kuwaiti scholar Prof. Mohammed Al-Moqadei, professor of public law at Kuwait University, in an article under the telling sub-heading “Adherence to constitutional document, with parliament supremacy”. He claimed:

“Since that date [November 1961, when the Amir ratified the Constitution; remark by the author], Kuwait became strongly known as an adherent state to constitutional system, that leads to the supremacy of parliament, and people's voices play an essential role in the legal system via the majority in the parliament.”¹²⁹

At the heart of this system, the National Assembly – or Majlis Al-Umma – consists of 50 members who are all elected by popular vote to serve four-year terms; in addition to the elected members of Parliament, all cabinet ministers are ex officio voting members of the Majlis Al-Umma¹³⁰. Since 2005, females have also held active and passive voting rights.¹³¹ Parliamentary approval is required for any act to become law.

¹²⁷ www.kuwait-info.com

¹²⁸ www.kuwait-info.com

¹²⁹ Al-Moqatei, IALS 2007 Conference Working Paper, p. 143

¹³⁰ CIA Fact Book Kuwait

¹³¹ CIA Fact Book Kuwait

However, Parliament has come to be considered a major roadblock for reform, rather than a catalyst of change and democracy. Many reforms have actually been blocked by Parliament, and the same has happened to major development projects such as Project Kuwait. Critique has been voiced that the relatively large powers given to Parliament are not responsibly handled by many of its members: "What Kuwait is passing through is a learning democracy, an evolving democratic process," says Shafeeq Ghabria, professor for political science at Kuwait University. "It is a push and pull situation between forces that would like to see enhancement of the democratic process and forces that have been abusing the democratic process."¹³² This statement is exactly in line with the impression the author of this thesis got from discussions with a large number of Kuwaitis when working there in the course of 2007. On the one hand, everyone seems to be complaining about Parliament, and its tendency to play what is seen as a destructive rather than constructive role. It is frequently criticized that Parliament spends a significant part of its time on "grilling ministers" rather than getting work done (or letting ministers get their work done). On the other hand, it would be unthinkable in the other GCC states (with the exception of Bahrain) to actually question ministers – for Kuwait's Majlis Al-Umma, it goes without saying that it has the right (and responsibility) to do so and to even impeach them. Also, law-making power is in the hand of the Majlis Al-Umma. And while many Kuwaitis (especially young ones, who have been educated, e.g., in Great Britain or the United States of America) are immediately complaining about insufficiencies of their parliamentary system, most of them are proud of it and do not seriously consider going back to a system without true parliamentary powers.

The Kuwaiti's interest in politics, and the willingness to really get involved, is also reflected in some movements that are close to what one would describe as grassroot movements in a Western political context. In a conference held by the Washington DC based Middle East Institute in 2006, Jennifer McElhinny, managing editor of *The Middle East Journal*, reported about two movements that she considered of key importance to further developments:

"The burgeoning youth movement, which refers to itself as the Orange Movement, uses new technologies such as text messaging and Internet blogs to mobilize students. From disrupting parliament sessions to political rallies to publishing lists of candidates who they perceive as "clean" and "corrupt," the youth movement has demonstrated a commitment to challenging the old system in many ways.

Women's groups have also emerged as a potent political force in Kuwait. Although prior to the campaign, some expressed doubts about women's ability to speak before large mixed audiences and serve a strong public role in government, McElhinny stated that the women she encountered led very strong campaigns during her visit to Kuwait. In general, she found

¹³² Kuwait Times, "Bleak Outlook for May Polls", 21 March 2008

that female candidates did not highlight gender issues, but instead focused on health care and economic platforms.¹³³

As a matter of fact, both movements have continued to play an important role after McElhinny's visit in 2006, including in the spring 2008 elections. Youth movements challenging the political elite in power (both those in Government and many of the Members of Parliament), and active political involvement of women are certainly not the typical characteristics of the GCC countries' political systems – with the exception of Kuwait (and Bahrain).

All the positive things being said, the political crisis and the struggle between Government and Parliament have actually led to a stalemate and to the Amir dissolving Parliament earlier in 2008. New elections were held on May 17th, 2008.¹³⁴ With these elections, a number of electoral reforms such as highly-demanded changes of electoral districts were applied for the first time. High hopes for the future were put into the outcomes: "I see Kuwait is ready for major decisions such as early elections - based on the recently reformed bill of elections over five districts - which could produce a stronger parliament and a more responsible parliament," says Professor Shafeeq Ghabria.¹³⁵ With the relatively clear outcome of the elections (Sunni 21, Islamic Salafi Alliance 10, Liberals 7, Shiites 5, Popular Action Bloc 4, Islamic Constitutional Movement 3)¹³⁶, expectations have been raised that the path forward will be more constructive than what had been experienced over the years before.

However, political turmoil is not expected to be over for good at this stage – many observers in Kuwait expect this 2008 dissolution of Parliament not to have been the last one; it certainly wasn't the first one. But, as Amy Buenning Sturm and Herbert Scoville wrote in 2006, shortly after Parliament was dissolved then:

"Kuwait has historically refused to abandon its Parliamentary system entirely and has each time returned to embrace the Majlis. While the present political developments are disheartening, they cannot overshadow the example Kuwait has set for the region politically. Kuwait's government appears deadlocked on how much reform should be undertaken; the fact that both reformers and conservatives within the government are engaged in public debate on democratic reform illustrates the potential of the Kuwaiti constitutional system, especially in comparison to its Gulf neighbours."¹³⁷

133 N. Brown/J. McElhinny, "Political Developments in Kuwait and Other Arab Countries", July 2006

134 CIA Fact Book Kuwait

135 Kuwait Times, "Bleak Outlook for May Polls", 21 March 2008

136 CIA Fact Book Kuwait

137 A. Sturm/H. Scoville, *Edging Towards Reform*

SUMMARY

As Prof. Nathan Brown, professor of political science and international affairs at George Washington University, pointed out, “political reform in the Arab world hinges on two main issues, the first being whether or not Islamist movements can be incorporated into the political system and, likewise, if other groups can form an effective counterweight.”¹³⁸ A number of ruling families in the GCC argue their role as a political balancing factor that ensures that extremism cannot take over in their respective countries. And given the experiences in some countries that have elected assemblies (whatever their degree of influence may be), there is a serious concern that extremism of whatever nature, in many cases of religious one, may become a true issue.

However, across all systems one can see certain steps towards more democracy – in some countries, those are very small steps, at least by Western standards (which may not always be the best yardstick but are typically used by Western observers, including the author of this thesis). Other countries such as Kuwait have gone much further and are now struggling with Parliament searching for the right balance between exercising their rights (and responsibilities, as a matter of fact) in a critical way, and not becoming obstructive to the overall political process. Reform is certainly under way, at different speeds, and not always on what looks like a straight path. Where does Bahrain stand in this?

¹³⁸ N. Brown/J. McElhinny, “Political Developments in Kuwait and Other Arab Countries”, July 2006

Introducing Political Reform in Bahrain

As above's comparison across the GCC has shown, having a constitution is far from something that goes without saying in the Gulf. Therefore, at this stage, Bahrain – as a country with a formally promulgated Constitution – can still be regarded as more of an exception rather than the rule among GCC countries. It becomes even more of an exception when looking at the Constitution, which – despite being hotly disputed – is still leading the regional charge (together with Kuwait) in terms of guarantees of citizens' rights as well as (relative) democratic principles, while at the same time stressing the importance of the Arabic (and Islamic) heritage.

After Bahrain's current king, His Majesty King Hamad bin Isa Al-Khalifa, ascended to the throne in 1999 and started his efforts of fundamentally changing and reforming this small island country, thereby moving it to the forefront of all GCC states, the discussions around a constitutional document became of key importance. As they are an excellent expression of the nature and spirit of the political reforms, the Constitution will be prominently used throughout the rest of this thesis to document those political reforms. This approach is even more valid, as even today, years after the Constitution came into force, the question around its legitimacy, and its content approach, is a central factor in political debates.

The (New) Constitution was promulgated by King Hamad bin Isa Al-Khalifa on February 14th, 2002. The reactions were mixed. A significant number of people, many of whom had been exiled or otherwise oppressed, felt not properly integrated or even short-changed.

“The Constitution promulgated earlier this year, suddenly and ahead of the advertised schedule, is a particular source of anger – for both Sunni and Shia Bahrainis. The consistency with which Shia, in particular, refer to the 1973 Constitution as a touchstone is striking – although university-educated Sunni women also express a preference for the earlier constitution.”¹³⁹

Disappointment was especially large given the high expectations and hopes that had been raised by the processes leading to the so-called National Action Charter, and the referendum on this Charter in 2001. A large number of politically active/interested citizens (many of whom are today active in opposition political societies) felt that strongly disillusioned that a number of political societies did not even participating in the first parliamentary elections:

¹³⁹ Melia, *The People of Bahrain Want to Participate*, 6
- 44 -

“Citizens of the Kingdom of Bahrain, Sunni and Shia alike, are disappointed that the promise of political reform contained in the National Charter they voted overwhelmingly last year to endorse is not being realized in practice. They believe the democratic potential they had embraced is being thwarted by the very measures the government is enacting to structure the reform process. Their frustration focuses largely on the Constitution promulgated earlier this year and extends to recently enacted laws relating to the forthcoming parliamentary elections. Many of the widely-touted reforms now appear to be superficial.”¹⁴⁰

On top of criticism around content, there was strong discontent with the fact that the Constitution was unilaterally promulgated by the King. In the perception of many people in Bahrain, this made the Constitution look more or less like a “present” by an enlightened and reform oriented leader to his people, rather than an acknowledgement and manifestation of rights that were already inherent to the people. One might say that these are “technicalities” and “word-smithing”, as long as the result is positive (and most, even the most critical opposition members tend to agree that the Constitution was a positive step compared to pre-1999/2002, relatively speaking). But in the interviews and discussions conducted with a variety of people in Bahrain in 2008, there was still much bitterness around this topic that could easily be grasped. A female activist, whose husband faced prosecution in the 1990s, and who shall remain anonymous, brought a widespread feeling to the point when she remarked in a conversation, almost on the side: “Until 2002, we fought for our rights, now we have to beg for them.”¹⁴¹

However, the overall assessment of Bahrain’s steps, including but not limited to the 2002 Constitution, has been rather positive, both within the country and internationally. While there were a lot of discussions, being able to have those discussions (and even voice criticism) was already perceived as a major step forward, compared to a situation until about 1999 that was characterized by an authoritarian regime, with many critical thinkers in exile or under arrest as political prisoners. Focus groups held in 2002 reflected this:

“Even as they voice their unhappiness with the political system that is emerging, many Bahrainis are mindful of the fact that their country was until very recently a much more repressive place than it is today. They appreciate that they now enjoy the freedom to speak their minds in public, to join associations and attend seminars on political topics -- and are able to vote at all. Even as they note that only time will tell how enduring these liberties turn out to be, Bahrainis embrace them.”¹⁴²

¹⁴⁰ Melia, *The People of Bahrain Want to Participate*, 3

¹⁴¹ Interview conducted by the author of this thesis in Bahrain in July 2008.

¹⁴² Melia, *The People of Bahrain Want to Participate*, 7

And then, there are the explicitly positive acknowledgments of the 2002 Constitution, although mainly from the Government side or people who are perceived to be relatively close to Government:

“Always a pioneering nation, with its new sovereign, King Hamad bin Isa Al-Khalifa, Bahrain became a kingdom in 2002. The kingdom is ruled in a spirit of democracy, with open politics and voting rights for women. Today, Bahrain is a constitutional monarchy with a two chamber assembly: the Chamber of Deputies (40 members directly elected by the people) and the Council of Shura appointed by the King.”¹⁴³

Nabeel Al Hamer, former Minister of Information of Bahrain, also stressed the importance of the changes initiated and led by the current King. Interestingly, he did feel urged to explicitly point out the involvement of Bahrain’s people in this process:

“Since his accession to the throne in March 1999, HM King Hamad bin Isa Al-Khalifa has ushered in a period of sweeping constitutional reform, putting in place a vision of a modern, liberal and democratic state founded on the country’s long traditions and Islamic heritage [...]. The pace of democratic change has been possible because HM the King and the people share the vision of the creation of a democratic society. Bahrain is a country where the views of others are listened to and valued: the constitutional reforms have been put to the people in a referendum, and only with their consent have they progressed.”¹⁴⁴

But the positive sentiments within Bahrain were not restricted to the Minister of Information or the publisher of a book that may be seen as leaning somewhat towards “celebrating the successes”. One also finds positive sentiments of many members of the wider public, especially such that might not be as closely involved in daily politics.

Taxi drivers, to mention an “unsuspicious” example, have a reputation in Bahrain (like in many other countries) to be quite critical and outspoken. And while there were varying shades of grey in the many conversations the author of this thesis had with them in a number of rides, all of them were positive about the changes Bahrain has experienced on the political stage. And even in generally critical web blogs, such as that of Mahmood Al-Yousif¹⁴⁵, the Constitution per se is regarded as something positive (despite some caveats that there are still more than enough shortcomings of Bahrain’s political system).

¹⁴³ M. Barrault, *Regards Bahrain*, 28

¹⁴⁴ Nabeel Al Hamer, in the foreword to R. Abraham/L. Bonapace, *The Journey begins*, 4

¹⁴⁵ mahmood.tv

Internationally, the steps taken by Bahrain were also positively acknowledged, as this summary/conclusion by UNDP's Programme on Governance in the Arab Region (POGAR) demonstrates:

“Political liberalization has increased in Bahrain since Shaikh Hamad bin Isa al-Khalifa assumed power in March 1999. The National Charter of Action with provisions for the expansion of personal freedoms and equal rights was approved in a referendum held February 14-15, 2001. The amended Constitution, promulgated on February 14, 2002, guarantees these provisions and makes the state responsible to consolidate the rights of women and to issue necessary legislation to protect families. The constitution guarantees that no person shall be arrested, detained, imprisoned, searched, confined to a residence, or have his freedom of residence or movements impounded, except in accordance with the law and under the supervision of the judiciary. The new constitution also gives citizens the right to set up private, scientific, cultural, and vocational associations and syndicates on patriotic bases, for legal purposes and through peaceful means in accordance with conditions and situations stipulated by law, provided that there is no coercion to join or remain in an association or a syndicate. [...] The 2002 Constitution also embraces an independent judicial system, a partly elected parliament, and a constitutional monarchy.”¹⁴⁶

The International Constitutional Law project homepage for Bahrain, edited by Prof. Axel Tschentscher, professor for public law, philosophy, and constitutional history at the University of Berne, Switzerland, formulates one notch more strongly:

“With the National Charter (2000), its adoption by referendum (2001) and the New Constitution (2002), Bahrain abolished its formerly authoritarian ways and turned to constitutionalization.”¹⁴⁷

¹⁴⁶ UNDP-POGAR, Bahrain Civil Society Country Profile

¹⁴⁷ A. Tschentscher, ICL, www.servat.unibe.ch/icl

The 2002 Constitution – Mirror and Indicator of Political Reforms

THE FOREWORD OF THE 2002 CONSTITUTION –A TELLING TEXT

On February 14th, 2002, King Hamad bin Isa Al-Khalifa promulgated a new Constitution. While the preamble is relatively long, it is absolutely worth reading, as it gives a very good impression of the spirit of the Constitution, as well as of the context and political struggles that led to this Constitution. Actually, understanding those eight paragraphs is quintessential for understanding the Constitution and for understanding Bahrain’s political reforms and the struggles around them.

Text of the Foreword

In the name of God on high, and with His blessing, and with His help, we Hamad bin Isa Al-Khalifa, Sovereign of the Kingdom of Bahrain, in line with our determination, certainty, faith, and awareness of our national, pan-Arab and international responsibilities; and in acknowledgment of our obligations to God, our obligations to the homeland and the citizens, and our commitment to fundamental principles and our responsibility to Mankind,

And in implementation of the popular will expressed in the principles enshrined in the National Action Charter; pursuant to the authority entrusted to us by our great people to amend the Constitution; out of our desire to complete the requirements of the democratic system of government for our beloved nation; striving for a better future in which the homeland and the citizen will enjoy greater welfare, progress, development, stability and prosperity through

Comments

At first reading, this text sounds like a typical preamble of a constitution – and it very much is. It is worth, however, to point out that this Constitution is not promulgated “in the name of the people” or so, but “in the name of God on high”. A few lines later it explicitly refers to “faith” and then to “our obligations to God”. This reflects Bahrain’s clear understanding of itself as an (Arab) state that is committed to, and defined via, Islam.

The second paragraph of the foreword is the one paragraph that has probably ignited most discussions.

To understand this paragraph, it is important to remember that there was (and still is) a significant dispute whether the King could actually promulgate the new Constitution in the unilateral way he chose to. What’s more, there are very serious claims that the 2002 Constitution, in contrast to what it claims, has not actually fully implemented the National Action

earnest and constructive cooperation between government and citizens which will remove the obstacles to progress; and out of a conviction that the future and working for the future is what all of us seek in the coming stage; and in view of our belief that such an objective requires the exertion of efforts; and in order to complete the march, we have amended the existing Constitution.

Charter (please compare the chapter “Critical Views on the Political Reforms” below).

This paragraph constitutes an attempt to legitimize this unilateral promulgation. It explicitly links the Constitution to the National Action Charter, which was widely approved in a public referendum. It then speaks of an “authority entrusted to us by our great people to amend the Constitution”. By positioning it right after the NAC sentence, some link to the referendum is suggested, but without really being clear on that. Looking closer, it actually is a strong statement that, at least within the text, does not specify where this authority is derived from. Given the level of discussions around the point (and the doubts voiced about the legitimacy of the promulgation path chosen), it can be taken for granted that on purpose a strong, yet at the same time vague statement was chosen. If one wants, one can see in this point a crackline that comes from the meeting of two schools of thoughts. Traditionally in the region, it was the ruler “giving out”, e.g., rights (in this case the constitution), while the other school, influenced by a Western understanding of democracy, sees those rights as something that already belongs to the people and hence cannot be “given” to them.

The other elements of this paragraph have been designed – and the author of this thesis would claim on purpose so – to ensure a sense of unity and of shared purpose: “democratic system of government for our beloved nation”, “better future”, “greater welfare”, “progress, development, stability and

prosperity” are all very positive buzzwords (“feel good” expressions), and they have been combined with expressions calling for unity and cooperation, which gain in significance considered the unrest and the divide between Government and the majority of the population before this Constitution. “Earnest and constructive cooperation between government and citizens” or “working for the future is what all of us seek in the coming stage” are the key phrases in this context.

And last but not least, towards the end of the paragraph, once again the Constitution is put into a row with earlier developments, especially the National Action Charter and its referendum, by the words “in order to complete the march.”

This is a relatively short paragraph in the foreword, and an “unsuspicious one” for a first-time reader, but at closer look, this one paragraph really brings to the point the struggles Bahrain had to go through (and still goes through) on its path towards constitutionalization.

This amendment has taken account of all the lofty values and the great human principles enshrined in the National Action Charter. These values and principles confirm that the people of Bahrain surge ahead in their triumphant march towards a bright future, God willing, a future in which the efforts of all parties and individuals unite, and the authorities in their new garb devote themselves to achieve the hopes and aspirations under his tolerant rule, declaring their adherence

Building on the previous paragraph, this paragraph once again stresses the alignment of the Constitution with the National Action Charter. Two interpretations of this exist in Bahrain: While some argue that this makes clear the weight given to the NAC by the King in promulgating the new Constitution, opposition members tend to argue, that “obviously, it doesn’t go without saying that the two are fully aligned, because they are not.”¹⁴⁸ And again, the paragraph contains a call to

¹⁴⁸ Based on a discussion with members of the opposition societies in August 2008

to Islam as a faith, a code of laws and a way of life, with their affiliation to the great Arab nation, and their association with the Gulf Cooperation Council now and in the future, and their striving for everything that will achieve justice, good and peace for the whole of Mankind.

The amendments to the Constitution proceed from the premise that the noble people of Bahrain believe that Islam brings salvation in this world and the next, and that Islam means neither inertness nor fanaticism but explicitly states that wisdom is the goal of the believer wherever he finds it he should take it, and that the Qur'an has been remiss in nothing.

In order to achieve this goal, it is essential that we listen and look to the whole of the human heritage in both East and West, adopting that which we consider to be beneficial and suitable and consistent with our religion, values and traditions and is appropriate to our circumstances, in the conviction that social and human systems are not

jointly work together for a bright and united future – in a way, this paragraph seems to repeat (reinforce?) its predecessor.

This is except for the last few sentences which state some specific principles that are essential (and more or less undisputed) as basics of Bahrain's self-understanding:

- Adherence to Islam
- Bahrain as part of the Arab nation
- Membership in the Gulf Cooperation Council

Bahrain clearly positions itself as an Islamic state, a state in which Islam plays a key role in government policies as well as everyday life, and in which there is a close link between state and religion. At the same time, the Constitution explicitly rejects any form of inertness or fanaticism. For sure, the events around 09/11/2001 had a strong influence on the drafting of the Constitution in 2002, as can be seen in this paragraph. At the same time, the paragraph reflects a political reality in Bahrain, where the Government on the one hand allows and fosters the exercise of Islam (as well as other religions), while at that same time keeping a strong hand over any form of perceived extremist preaching or action.

In the eyes of the author of this thesis, this is one of the most remarkable paragraphs in the foreword. The previous paragraph has just anchored the core principle of Islam, and this paragraph stresses that achieving the goals actually requires openness and flexibility. And the paragraph doesn't limit this openness to, e.g., the Arab

inflexible tools and instruments which can be moved unchanged from place to place, but are messages conveyed to the mind, spirit and conscience of Man and are influenced by his reactions and the circumstances of his society.

Thus these constitutional amendments are representative of the advanced cultural thought of our beloved nation. They base our political system on a constitutional monarchy founded on counsel [shura], which in Islam is the highest model for governance, and on the people's participation in the exercise of power, which is the foundation of modern political thought. The Ruler, with his perspicacity, chooses certain experienced people to constitute the Consultative Council (Majlis al-Shura), and the aware, free and loyal people choose through elections those who make up the Chamber of Deputies (Majlis al-Nuwwab), and thus the two chambers together achieve the popular will represented by the National Assembly (Al-Majlis al-Watani).

region, it speaks of “the whole of the human heritage in both East and West”. Without relativizing the previous paragraph, far from that, this expresses a commitment to openness and tolerance as well as recognition of the need for flexibility and adaption, all of which deserve to be pointed out.

Another interesting paragraph. Apart from the clear statement that Bahrain’s political system will remain a (constitutional) monarchy, this paragraph tries to link two schools of thought, two approaches. It expresses the compromise that is at the heart of the Constitution (and of the discussions around the Constitution):

- On the one hand, there is still the (traditional) thinking that a ruler, a shaikh is responsible for his people (his tribe) and has the obligation to care for them and guide them, based on consultations with experienced men.
- On the other hand, the ideas of democracy, with the core principle of the power coming from the people, are explicitly referred to (although the critical reader might have noticed that the Constitution doesn’t go the full way but only speaks of the people’s “participation [sic!] in the exercise of power”).

Between the extremes of a full-scale authoritarian system and a full democracy (Western style), there is a wide bandwidth of greys. Bahrain obviously tries to get a compromise that balances the different interests. And while many opposition members claim that the “grey” is still too close to the black of an authoritarian system, it

These constitutional amendments undoubtedly reflect the joint will of the King and the people, and achieve for everyone the lofty ideals and the great humanitarian principles contained in the National Action Charter, and ensure that the people will advance to the high position for which their ability and preparedness qualify them, and which accords with the greatness of their history, and allows them to occupy their appropriate place among the civilised nations of the world.

This constitution that we have promulgated contains the amendments that have been carried out in accordance with the provisions of the National Action Charter and that complement all the unamended texts. We have attached an explanation memorandum which will be used to explain its judgement.

needs to be said that, compared to most neighbours except Kuwait, Bahrain does feature a relatively democratic system, with some powers given to the elected Majlis Al-Nuwwab.

Once again the reference to the National Action Charter, and to its “lofty ideals and the great humanitarian principles” – when formulating the foreword, it has obviously been one of the key targets of the authors to very explicitly put the Constitution into a line with the referendum approved National Action Charter.

An interesting side point is the line “for which their ability and preparedness qualify them”. For a long time, the opposition claimed positions, especially in the public sector, were awarded less by merit than by membership to specific (religious) groups.

The last paragraph of the foreword contains three key points:

- First of all, it stresses – one more and final time – the accordance with the National Action Charter. As a neutral reader, the number of repetitions of this does make one wonder whether the authors were actually sure about this fact – it almost seems it wasn’t that obvious even for themselves, so that they felt the need of reemphasizing this again and again. Certainly, a number of opposition members claim that the Constitution, while a positive step in principle, isn’t fully in line with the National Action Charter as it gives more power to the King and less to the people, compared to the NAC.
- Secondly, this paragraph makes

clear that the Constitution complements all unamended texts – i.e., laws passed before the Constitution remain in power.

- And thirdly, the explanation memorandum's status is “upgraded” to a semi-official status by explicit reference to it in the Constitution. While this doesn't give the memorandum constitutional rank (or even that of a normal law), it certainly adds further political weight. The memorandum contains information and explanations that one would typically find in parliamentary materials, and is a key source used for interpreting the Constitution.

Reading the Constitution, the clear commitment to Islam and to the monarchy do not come as a surprise. However, taking an overall view at the foreword, there are three points that are really standing out:

- The strong attempt and desire of the authors of the Constitution (and the King who promulgated the Constitution) to put this Constitution into a line especially with the National Action Charter and to legitimize the promulgation.
- The call for unity and cooperation – It must not be forgotten that Bahrain had just gone through decades of an authoritarian regime before the current King took office and the Constitution was promulgated in 2002. There was a strong gap – almost a vault – between the governing elite and the majority of the people. The constitution reflects a totally new approach, an approach credits for which should be given to King Hamad and his close advisors. They started comprehensive reform efforts that can be characterized as trying to narrow this gap and thereby creating a new, future oriented, more inclusive Bahrain.
- Closely linked to and probably going hand in hand with the previous point, there is a lot of reference to balance and to tolerance, to finding an equilibrium between preserving traditions and ensuring openness to change, openness to new ideas, even to such that come from outside the Arab region and culture.

Is the Constitution the perfect document? Probably not even the authors would claim this. It represents a compromise between diverging interests, a compromise that was a significant step towards full democracy (in a Western understanding –

however problematic this is as yardstick), that constituted a clear break with and move forward from the pre-Constitution era, but that failed to go all the way to, e.g., a Western style democracy (and failed to go as far as many opposition members within Bahrain had hoped – please refer to the chapter “Critical Views on the Political Reforms” below for further information).

But then, one might have to ask whether simply copying a Western democracy’s constitution would really have been such a good idea (apart from the fact that there isn’t the one Western democracy constitution to copy from; one can still find very significant differences, e.g., between the constitutions of the various member states of the European Union). One must not forget that the GCC states, including Bahrain, have gone through very significant transformations on a number of levels over the last decades. This rapid transformation and the increased international opening have led to societies trying to find a balance between their traditional forms of life and government and new democratic ideas and ideals. They try to find a balance between their anchoring in Islam and openness to the world and other cultures. Compared with other countries in the region – maybe with the exception of Kuwait – Bahrain has certainly chosen the most pro-democracy and participationist approach of all the GCC countries.

Coming from a background of a Western-style democracy (in the specific case, Austria’s), the author of this thesis – and probably many of its readers – are automatically inclined to use their own system, the system they are used to, as the absolute yardstick. But it is worth taking a step back and asking: Would the “European model” really have worked here? Would it be compatible with the culture and traditions, the heritage of a system that was strongly influenced by tribal thinking (and the idea of a leader who is responsible to protect and care for his tribe, as well as his guests) until very recently, and still is? Maybe there is something one could call “democracy Arabic style”, which works better in this part of the world or which at least is the better interim solution at this stage of development. One should not forget that the Western-style democracies have not developed overnight, but have been the product of century long developments, with quite a number of deviations on the way.

In the author’s humble opinion, the basic driving factors towards democracy – the desire of the people for equal opportunity, for participation in the power, for guaranteed rights, for self-determination – are also found in the Arabic world. At this stage, however, a model of careful exploration, of continued balancing (compromising) – as practised in Bahrain – might not be the best one from a theoretical (or idealistic) point of view, but it is the most and maybe only viable model. And it might also be the best one from an international perspective. Another unstable country in an already very critical and sensitive region would certainly not be in the best interest of the global community.

This being said, Bahrain needs to develop further. As democracy evolves, as the new system, especially the role of Parliament, gains the trust of both the people and Bahrain’s leadership, the grounds will be prepared for the next steps, and

potentially a revision of the current Constitution. At this stage, however, Parliament, especially the Majlis Al-Nuwwab and its members, are still struggling in really defining their role. In a number of cases, they have rather caused raised eyebrows regarding the matters they are taking on, and their priorities (e.g., the discussions regarding the decent drying of laundry). Frequently, they are accused of being a decelerator rather than a catalyst of reform.

At the same time, it has already become fully accepted and absolutely normal that a law requires Parliamentary approval. The system established in the 2002 Constitution is, to some extent, still in an experimental phase – but by now, it has become an accepted part of Bahrain’s political life, as is demonstrated by the participation of all opposition societies in the 2006 elections.

THE POLITICAL CONCEPTS OF THE 2002 CONSTITUTION – AN OVERVIEW

Structure of the Constitution

The Constitution is structured into a Foreword – that has already been looked at in some detail above – and a total of 125 Articles, organised into 6 chapters:

- Chapter I – The State (Articles 1 – 3)
- Chapter II – Basic Constituents of Society (Articles 4 – 16)
- Chapter III – Public Rights and Duties (Articles 17 – 31)
- Chapter IV – Public Authorities (Articles 32 – 106)
- Chapter V – Financial Affairs (Articles 107 – 119)
- Chapter VI – General and Final Provisions (Articles 120 – 125)

Over the following pages, this thesis will in turn take a close look at each of the six chapters to demonstrate the political concepts reflected in the 2002 Constitution.

Chapter I – The State (Articles 1 – 3)

“The Kingdom of Bahrain is a fully sovereign, independent Islamic Arab State whose population is part of the Arab nation and whose territory is part of the great Arab homeland. Its sovereignty may not be assigned or any of its territory abandoned.” (Art 1 lit a)

Starting out with the definition of Bahrain as a fully sovereign, independent Islamic Arab State, the Constitution then immediately clarifies that the “regime of the Kingdom of Bahrain is that of a hereditary constitutional monarchy” and

regulates the hereditary order of passing the throne to the eldest son as the default option.

Art 1 lit d contains the commitment to a democratic system, plus a sentence that one might not even have expected in this clarity in the Constitution itself, given the circumstances: “sovereignty [is] in the hands of the people, the source of all powers”. Lit e stipulates the right to vote and to stand in elections for all citizens, both men and women (as the Constitution explicitly says – again something that might go without saying in Europe, but that is not at all that obvious in the GCC).

Art 2 makes Islam the religion of the State, and the Islamic Shari’a the principal source for legislation. In addition, it defines Arabic as the official language

Art 3 – of smaller importance, relatively speaking – stipulates that the flag, emblem, logos, honours and the national anthem of Bahrain need to be defined by law.

Chapter II – Basic Constituents of Society (Articles 4 – 16)

The second chapter contains a kind of “Social Bill of Rights”, specifying the principles of the social order that Bahrain strives for, but also guaranteeing certain individual rights:

“Justice is the basis of government. Cooperation and mutual respect provide a firm bond between citizens. Freedom, equality, security, trust, knowledge, social solidarity, and equality of opportunity for citizens are pillars of society guaranteed by the State.” (Art 4)

Art 5 lit a lays out the importance of families as the basis of society, with an emphasis on the importance of religion, morality, and love of the homeland. For the state, an obligation is derived to protect in particular mothers and their children, as well as a responsibility for providing education. In Art 5 lit c similar protection and care responsibilities of the state are stipulated towards the elderly and other weak groups of society. Interestingly, one of the disadvantaged groups that is explicitly mentioned are the unemployed – combined with a state guarantee for “the provision of job opportunities for its citizens” (Art 13 lit b).

In Art 5 lit b of the same Article, the equality of men and women in “political, social, cultural, and economic spheres” is stressed, however with a short, but important caveat that has given room to significant discussions (and interpretations): “without breaching the provisions of Islamic canon law (Shari’a)”. In Bahrain, participation of women in public life is much stronger than in other countries of the region. There is no requirement for women to veil themselves, and the Supreme Council for Women, headed by the King’s wife, is strongly advocating for women’s rights. However, there is still a long path to go to full factual equality.

Art 5 lit d guarantees the right of inheritance.

Art 6 stipulates the safeguarding of the Arab and Islamic heritage, while Art 7 explicitly deals with scientific research and education, both of which are to be sponsored and supported by the State. Education is declared compulsory, with both private schools and universities allowed under the supervision of the state.

Art 8 stipulates the right to healthcare, to be provided by both public and private institutions. The latter Article has seen some discussions recently whether it only stipulates an obligation of the state to ensure adequate healthcare facilities (and the personnel required), or whether it actually extends to guarantee free (public) healthcare.

Art 9 is another key article, as it clarifies the right to private ownership, but at the same time hints at certain limits of that individual right in the interest of society. This article lays the basis for all economic activity in Bahrain:

“Ownership, capital and work – in accordance with the principles of Islamic justice – are basic constituents of the social entity of the State and the national wealth, and are all individual rights with a social function regulated by law” (Art 9 lit a), and

“Private ownership is protected. No one shall be prevented from disposing of his property within the limits of the law. No one shall be dispossessed of his property except for the public good in the cases specified and the manner stated by law and provided that he is fairly compensated.” (Art 9 lit c)

In addition, and somewhat surprisingly at this very spot from a legislative point of view, Art 9 also stipulates an obligation of the state to provide housing for citizens with limited income. It requires the state to raise the standards of farmers and define support measures especially for small farmers. And still in the same Art 9, the state is obliged to protect the environment and conserve the wildlife. This Article can be used to show one of the obvious struggles that the authors of the Constitution had to deal with (and which, to a large extent, were already present in the 1973 Constitution and copy-pasted to the 2002 Constitution). On one hand, they needed to lay down the big principles, in this case the guarantee of private property. On the other hand, they had to respond to specific political concerns at the time of writing. The result of this is a constitutional document that, at some instances, surprises the reader by the combination of matters of significantly varying importance (and sometimes even context) in the very same article. Art 9 is an example of such a provision. In a way, it reads as if things had been crammed into this Article that should not necessarily be in there (and one might even question whether they should explicitly be in a constitutional document at all, like the provision that the “law lays down how small farmers are to be helped” – without disputing that this might be a politically important question).

Art 10 defines Bahrain's economic system as one striving to achieve social justice and stresses Bahrain's commitment to the economic union objectives of the Gulf Cooperation Council and the Arab League.

Art 11 declares all natural wealth and resources the State's property. This short (two-line) article is actually of significant importance, given the declining, but still high significance of natural resources such as oil and gas. Plus, it clearly states that those resources are State's property, i.e., not the property, e.g., of the Royal Family. In many of the GCC countries (including for example the United Arab Emirates), the differentiation between state ownership and ownership by the respective royal family is still not such a clear cut – therefore, this clarification in Bahrain's Constitutions should not be underestimated.

Art 12 stipulates the principle of solidarity in case of natural disasters and war, while Art 13 is employment related: Work is declared both a duty of every citizen (Art 13 lit a) and a right, with the state guaranteeing the job opportunities (Art 13 lit b). As Bahrain has been struggling with unemployment, especially among its young citizens, this latter provision has seen quite some heated debate about its scope – especially as at the same time that Bahrainis are unemployed, a large number of expatriate workers, many of them lowly skilled, are in the country. Many of those jobs are generally considered not adequate for Bahraini citizens – but how does Art 13 lit a (“Work is the duty of every citizen, is required by personal dignity, and is dictated by the public good”) fit with this customary rejection of specific job groups by Bahrainis? Has the state already fulfilled its obligation from Art 13 lit b if it creates sufficient opportunities to have enough jobs for all Bahrainis, even if they choose not to take them? Generally, those clauses are interpreted as general guidance to the state to strive for additional job opportunities – something nobody is disputing –, and to the individuals to accept jobs, within certain limits. But the questions above already show that seemingly clear articles do have the potential for very heated debates.

Again somewhat surprising in terms of positioning, Art 14 then stipulates that the State not only encourages cooperation and saving, but also supervises the regulation of credits. Art 15 mentions taxes and public cost, and declares their payment a duty under the law. Article 107 of Chapter V picks this topic up again, and again one could ask why this is in Chapter II, Art 15. But apart from the positioning, which could be regarded as a purely technical/legislative discussion (and where one could argue that this is important enough to be put upfront, rather than hidden in Art 107), this Article lays the foundation for the State actually being authorized to demand taxes without having to change the Constitution – let's not forget that there are currently no taxes in Bahrain, and any tax related discussions are of extremely high sensitivity.

One more article that deserves to be quoted is the very last sentence of Chapter II:

“Citizens are equal in the assumption of public posts in accordance with the conditions specified by law” (Art 16 lit b)

A neutral reader might not find this very sensational, but given the specific circumstances in Bahrain, this commitment to equal opportunity, regardless, e.g., of religion, is an important signal. Especially Shi'a have long protested against discrimination in favour of Sunni Muslims in the public sector – and while a clause in the Constitution doesn't change the whole system immediately, it is a very important and especially a binding signal.

Chapter III – Public Rights and Duties (Articles 17 – 31)

While Art 17 deals with citizenship, Art 18 is one of the most central in the Constitution. The chapter as a whole can be seen as one of the most progressive and furthest reaching in the whole Constitution, as it stipulates a number of principles and individual rights that are consistent with clauses that one would find in many Western style Constitutions:

“People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed.” (Art 18)

Art 19 then guarantees the individual right to personal freedom, limits exceptions to this freedom to cases specified explicitly by law and to judicial supervision, and rules out physical and mental torture.

Art 20 details the principle that “there shall be no crime and no punishment except under a law, and punishment only for acts committed subsequent to the effective date of the law providing for the same” (Art 20 lit a) and that “an accused person is innocent until proved guilty in a legal trial [...]” (lit d).

Art 21 guarantees the protection of political refugees, namely their non-extradition.

Art 22 subsequently regulates the freedom of conscience and worship. And while Bahrain is an Islamic state, with Islam as the religion of state (Art 2), Art 22 guarantees the freedom of religion – including the freedom to worship – not only to Islam, but also to other religions. It is worth to be mentioned on the side that there is, for example, an active Jewish synagogue, as well as a vibrant Roman-Catholic and various other Christian parishes, some Buddhist temples, etc. – freedom of religion is a reality in Bahrain, even though the state does monitor all religious activity (especially that at mosques).

Art 23 guarantees the freedom of opinion and scientific research. However, it should be mentioned that this article contains a significant caveat: “provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused.” While in general, freedom of opinion – and of press, printing, and publishing (Art 24) – are observed in Bahrain, there have already been occasions over the last years where public security forces did make use of the caveat in Art 23, including in the context of the Bandergate scandal mentioned earlier. Hence, this article,

despite agreement on the principle direction, is quite suspiciously eyed by many opposition activists.¹⁴⁹

Art 25, on the other hand, is one that goes further than corresponding articles in many European constitutions. In the Arab culture, the integrity of one's home is a key value – and any disruption must be avoided except for really special cases. And accordingly, the integrity of the house right is strongly safeguarded in Art 25 except for “in cases of maximum [sic!] necessity as laid down and in the manner provided by law”.

The subsequent article then guarantees the freedom of postal, telegraphic, telephonic and electronic communication (Art 26).

Article 27 stipulates the freedom to form associations and unions (with the freedom to form unions being something very extraordinary in the Gulf). But not surprisingly, many opposition members feel that in reality, they still face certain constraints:

“We have the freedom to form societies, but everything is still very regulated and closely monitored. This breaches international standards. We need more room!”¹⁵⁰

Feelings are somewhat similar with respect to the right to assemble, expressed in Article 28. While guaranteed on the constitutional level, opposition members still challenge the practical implication of this constitutionally guaranteed right:

“The law regarding public gatherings is old, and it is not in line with the spirit of the National Action Charter, not even with the Constitution. One example: Peaceful demonstrations are allowed, officially, but it is at the discretion of the public security officer what is peaceful. This makes even peaceful demonstrations difficult.”¹⁵¹

Art 29 explicitly states each individual's right to address public authorities, Art 31 makes clear that any specifications of the rights of the Constitution must be done by law, and in the spirit of the Constitution – which is especially significant as Art 106 establishes a Constitutional Court that has the right to rule any law or statute unconstitutional with direct effect.

In between those Articles 29 and 31, Art 30 monopolizes the establishment of defence forces, national guard, and public security services to the State, and lies the legal basis for general conscription if necessary (at the moment, Bahrain's defence forces do not use conscription, but consist of full-time professional soldiers). Many of Bahrain's soldiers are citizens, but of origin from outside

¹⁴⁹ Based on discussions with opposition politicians in July 2008

¹⁵⁰ Opposition societies workshop on “Bahrain since the National Charter”, August 13th, 2008

¹⁵¹ Opposition societies workshop on “Bahrain since the National Charter”, August 13th, 2008

Bahrain. This in turn has actually led to strong rumours that via the military, citizenship is on purpose given to Sunnis, to change the Sunni – Shi'a balance.¹⁵²

Chapter IV – Public Authorities (Articles 32 – 106)

Chapter IV starts out with what reads like a clear commitment to the separation of powers between the legislature, the executive branch, and the judiciary:

“The system of government rests on a separation of the legislative, executive, and judicial authorities while maintaining cooperation between them in accordance with the provisions of the Constitution. [...]” (Art 32 lit a)

However, a look at lit b of the same article does raise a number of questions, especially if read with a concept of separation of power in mind that is found, e.g., in most parts of Europe and in the United States:

“Legislative authority is vested in the King and the National Assembly in accordance with the Constitution. Executive authority is vested in the King together with the Council of Ministers and the Ministers, and judicial rulings are issued in his [i.e., the King's] name, the whole being in accordance with the provisions of the Constitution.” (Art 32 lit b)

Can it really be that both the legislative authority and the executive authority are vested in the King (with the King entitled to directly exercise his rights), on top of him chairing the Higher Judicial Council (Art 33 lit h) and rulings being issued in his name? Without doubt, while Chapter III goes down relatively easily coming from a Western democracy background, Chapter IV is where the delicate balance between Arab traditions and Western-style democracy becomes obvious. The fact needs to be recognized that Bahrain's constitutional setup is closer to a Western-style democracy than that of most (almost all) its neighbouring countries in the GCC, but at the same time the model chosen by Bahrain does not (yet) go the full way to a Western-style democratic model. Rather, it could be regarded as a model of democracy “*sui generis*”, resulting from the specific circumstances of its time and geographic context, as well as from its roots in old Arab traditions. The purpose of this is not to say that this is good – or bad – in an absolute way, but to point out the difference. The system promulgated is certainly not perfect from a theoretical point of view, and it has been subject to strong criticism, but it might well have been the right one (or at least the one pragmatically achievable) at its specific point of time and given the specific circumstances: Compared to its neighbours, Bahrain's model of democracy and separating powers is working relatively well, and even considered a potential role model for the region – and most importantly, it has jump-started a development process towards a parliamentary democracy that is still in progress. Only the future will show where exactly this will develop towards.

¹⁵² The Economist, April 3rd, 2008

For the time being, however, the focus should be on the provisions of the current 2002 Constitution.

Section 1 of Chapter IV (Articles 33 – 43) specifies the role of the **King**. He is the Head of State. The Defence Forces, whose Supreme Commander he is, are directly linked to the King. He has the right to exercise his powers directly as well as through his ministers – who are appointed and dismissed by him (the “normal” ministers based on a proposal by the Prime Minister). He is entitled to grant (individual) clemency by abating or commuting sentences.

The King also holds an important role in the legislative process. To ensure easier readability, and to make the context between different articles (and institutions) clearer, there will be a separate paragraph regarding the law making process later in this chapter, including the King’s role in that process.

In case of the King’s absence, the Crown Prince acts as Deputy King. If the Crown Prince is not able to act on behalf of the King, the King may also deputise his powers to another citizen (Art 34). It is the King’s right to provide special regulations for how the deputised powers may be exercised, and he may also choose to limit the scope of deputised powers.

The King also has the right to issue royal decrees, which are directly binding upon promulgation. However, those decrees need to be within the boundaries set by the Constitution as well as normal laws, and typically require an authorization to do so in constitutional or other primary legislation (Art 39). However, there is one significant exception to this rule: If Parliament is not in session or if it cannot assemble quickly enough, the King may issue decrees that have the force of law if a matter requires attention without delay. The validity of these decrees is however limited, and requires ex-post approval by both the Shura Council and the Chamber of Deputies. The validity of the decrees/laws abates retrospectively if such approval is not granted (Art 38). Therefore, this provision serves the purpose of having a flexible emergency instrument, rather than a tool that allows to permanently circumvent Parliament. A related emergency provision is Art 36 lit b that allows the King to proclaim a state of martial law by decree, limited to a single period of a maximum of three months, unless Parliament agrees to a prolongation. It has been met with criticism, however, that martial law can be simply declared by decree, without requiring parliamentary approval (as was the case in the 1973 Constitution).

Art 43 gives the King one more prerogative: He may have a popular referendum conducted on important laws and issues connected with the interests of the State. The outcome of this referendum is binding – i.e., it has to be accepted. While this can be seen as an element of direct democracy, it could also be regarded as a (although difficult to use) safeguard around Parliament if necessary. It should be pointed out in this context that the right to call for a popular referendum is a prerogative of the King – not a tool that can be used, e.g., by the (elected) Chamber of Deputies to get popular approval for a matter they could not get past

the Shura Council and the King (please see below for further details on the law making process).

Shifting from the King to the **Council of Ministers** (Articles 44 – 50), the role of a Minister is restricted to Bahraini citizens of at least 30 years of age (Art 45). Appointment is by royal nomination. It is the Ministers who are responsible for the day-to-day running of Government in Bahrain. They meet (typically on a weekly basis), chaired by the Prime Minister (or the King if he chooses to participate) to discuss any matters of principle interest, and approve of legislative proposal by individual ministers.

One provision that is worth to be pointed out, given historic accusations of conflicts of interest, is a relative far-reaching clause to this respect:

“While in charge of his Ministry, a Minister may not assume any other public office, nor may he even indirectly practise a profession or conduct industrial, commercial or financial business, nor may he participate in contracts concluded by the Government or public institutions, or combine his ministerial position with the membership of the board of directors of any company except as a non-remunerated Government representative. Also during his period the Minister may not purchase or rent a State asset even by way of public auction, nor may he lease, sell, or barter any of his assets to the State.” (Art 48 lit b)

It is also worth to point out that, according to Art 93, any Minister may attend any session of either chamber of Parliament, and has the right to speak whenever he or she wishes to do so.

However, the Council of Ministers, while the Constitution needs to deal with it (and does so), was not in the focus of interest when the new Constitution was promulgated in 2002. Rather, the core was the legislative branch and the allocation of power in that area. The following paragraphs will look at the legislative authority (Section 3 of Chapter IV, Art 51 – 103, with additional relevant clauses in Articles relating to the King and to the Council of Ministers). The length of this section already demonstrates the attention paid to this area. To facilitate readability, the following descriptions and considerations are split into three major buckets:

- Institutional setup
- Law making process
- Other powers of the legislative branch

Institutional setup – Bahrain’s National Assembly (Al-Majlis Al-Watani) consists of two chambers: the Consultative Council (Majlis Al-Shura), and the Chamber of Deputies (Majlis Al-Nuwwab)

The **Consultative Council** (usually referred to as Shura Council, even in English) is composed of forty members, all of them appointed by the King by Royal Decree. Each member must be Bahraini, enjoy full political and civil rights, be on an electoral list, and at least 35 years of age. In addition, Art 53 picks up the traditional concept that members of the Shura Council should be well qualified advisors by stipulating that a member “must be experienced or have rendered distinguished services to the Nation”. Membership of the Shura Council may not be combined with membership in the Chamber of Deputies or the holding of any other public office at the same time (Art 97). Other exclusions rule out board membership of a company, participation in contracts concluded by Government or public institutions, or any transactions relating to state assets (with some limited exceptions) (Art 98).

Term of membership is four years, and reappointment is possible. Resignation requires the acceptance of such act by the King. Abrogation for loss of confidence or esteem or for breach of duties of membership is possible, but requires a 2/3 majority in the chamber plus the King’s approval.

Art 89 guarantees a limited immunity to the Shura Council members (as well as to the members of the Chamber of Deputies – who, given political circumstances, might actually need that immunity more than the Shura Council members). Except in the case of *flagrante delicto*, no penal action may be taken against a Council member without permission of the Council. Also, immunity is guaranteed for any opinions and ideas expressed in the Council. However, there is a caveat in Art 89 lit b which excludes immunity under certain circumstances, and thereby makes deputies subject to criminal prosecution: “unless the opinion expressed is prejudicial to the fundamentals of the religion or the unity of the nation, or the mandatory respect for the King, or is defamatory of the personal life of any person.” Such an exception clause, generously interpreted, can easily be (mis)used to “discipline” representatives, especially in case of a deteriorating political climate, and hence needs to be considered as a very dangerous provision from a parliamentarian point of view.

The Shura Council is headed by a royally appointed President and two Vice-Presidents elected by the Shura Council itself. All sessions of the Shura Council – like of the Chamber of Deputies – are open to the public, unless a secret session is requested by the Government or ten members, or ordered by the President.

The **Chamber of Deputies** (Majlis Al-Nuwwab) on the other hand is not appointed, but its 40 members are elected by secret public ballot for a term of office of four years; the legislative session may be extended by the King for another two years “if necessary” (Art 58). Elections for a new Chamber of Deputies are to be held within the last four months of a legislative period. Any candidate for office must be Bahraini, enjoy full political and civil rights, be on an electoral list, and at least 30 years of age (as opposed to 35 years for the Shura Council). An additional requirement, which is not listed for the Shura Council, is the ability to read and write Arabic fluently (a precondition that has been

repeatedly criticized by representatives of the Persian minority). On top of the above, Art 57 lit d excludes former MPs who have been voted out of the Chamber due to a breach of duties from re-running for office within the same legislative period unless the Chamber cancels such impediment (i.e., they must not immediately re-run for the very mandate they have just been removed from). Membership of the Chamber of Deputies may not be combined with membership in the Shura Council or the holding of any other public office at the same time (Art 97). Other exclusions rule out board membership of a company, participation in contracts concluded by Government or public institutions, or any transactions relating to state assets (with some limited exceptions) (Art 98). Once in office, abrogation for loss of confidence or esteem or for breach of duties of membership is possible, but requires a 2/3 majority in the Chamber.

In case any seat frees up more than six months before the end of a legislative session, elections are to be held in the respective caucus to elect a new MP, who shall then serve for the remaining part of the legislative session. In case of a seat freeing up within six months before the end of a legislative session, such seat shall remain empty for the rest of the legislative period.

The King has the right to dissolve the Chamber of Deputies in accordance with Art 42 lit c. The only “barrier” to this is that the decree needs to state the reason(s) for dissolution, and that the same reason may not be used twice. After the dissolution, new elections need to be held no later than four months after the date of dissolution – if such elections are not held, Art 64 lit a actually stipulates that the dissolved Chamber of Deputies regains its full constitutional powers. However, the significance of this clause is strongly relativized by lit b of the same article: “Notwithstanding the preceding clause, the King may defer election of the Chamber of Deputies if there are compelling circumstances whereby the Council of Ministers considers holding elections is not possible”. Given that all Ministers are personally appointed by the King (and can be dismissed at any time), this would hardly be a very high barrier to delaying elections if things really get tough. Insofar, this Article 64 lit b can actually be considered a very problematic one from a democratic perspective. Art 64 lit c that gives the King the power (but not the obligation!) to restore the old Chamber of Deputies if the Article 64 lit b “compelling circumstances” continue, is little ointment in this context.

The Chamber of Deputies is headed by a President and two Vice-Presidents elected among the Deputies. Until a President is elected, the Chamber is chaired by its eldest member.

The **National Assembly** itself consists of the members of both the Majlis Al-Shura, and the Majlis Al-Nuwwab, i.e., of a total of 80 members and is chaired by the President of the Majlis Al-Shura. The regular annual convening period of both the Majlis Al-Shura and the Majlis Al-Nuwwab starts with a National Assembly session in October, when the King or a representative of the King, e.g., the Crown Prince, inaugurates the new convening period by a royal address. The

regular convening period of all chambers is set to last at least seven months, with the King having the right to call extraordinary sessions of either or both Chambers if he deems this necessary. The convening period of the Consultative Council and that of the Chamber of Deputies are linked to each other.

Law making process – When referring to the key legislative processes, relevant articles are found across a variety of sections of the Constitution, as the interaction and cooperation of multiple stakeholders is required. However, Art 70 can be regarded as the stipulated governing principle, especially if read in conjunction with Art 35 lit a:

“No law shall be promulgated unless approved by both the Consultative Council and the Chamber of Deputies, or the National Assembly as the situation demands, and ratified by the King.” (Art 70), and

“The King may amend the Constitution, propose laws, and is the authority for their ratification and promulgation.” (Art 35 lit a)

This section will first look at the process of a “normal” law, and then pay additional attention to changes to the constitution:

Besides the above-mentioned right of the King to propose a law, it typically starts on one of two paths:

- The bill is prepared by one of the Ministers, then approved by the Council of Ministers, and submitted to the Chamber of Deputies by the Prime Minister
- The bill is initiated by a member of either the Shura Council or the Chamber of Deputies (fifteen members in case of a proposed amendment to the Constitution) and passed on to the relevant committee of the respective Majlis. If the proposal finds a majority there, it is referred to the Government to prepare a draft bill. At that stage, the path merges with the first one described above.

Once the draft bill reaches the Chamber of Deputies, it is usually first sent to one of the committees for further discussion. Once it reaches the floor, the Chamber votes on it, given a quorum of more than half of the members of the Chambers are present. In case of the presence quorum not reached twice in a row, a presence quorum of 25% is sufficient on the third attempt. The vote is taken by absolute majority of the members present (except for some decisions that require higher majorities). In case of a tie, the side wins that has the President’s vote with it. The decision of the Chamber of Deputies may be to accept the Government proposal, accept it in an amended version, or to reject it.

Whatever the outcome of the vote is (i.e., even if the draft is rejected by the Chamber of Deputies), the draft bill is then passed on to the Shura Council. As in the Chamber of Deputies, the bill will first be discussed in the relevant committee, before a vote is scheduled on the floor. And exactly like in the

Chamber of Deputies, an absolute majority, given 50% presence of members (25% on the third attempt) is required.

If the Shura Council approves the Bill as presented by the Chamber of Deputies, its President will forward it to the Prime Minister who will submit it to the King. The King will then ratify the draft bill and promulgate the new law. It needs to be published in the Official Gazette within two weeks after ratification, and is usually enforced as of one month after the date of publication (unless a different period is prescribed in the law itself).

The path described here is the “smooth” path of agreement. However, the Constitution also contains considerable amounts of regulation for cases where the process does not run that smooth. These are the different options of “games”, in addition to tactical moves of transferring draft bills between committees and sub-committees within one chamber:

- *The Shura Council rejects or amends a draft bill:* The bill needs to be sent back to the Chamber of Deputies
- *A bill is sent back to the Chamber of Deputies, which agrees with the Shura Council’s amendments:* The President of the Shura Council shall submit the draft bill to the Prime Minister for submission to the King without requiring an extra vote in the Shura Council
- *A bill is sent back to the Chamber of Deputies, which does NOT agree with the Shura Council’s amendments:* In such case, the bill will once return to the Shura Council for reconsideration. In case any amendments are made to the bill at that stage it is considered as a new draft bill that has not been presented to the Shura Council before.
- *The Shura Council receives a bill that has been reconsidered by the Chamber of Deputies and re-sent to the Shura Council without amendments:* In this case, the Shura Council once again votes on the proposed draft law (with the same majority and presence requirements as in the first vote).
- *The Shura Council accepts the resent draft bill the Chamber of Deputies insisted on:* In this case, the bill is sent to the Prime Minister for submission to the King, ratification, promulgation, and publication in the Official Gazette.
- *The Shura Council does NOT accept the resent draft bill the Chamber of Deputies insisted on, but confirms its earlier rejection:* In this case of the two chambers disagreeing twice, Art 85 stipulates that the National Assembly shall convene (i.e., a combined session between both Shura Council and Chamber of Deputies). It needs to be pointed out that this only applies if exactly the same proposal has been voted on twice in both chambers – any amendment etc. makes it a new proposal.

Under the chairmanship of the President of the Shura Council, a joint vote of

all members of the National Assembly is held. In terms of presence, the joint session requires a majority of the members of each individual chamber to be valid. Unless a special quorum is required, decision shall be taken by absolute majority of the members present. There is no distinction regarding which of the chambers the Member belongs to. In the case of a tie, the President casts the decisive vote.

If the National Assembly approves the law, it once again takes the way towards Prime Minister and King. If it is rejected by the National Assembly, it is voted out and may not be re-introduced within the same convening period.

- *The law is properly passed by both the Chamber of Deputies and the Shura Council (or the National Assembly, if necessary), forwarded to the King, but not ratified by the King (but not vetoed either):* In this case, the law shall be deemed ratified six months after submission to the King
- *The King vetoes a law that is submitted to him:* It is the King's prerogative to veto any law. In this case, the bill is returned to Parliament, with the King deciding whether it should be reconsidered still in the same session or only in the next one. If both the Chamber of Deputies and the Shura Council (or the National Assembly) re-approve the draft by a two-thirds majority, it is once again submitted to the King who shall then ratify and promulgate the law within one month and without further veto rights.

In principle, the same mechanisms apply also if the Constitution is to be amended. However, there are some additional safeguards, mainly stipulated in Art 120:

- Initiating an amendment to the Constitution from the side of the National Assembly requires 15 members, rather than one only.
- Any amendment of the Constitution requires a two-thirds majority, rather than a simple absolute majority.
- If a constitutional amendment is refused, it may not be re-submitted earlier than one year from refusal.
- The amendment must be approved by the King.
- In addition, according to Art 120 lit c, Art 2¹⁵³, the amendment of the constitutional monarchy, the principle of inherited rule in Bahrain, the bi-cameral system, and "the principles of freedom and equality established in this Constitution" must not be the subject of amendments.

¹⁵³ "The Religion of the State is Islam. The Islamic Shari'a is a principal source for legislation. The official language is Arabic."

- Last but not least, the powers of the King stated in the Constitution may not be proposed to be amended while a Deputy King is acting on the King's behalf.

While the first three restrictions are quite common or at least not unusual and the last one isn't surprising as it prevents coup d'état like adjustments to the King's role while he is abroad, the fourth restriction of requiring the King's approval is expression of the strong and central role of the King. One of the main criticisms of the opposition groups against the 2002 Constitution is that – at the end of the day – nothing can be done against the will of the King. This constitutional safeguard is one of the expressions of this.

The fifth restriction is also a difficult and problematic one, especially but not only from a technical/legislative perspective. On the one hand, the intention is clear: The basic principles of the Constitution should receive special protection. While this intention is one that is shared with a multitude of constitutions globally, the chosen path of protection appears problematic: Typically, extra protection is given by requiring a higher majority, a popular referendum, waiting periods, or the likes. However, the Bahraini Constitution simply states that no change/amendment whatsoever is allowed. This means that any further developments in these areas would require replacing the current Constitution, rather than developing it further. This might well have been the signal that was intended to be sent politically, but from a legislative point of view, it makes very little sense. Plus, it is not even a very strong safeguard, technically speaking: The Constitution does not protect Art 120 lit c itself from amendment – so, a simple constitutional amendment would allow to modify first Art 120 lit c to lift/change the safeguard, and then the provisions that article is supposed to protect.

In addition to the safeguards against changes to the Constitution and the emergency Royal Decrees in urgent cases where Parliament cannot convene in time, the Constitution knows one more special procedure for passing a law, restricted to bills that regulate economic or financial matters and for which the Government explicitly requests urgent consideration. This “express procedure” is stipulated in Art 87 and works as follows:

- The Chamber of Deputies is given only 15 days to take a decision after the submission of the draft by the Government. If the Chamber of Deputies does not manage to vote within that timeframe, the draft nevertheless moves on to the Shura Council – which would be the sole parliamentary decision maker in this case.
- The Shura Council is again given a maximum of 15 days to vote. If the Chamber of Deputies actually voted and the Shura Council disagrees, the National Assembly needs to vote on the draft within a further 15 days (i.e., without the standard “bouncing back and forth”)
- If the National Assembly does not decide within its 15 days, the King can issue the bill as a Royal Decree that has the full force of a regular law.

What do all the regulations regarding the law making process really mean, if one takes a step back? Where are the real centres of power in all of this?

On the one hand, there is a fully elected Chamber of Deputies that is an essential part of the law making process. It is this Chamber that can significantly influence the process, has the right to make amendments to Government proposals, and so on. Also, in political reality, Parliament – meaning usually the Chamber of Deputies – does receive a significant share of public attention. Plus, each and every law (with the exceptions mentioned above) does require approval by the Chamber of Deputies, the lack of which can only be outdone by a vote in the full National Assembly. So, the first impression actually suggests a quite democratic system – and certainly a significantly more democratic system than that of most neighbours, where the representatives (most of them appointed) actually have advisory roles only (with the exception of Kuwait).

At the same time, if taking a closer, systematic look, it needs to be realized that while the elected deputies can significantly slow down things (which can be quite a powerful weapon – but only one of delay), they cannot force through any bill against the will of the King and the Government. On the other hand, forcing through a bill against the will of the elected majority (i.e., the majority in the Chamber of Deputies) is not that difficult – and can even work if all 40 elected members vote against a bill:

- *Elected Deputies forcing through a bill against the will of the King/the Government: Highly unlikely to impossible*
After reaching a majority in the Chamber of Deputies, the Shura Council also needs to vote on the bill – and it is unlikely that the Shura Council members, appointed by the King, vote in majority against the King's/the Government's will. This already impedes the process significantly. Even if it finally comes to a vote in the National Assembly, 40 Chamber of Deputies members face 40 Shura Council members. Given that one can always expect some loyalists among the Deputies who vote pro-King/Government and that again, the Shura Council members are unlikely to vote “against” the King's will in significant numbers, gaining a majority for an anti-King/Government bill in the National Assembly is unlikely (not even to speak of the 2/3 majority required for constitutional amendments). Even if a tie was reached, the chairman's vote would be decisive – and the National Assembly is chaired by the President of the Shura Council, who is appointed by the King. Let's assume the bill does make it through the National Assembly – in this case, the King still has the right to veto the bill and thereby re-start the whole process from the beginning but with the draft now requiring a 2/3 majority (in case of constitutional amendments, the King even holds an absolute veto).
- *King/Government forcing through a bill against the will of the majority of the elected deputies: Possible*
As described above, to pass a bill, a majority is required in both chambers. If the Chamber of Deputies rejects a proposal, the Shura Council still gets to

vote, and is likely to have a pro-King/Government majority. That way, a National Assembly vote eventually becomes necessary, which – given the composition and the voting rules of the National Assembly – is favouring the King/Government.

Considering those points, it becomes clear why many members of the opposition are highly critical of the 2002 Constitution. They have repeatedly pointed out that “the 2002 Constitution has effectively wiped out the rights already guaranteed to us in the 1973 Constitution. [...] The power of Parliament is smaller in the 2002 than in the 1973 Constitution, the role of the King is stronger.”¹⁵⁴ One example that is highly relevant in the law making process: While the 1973 Constitution provided for a clear majority of elected members, the 2002 Constitution stipulates 40 appointed and 40 elected members, with the decisive vote in the case of a tie in the National Assembly resting with the President, an appointed member.

Official representatives, however, usually compare the democracy situation after the 2002 Constitution with the situation immediately before it (or even just before 1999). From this perspective, the 2002 Constitution does constitute a significant step forward. This progress includes the participation of elected representatives in the law making process. Full respects should be paid to the significant reforms made since 1999. However, given the above analysis, this system of legislation is not yet at a stage where it could fully claim to primarily represent the will of the people via their elected representatives. Insofar, the claim in Art 1 lit d that “sovereignty [is] in the hands of the people, the source of all powers” still appears somewhat too strong at this stage.

Other powers of the legislative branch – In addition to their legislative role, parliaments typically also fulfil a monitoring role. In the case of Bahrain, the opposition claims that this role is a relatively weak one. Under the 2002 Constitution, monitoring is criticized to have been vested more into the King, rather than into Parliament.¹⁵⁵ However, there are a number of relevant powers vested into Parliament:

- *Art 65 – Questioning*: If five members of the Chamber of Deputies wish to do so, any Minister can be questioned on matters relating to his Ministry. However, the Minister must be given a period of at least 8 days between the question(s) and the actual debate.
- *Art 66 – No-confidence vote against Ministers*: The Chamber of Deputies may schedule a vote of confidence in a Minister if the Minister asks for such a vote, or ten of the Chamber’s members demand it. In the latter case, a questioning procedure, as set out in Art 65, needs to come before Art 66 is applied. If, after a waiting period of at list seven days after the submission of

¹⁵⁴ Opposition societies workshop on “Bahrain since the National Charter”, August 13th, 2008

¹⁵⁵ Opposition societies workshop on “Bahrain since the National Charter”, August 13th, 2008

a demand for a confidence vote, a 2/3 majority votes against the Minister, the Minister is obliged to submit his resignation.

- *Art 67 – No-confidence vote against the Prime Minister:* With respect to the Prime Minister, more restrictive rules are stipulated: If 2/3 of the members of the Chamber of Deputies do not consider it possible to cooperate with the Prime Minister, the matter goes to the National Assembly where, again, a 2/3 majority is required. However, at this stage, the Prime Minister is still not removed from office. It's the King's decision whether to relieve the Prime Minister of his post or to keep the Prime Minister and dissolve the Chamber of Deputies instead.
- *Art 68 – Wishes to the Government:* The Chamber of Deputies may express wishes to the Government, and the Government must give a reason, if it doesn't comply with the Chamber's wishes.
- *Art 69 – Investigations:* The Chamber of Deputies may investigate political matters ("within the powers of the Chamber stated in the Constitution"), with an obligation on all Ministers and state employees to provide testimony, documents, and statements.
- *Art 88 – Submission of Government programme:* Government shall submit its programme to the National Assembly. However, while the National Assembly "may put forward any observations it deems appropriate regarding the programme", it does not need to approve nor has the right to reject the Government programme.
- *Art 91 – Written questions:* Any member of the Shura Council or the Chamber of Deputies has the right to direct written questions at Ministers.
- *Art 93 2nd paragraph – Mandatory attendance:* The Shura Council or the Chamber of Deputies may require a Minister to attend when a matter is discussed in relation to his/her ministry.

Looking at this list of monitoring rights, most of them resting with the elected Chamber of Deputies, Bahrain's Parliament does have a number of tools to question and monitor Government. However, with the exception of the no-confidence vote against Ministers (and theoretically against the Prime Minister, but with hardly surmountable barriers), potential consequences of the monitoring are limited. Nevertheless, the tools – as long as they are used responsibly and are actually respected by both sides, parliamentarians and Government – should not be underestimated and appear quite reasonable even in international comparison.

The last part of Chapter IV refers to the **judiciary** (Section 4, Art 104 – 106). Art 104 lit b stipulates the independence of the judiciary and its judges:

“No authority shall prevail over the judgment of a judge, and under no circumstances may the course of justice be interfered with. The law

guarantees the independence of the judiciary, and the law shall lay down the guarantees of judges and the provisions pertaining to them.”

All court hearings, subject to limited exceptions, are public. Military courts are confined to military offences committed by members of the Defence Force, the National Guard, and the Security Forces.

A Higher Judicial Council, (officially) chaired by the King, is established to supervise “the smooth running of work in the courts and their supporting organs” (Art 105 lit d). The powers of the Higher Judicial Council include proposing judges to the King, who appoints the judges by Royal Decree (Art 33 lit h).

In addition, Art 106 sets up the Constitutional Court – something Bahrain is very proud of. In the words of the Chairman of the Constitutional Court, this reads as follows:

“As an expression of firm belief in the pivotal role of the Constitutional Courts and Councils in the protection of human rights and liberties which are among the pillars of democratic practice and an aspect of wise governance and popular participation, Article 106 of the Constitution of the Kingdom of Bahrain provided for the establishment of a Constitutional Court to undertake review of the constitutionality of laws and regulations. This was implemented by the issue of Legislative Decree No.27/2002.”¹⁵⁶

In terms of its rights and responsibilities, any law or statute can be challenged for its constitutionality in front of the Constitutional Court. This includes penal laws, as is explicitly stated in the Constitution. Any ruling that a law or statute is unconstitutional has direct effect. In addition to ruling on existing laws and statutes, the King may also ask the Court to check the constitutionality of a draft law before it is passed, with the Court’s decision being binding.

Chapter V – Financial Affairs (Articles 107 – 119)

The first article of Chapter V, Art 107, read in conjunction with the aforementioned Art 15, sets the basic framework for the levying of public taxes. Even though Bahrain currently does not collect taxes, the Constitution would allow the introduction of taxes by a simple law.

In addition to setting the framework for and defining the basic rules of taxes, this chapter addresses the budgeting process as well as provides for the case that no budget is passed in due time. In addition, this chapter requires the Government to submit a statement on the financial and economic condition of Bahrain, together with the draft budget, and final accounts within five months following the end of a fiscal year. Also, it sets up a Financial Control Office, that has to deliver its observations to both the Government and the Chamber of Deputies (but is not

¹⁵⁶ Ebrahim Mohammed Hassan Humaidan, Chairman of the Constitutional Court (in the Chairman’s Statement on www.constitutional-court.org.bh)

attached to the National Assembly anymore, as was the case according to the 1973 Constitution).

Chapter VI – General and Final Provisions (Articles 120 – 125)

The final chapter of the Constitution reads rather technical – but as a matter of fact, those “technicalities” are of key importance in the system of the Constitution and its implications for the political balance. Two of the key provisions of this chapter have already been mentioned in the content context of one of the earlier chapters:

- Art 120 provides for safeguards against changes to the Constitution, and
- Art 122 requires the publishing of laws in the Official Gazette.

Beyond those two Articles, Art 121 first states that the application of the Constitution does not breach any international treaties or agreements Bahrain is a party of, before it goes on to a very important clause:

“[...], all laws, laws by Decree, Decrees, statutes, orders, edicts and circulars that have been issued and are in force prior to the first meeting convened by the National Assembly remain proper and valid, unless amended or rescinded in accordance with the regulations prescribed in this Constitution.” (Art 121 lit b)

What does this mean politically? Any of the regulations in force at the time of the first National Assembly meeting remained valid, whatever their nature of passing was. That included, e.g., many of the hotly disputed public security related laws and regulations passed between the suspension of the 1973 Constitution and 2002. From a legislative point of view, such a clause is a necessity – without such clause, the risk of suddenly facing major gaps of regulations is too large, and defining law by law, or even clause by clause, regulation by regulation, which one stays in force and which one doesn't, is extremely hard and time consuming, i.e., not practical. Nevertheless, it is understandable that two elements fuelled some discontent: First of all, no exceptions at all were made to the continued validity clause in the Constitution. And secondly, over 50 laws were promulgated between the National Action Charter and the coming into force of the new Constitution that were perceived as amending the powers and creating room for manoeuvring in favour of the King and the Government (even though within the parameters of the Constitution). Of course, those remained in force because of Art 121 lit b.¹⁵⁷

While Art 121 lit b was eyed critically by the opposition (or at least the legislative activities before that Article even actually came into force), Art 123 as such was welcomed more openly as at least puts some limited restrictions to what

¹⁵⁷ Opposition societies workshop on “Bahrain since the National Charter”, August 13th, 2008

might be done under martial law (the state of which can be unilaterally declared by the King by Royal Decree for a period not exceeding three months, unless the National Assembly agrees to a prolongation – Art 36 lit b). Not surprisingly, the potential of excessive use of martial law was (and still is) one of the main concerns of the opposition:¹⁵⁸

“It is impermissible to suspend any provision of this Constitution except during the proclamation of martial law, and within the limits prescribed by the law. It is not permissible under any circumstances to suspend the convening of the Consultative Council or the Chamber of Deputies during that period or to infringe upon the immunity of their members, or during the proclamation of a state of national safety.” (Art 123)

Art 124 contains another technical but very important provision, which is regulated for Bahrain in line with international standards: As a rule, the provisions of any law shall only apply to what occurs from when the law comes into force. Retroactive effect requires a specific clause in the respective law. However, retroactivity is excluded for the penal code.

And last but not least, Art 125 declares:

“This amended Constitution shall be published in the Official Gazette, and shall be effective from the date of its publication.

Hamad bin Isa Al-Khalifa”

Summary

The pages above have looked in quite some detail at the Constitution and its various provisions. Is this Constitution really the expression of “sweeping constitutional reform, putting in place a vision of a modern, liberal and democratic state founded on the country’s long traditions and Islamic heritage”, as claimed by Government officials?¹⁵⁹ Or is it in reality a “step backwards” if compared to the 1973 Constitution, as the opposition claims: “the [2002] Constitution wiped out the rights guaranteed in the 1973 Constitution”?¹⁶⁰

As already discussed above, the 2002 Constitution did mark an important step forward compared to the situation before 2002 (and before 1999 in particular). The overwhelming agreement to the National Action Charter in a (secret and to the largest extent fair) popular referendum speaks a clear language of the appreciation of the reforms by a vast majority of the population, despite all the criticism of the opposition about how the National Action Charter was translated into the 2002 Constitution. A lot of hope was and still is put into the new

¹⁵⁸ Opposition societies workshop on “Bahrain since the National Charter”, August 13th, 2008

¹⁵⁹ Nabeel Al Hamer, in the foreword to R. Abraham/L. Bonapace, *The Journey begins*, 4

¹⁶⁰ Opposition societies workshop on “Bahrain since the National Charter”, August 13th, 2008

developments, and into the King's aspirations of reforming Bahrain and preparing it for the future.

Looking at the Constitution itself, there is no doubt that the role of the King and his Government are still very strong, especially as far as the arrangements of the Constitution with regard to the appointment of the Shura Council and to the legislative process are concerned. However, the Constitution does set clear limits to the King's powers and gives clear rights (and responsibilities) not only to the Shura Council but also to the Chamber of Deputies. It also guarantees individual rights in a relatively comprehensive way.

On the other hand, the ambitions for the New Constitution, as reflected in the National Action Charter, were very high. To provide one core example, the National Action Charter refers explicitly to the legislative process:

“Laws shall be passed in the manner detailed in the Constitution in accordance with the recognized constitutional norms and traditions in well-established democracies.”¹⁶¹

The reference examples used in that context were Great Britain, the Netherlands, Spain, Japan, and Denmark, among others.¹⁶² Compared to those benchmarks, the 2002 Constitution does not fully live up to the aspirations:

“As to the New Constitution, while it has used certain foundations contained in the 1973 Constitution, in respect of the Head of the State and the organization of the Executive Power, and also in respect of the Legislative Power, yet it established a government which is far from the democratic parliamentary system.”¹⁶³

The following chapter will explicitly reflect some of the key critical views on the Constitution and on the political reform process.

But what is the interim “verdict”, to the extent that this is already possible? The political reform movement, started in 1999 and still continuing today, with the National Action Charter and the 2002 Constitution being its two key documents, has certainly put Bahrain to the forefront of democratisation in the region. Credits also need to be given to the fact that this reform movement was and still is strongly driven by the King and the country's top leadership, especially the Crown Prince. Instead of potential revolution and major unrest, an evolutionary process has been started in a difficult internal as well as regional context. Significant parts of the Constitution live up to the expectations and characteristics of a modern democratic constitution. However, there are shades of grey – the Constitution document itself is an expression of the compromises, and even the struggles, between different systems, ideas, and schools of thoughts. A step

¹⁶¹ National Action Charter, Future Prospects, 2nd Paragraph

¹⁶² Anonymous, Legal Opinion Concerning the Constitutional Matter Of the Kingdom of Bahrain, Section 2

¹⁶³ Anonymous, Legal Opinion Concerning the Constitutional Matter Of the Kingdom of Bahrain, Section 2

forward, compared to pre-2002? Yes, for sure. The perfect, fully democratic Constitution? No, certainly not. Bahrain's political reforms are still work-in-progress, and the Constitution mirrors this interim stage.

CRITICAL VIEWS ON THE POLITICAL REFORMS, AS REFLECTED IN THE CONSTITUTION

While the (new) Constitution has been widely regarded as an important step forward (see above), there is a lot of criticism, focusing both on content elements of the Constitution and on how it has been promulgated. This chapter shall take a closer look at the criticism, as mainly voiced by opposition members within Bahrain.

One of the most extensive discussion documents available stems from a set of lawyers, who have however chosen to remain anonymous. The document, dated March 19th, 2006, is available via the well-known Bahraini web blog of Mahmood Al-Yousif, who has disclosed the following regarding the document quoted below: "I received this document by email, the authors are unknown other than them being a group of lawyers. I have presented it here for discussion and information. I am grateful to the person who originally shared it with me and who requested anonymity. I have faithfully represented it here for your perusal and edification and in the hope that we can, by logically discussing these problems, arrive at a solution that will keep us from the abyss of strife."¹⁶⁴

Over almost fifty pages, the document discusses the history and making of the current Constitution as well as its content, and comes to the following, quite negative conclusions:

"The final conclusions which we can make from this discussion are as follows:

First: The provisions contained in the New Constitution, whether related to powers or the principle of the people's exercise of their right to sovereignty through an independent Legislative Power that initiates legislation and exercises control over the Legislative Power, have demolished the principles and bases provided for in the National Action Charter. They added to the constitutional organization things which are not dealt with, either directly or remotely, by the National Action Charter.

Second: The National Action Charter is a political document which laid down general bases and principles for the form of the Government and the system of Government and its principles, by introducing the bicameral system of Legislative Power where one of the two chambers is elected directly and freely by the members of the public, and which unilaterally undertakes legislative tasks, while the second chamber is appointed from

¹⁶⁴ Mahmood Al-Yousif on <http://mahmood.tv/bahrain/bahrain-politics-2/bahrain-constitution/legal-opinion>

among those who have knowledge and experience to seek their assistance in providing non-binding opinions to the elected Chamber. The New Constitution expressly contravened the principles and bases.

Third: There is nothing in the National Action Charter that says, either explicitly or implicitly, that it is a means of amending the 1973 Constitution or a bypass to the procedural or substantive provisions established in the Constitution. There is also nothing in the National Action Charter that provides, either explicitly or implicitly, that the people's approval of it means that the people have vested in the Amir the trust of making the constitutional amendments without complying with the procedures required for such amendment as provided in the 1973 Constitution.

Fourth: The New Constitution is a grant Constitution, which has prejudiced the constitutional rights which were established to the people in the 1973 contractual Constitution. In addition, it has robbed the general and total principles and provisions of their contents and actual objectives. Despite that the New Constitution provides that the system of Government in Bahrain is democratic, in which sovereignty is for the people who are the source of powers, and that the system of government is based on the principle of separation of the powers and their co-operation with each other, yet its detailed provisions robbed these principles of any actual content.

Fifth: The claim in the Explanatory Memorandum that the National Action Charter has repealed the constitutional provisions contrary to it is a serious statement, which leads to serious consequences, the first being cancellation of the constitutional organization made by the 1973 Constitution, and the most serious of which being the undermining of the legitimacy of the system of Government.

Sixth: The provisions related to the New Constitution decide certain procedures for its amendment, being the approval of such amendment by the two-thirds majority of the members constituting the Consultative Council and the Chamber of Deputies. They also put a substantive ban on not allowing any proposal to be made to amend the bicameral system established in the Constitution, which makes any amendment or improvement to the Constitution an impossible thing in the framework of the organization of the Legislative Power Assembly established in this Constitution.¹⁶⁵

All of those are very serious concerns and allegations. Also, in a number of meetings between the author of this thesis and members of the opposition, both such that are represented in the Chamber of Deputies, and such that are not, as

¹⁶⁵ Anonymous, Legal Opinion Concerning the Constitutional Matter Of the Kingdom of Bahrain, Conclusion

well as in an opposition seminar “Bahrain since the National Charter” the author of this thesis was invited to attend in August 2008, very serious allegations and complaints have been made. Looking at them systematically and trying to group them, four groups of comments emerge:

- A first group of comments (although a minority of them)¹⁶⁶ pragmatically acknowledged some progress, even though they expressed concern, that progress hasn't gone far/quick enough (“It is good to have a Constitution, but it hasn't gone far enough”, “At least, we went somewhere. We have freedom of discussion. Today's seminar [on August 13th, 2008] would not be possible otherwise”, “The National Charter came at a difficult time, and our yes to it was not wrong at that time. Even the Constitution was not wrong, it was better than what we had before. But we want more today”, “Is the new Constitution perfect? No, not really. But at least, we have a Constitution again which is really applied. If we had insisted on the old one, we still wouldn't have a Constitution”, “After the National Action Charter, I had hoped for more. But, at least it is something. It is more than I would have hoped a couple of years before 2002”). It is interesting to note that those comments in general compare the situation post-2002 with the one pre-1999, rather than with around 1973 – as will be the case among the fourth group of comments.
- The second group of comments questioned the legitimacy of the new Constitution (“The 2002 Constitution was illegal. The King should simply have applied the 1973 Constitution. And for any changes he wanted, the regulations in there should have applied. He didn't because he knew he wouldn't have got what he wanted”, “The Valentine's Referendum was not constitutional. And even if it had been, it was not an authorization to the Amir to declare a new Constitution”).
- The third group of comments criticized that the 2002 Constitution did not live up to the expectations raised by the National Action Charter, because of what was put into the Constitution and because of what happened between the NAC and the Constitution coming into force (“The National Action Charter would have been a basis for good democracy, but between the referendum and the Constitution, the Government passed many laws that contravened the spirit – this was very disappointing”, “All opposition parties at first didn't want to sign the National Action Charter, but then we did so to show good faith to the government. But we have been disappointed”, “The opposition was not united enough in 2002, after the Charter. The Government could do

¹⁶⁶ For reasons of transparency and fairness, it should be remarked that the author of this thesis has on purpose chosen to also get in touch with some of the more radical opposition members, to get a balanced view compared to the probably overly positive official positions and compared to most international perspectives that are basically happy to have some sort of democracy in that region (plus a more or less stable country). Hence, many of the views expressed here are among the more radical ones. When talking with most people, the general notion is more around the situation potentially not being perfectly democratic, but significantly better than before. On top, many of those (especially among the well educated middle/upper-middle class) actually perceive the King and the Royal Family as a key balancing factor that is protecting Bahrain's openness and tolerance against more fundamentalist tendencies that they see in Parliament.

what they wanted – and they did”, “The problem was not the National Action Charter, but what followed then, especially within the Committee to draft the amended Constitution. The opposition was not united and hence weak”).

- And last but not least, the fourth group of comments raised the issue that the so-called reforms (including the 2002 Constitution) were actually a step backwards, compared to 1973 (“There is no true political reform in Bahrain. We have moved backwards, behind the 1973 Constitution. [...] It is not correct to compare 2002 and 1995. You need to compare 1973 and 2002”, “In 1973, the Constitution knew strong restrictions on the power of the Government. Then, they realized they had gone too far. Bahrain was too democratic. And they dissolved the National Assembly. The following years were dark, until 1999. The National Charter was no problem, but detailing it was. The King suddenly got more power than in the 1973 Constitution”, “The 2002 Constitution wiped out the rights guaranteed in the 1973 Constitution”).

The pragmatic view expressed by the first group of comments is very much the view that is represented in a wide group of the general population. Their concern seems to be more around what is now happening, within the new constitutional framework, rather than questioning the framework as such. And topics that are high on the list include distribution of wealth, welfare, (un)employment, etc. – as one young university graduate told the author of this thesis: “Why are you talking about freedom of speech? We can say anything we want, nobody stops me. These are not the issues. The King has sorted that out, and I trust him. But will I get a good job? Make the hospitals better. Get the f***ing bureaucracy to work, that’s the topics.”

The second group worries more about the legitimacy of the Constitution. As the analysis of the 2002 Constitution itself (in this case of the Foreword) earlier in this thesis has revealed, this concern regarding the legitimacy also seems to have been high on the agenda of the authors of the Constitution (or at least of the Foreword). To act in a fully legitimized way (in a technical/legislative sense), the old 1973 should have been “reactivated” and applied, which would have meant elections and then the convocation of a National Assembly, consisting of 40 elected representatives plus the Ministers, who would have had to approve the new Constitution by a 2/3 majority before it being ratified by the King. Instead, a path was chosen to first come up with the “National Charter” – which was not a constitutional/legislative document, but more of a programmatic document (please refer to Appendix 2 for the full text). From a political point of view, it could be argued that the path via a referendum was actually the most directly democratic one: Everyone of the people was asked whether (s)he agrees to the new directions, and the overwhelming majority, including most opposition group members, said yes. It is claimed that it was from this manifestation of political will that the King (then the Amir) derived his authorization. But without doubts, this line of arguments leaves a question mark over the strict legalistic legitimacy of the new Constitution.

This leads directly to the third group of concerns referred to above, that the 2002 Constitution does not live up to what the population voted on in the National Action Charter referendum. Even if the referendum had authorized the King to promulgate a new Constitution (which is subject to massive debate), the Constitution would have had to be fully in line with the National Action Charter, the argument goes. As the comments above showed, many question this alignment sincerely. In particular, the debate focuses around whether the Constitution actually stipulates a truly democratic monarchy or not. The following is an excerpt from a paper anonymously published by a group of Bahraini lawyers that looks at this question in more depth. It is worth being read at full length:

“We believe that there is no doubt that what is meant by "constitutional monarchies of well established democracies" and by "recognized constitutional norms and traditions in well-established democracies," as provided for in the National Action Charter, are the constitutional governments of well-established constitutional monarchies, such as Britain, the Netherlands, Spain, Japan, Denmark, etc. However, we also believe that comparing between the well-established constitutional governments of these monarchies with those of Bahrain is grossly unjust, for many reasons, first of all is that the royal families in these monarchies do not actually rule. For this reason, we will compare with two Arab constitutional monarchies, Jordan and Morocco, because the royal families in these two countries participate in rule through the King’s constitutional powers.

In Jordan, for example, laws are promulgated by a legislative power, the National Assembly, which consists of a bicameral chamber, comprising two assemblies: the Senate, the members of whom are appointed by the King, and the House of Deputies, whose members are elected by the people in universal suffrage, directly, and by secret ballot. Jordan’s constitution provides that the number of the appointed Chamber, including its Speaker, shall not exceed half the number of the members of the elected chamber. The constitution also stipulates that no member of any of the two Legislative Powers should be a relative of the King.

In Morocco, on the other hand, the "parliament" consists also of two chambers: the House of Deputies, whose members are elected directly, and the Chamber of Advisers, three fifths of whose members are members elected in each region of Morocco by an election body consisting of representatives of local communities, while the remaining two fifths of its members consist of members elected also in each region of the country by election bodies consisting of elected members in professional chambers and members elected on the national level by an election body consisting of the representatives of employees (workers). This means that the members of each of the two chambers are elected, the first directly elected by all members of the public, while the second is elected indirectly by the

representatives of professional bodies and labour unions and other private institutions and organizations.

By comparing the two constitutional monarchical systems, in terms of principles related to the form of the Legislative Power, with the government provided for in the New Constitution, we find a world of difference. For example, the number of the members of the appointed chamber in Jordan is not more than half the number of the members of the elected chamber, while in Morocco both chambers consist of members who are elected, either directly or indirectly.

Therefore, what is provided for in the National Action Charter, in respect of the constitutional monarchy which will occupy its niche among well-established constitutional monarchies of democratic governments, where laws are promulgated in accordance with the norms and customs of well-established democracies is, no doubt, not achieved in the New Constitution, even by way of comparing it with two constitutional Arab monarchical governments.”¹⁶⁷

Last but certainly not least, there are the claims that the new Constitution moves “backwards” in terms of substance, compared to the 1973 Constitution. “Backwards” in this context is interpreted as away from parliamentary powers, towards more powers for the ruler, as well as a reduction in terms of rights guaranteed. This is worth to be mentioned as many in Bahrain might well disagree with this interpretation. Due to a number of parliamentary quarrels as well as some tendencies towards a stronger Islamic orientation of Bahrain among the majority of members in the Chamber of Deputies,¹⁶⁸ one meets a lot of people who – inofficially – reason that, in the current situation and given “the Parliament’s performance and track record”, strong powers for the King are actually essential to keep Bahrain on its progressive, pro-Western reform course (the very course it is internationally applauded for, in a very sensitive region), to balance the different forces within society, and to protect the diversity of groups in Bahrain against any tendency of extremism.

Moving away from the discussion of what is “good” and what is “bad”, the claim still stands that the 1973 Constitution differs substantially from the 2002 Constitution and that all the shifts were towards more power for the King and Government. In the previous chapter, this thesis already looked at the terms and provisions of the 2002 Constitution in some detail. However, even extensive search of literature has not found a “neutral” comparison between the 1973 and the 2002 Constitution. For this purpose, Appendix 1 of this thesis contains a clause-by-clause comparison between the old and the new Constitution. The 1973 Constitution was taken and its articles, partially on a sub-clause level, were

¹⁶⁷ Anonymous, Legal Opinion Concerning the Constitutional Matter Of the Kingdom of Bahrain, Section 2

¹⁶⁸ As already mentioned, 17 of the 40 members of the Chamber of Deputies currently belong to the conservative Shi’a Al Wafaq Society, to name the most prominent example

carefully assigned next to the corresponding articles of the 2002 Constitution wherever this was possible. This allows to read both Constitutions in parallel, and it also shows where one Constitution contains a provision that doesn't have a pendant in the other and vice versa. Each reader is invited to refer to Appendix 1 for this detailed analysis, and to form his or her own opinion from the material presented there. To facilitate (and expedite) this, differences in content have been highlighted directly in the Articles.

To summarize the analysis conducted, most provisions around the general principles of the State, the “basic constituents of the society”, and around the guaranteed rights as well as duties, are very similar between the two Constitutions. While the 2002 Constitution does not really move beyond the 1973 Constitution, it by and large doesn't take a step back either (please see below for one exception in the area of the freedom to form associations and unions). The main changes are in the power split between the King (and his Government) and Parliament, especially the elected Chamber of Deputies. There is a clear shift towards more rights for the King. Also, unlike in the 1973 Constitution, the 2002 Constitution allows the King to directly exercise his rights (rather than via the ministers only).

Not a modification of content, but nevertheless quite telling is a “formatting” change: In the 1973 Constitution, the National Assembly provisions are located right after the Amir and before the Cabinet of Ministers, while in the 2002 Constitution, the National Assembly provisions come after those referring to the King and those referring to the Council of Ministers.

With respect to the judiciary, to financial affairs and general provisions (i.e., the last three chapters), the changes are relatively smaller, even though there are a few that deserve attention.

The following provides a summarized overview of amendments, grouped by nature/context. It does not provide the full list of all changes nor does it fully keep the chronological order of changes as they come in the Constitution, to facilitate comparison. For a full impression of all those content changes in chronological order, please refer to Appendix 1.

- By and large, the individual freedoms guaranteed in the Constitution have not been touched, with two exceptions:
 - The freedom to form associations has had one extra condition added in 2002: “provided that the fundamentals of the religion and public order are not infringed.”
 - On the other hand, the 2002 Constitution strengthened the protection of one's home. A house may now be searched only in case of “maximum necessity”.
- The role of the King has been significantly strengthened in the 2002 Constitution, compared to the 1973 one:

	1973 Constitution	2002 Constitution
<ul style="list-style-type: none"> Exercising of rights by King 	Through ministers	Directly or through ministers
<ul style="list-style-type: none"> Role of the King with respect to the Security Forces 	Supreme Commander	Supreme Commander, but now emphasized explicitly that the Defence Forces are directly linked to the King, and that they are to maintain “the necessary secrecy”. On the side, Art 33 lit g also contains an explicit authorization to use the Forces for “national tasks outside the homeland”.
<ul style="list-style-type: none"> Amendment of the Constitution 	2/3 majority of the National Assembly and ratification by the King	2/3 majority of both Chambers (or the National Assembly) and approval by the King
<ul style="list-style-type: none"> Appointment of Shura Council Members 	n/a	By the King
<ul style="list-style-type: none"> Setting/changes of the Royal Court’s budget 	By law	By Royal Decree
<ul style="list-style-type: none"> Waiting period until a law is automatically deemed ratified if the King neither actively ratifies it nor uses a veto 	30 days	6 months

• Submission of emergency decrees by the King for parliamentary approval	Within 15 days if the Assembly in session, otherwise in the first meeting of the next session	Within 1 month if in session, otherwise within 1 month of the new session
• Budget appropriations by emergency decree	Explicitly excluded	Possible
• New elections if the National Assembly/Chamber of Deputies is dissolved	Within 2 months	Within 4 months ¹⁶⁹
• Convocation of the National Assembly if the King doesn't act	Automatic rule in Constitution	No rule in the Constitution
• Convocation after elections	Within 2 weeks	After one month
• Opening speech of the National Assembly	By the King or the Prime Minister	By the King or whomever he nominates
• Adjournment of National Assembly	Once for less than 1 month within one convening period ¹⁷⁰	Twice for less than 2 months each within one convening period
• Extension of the legislative period	Not allowed, except in war with a 2/3 majority of the Assembly	The King may extend the period "when necessary," for up to 2 years
• Veto of a bill by the King	Normal majority for reconfirmation	2/3 majority for reconfirmation

¹⁶⁹ Plus further postponement by the King permitted if the Council of Ministers considers holding elections not possible, in which cause the King may (but doesn't have to) call back the old Chamber

¹⁷⁰ For second and subsequent adjournments: approval by the National Assembly required

<ul style="list-style-type: none"> • Declaration of martial law 	By law; in urgent cases by Amir, but to be referred to the Assembly within 2 weeks	By royal decree
<ul style="list-style-type: none"> • Royal right to initiate popular referendum 	N/a	Newly introduced by 2002 Constitution

- Moving on, the legislative authority section of the 2002 Constitution has seen the most comprehensive amendments. A significant part of them stems from the fact that the system was changed to two chambers, one elected, one appointed, plus some arrangements for joint sessions of both chambers. However, there are also some changes that are not necessarily directly related to the changes in the number and nature of the chambers:

	1973 Constitution	2002 Constitution
<ul style="list-style-type: none"> • Initiation of a bill 	By any member	By any member (15 in case of constitutional amendment) plus consent of the respective committee
<ul style="list-style-type: none"> • Result of vote in case of a tie 	Rejected	Dependent on which side the President voted with
<ul style="list-style-type: none"> • Presence quorum 	At least 50%	At least 50%, however at least 25% if quorum not met on two successive occasions
<ul style="list-style-type: none"> • Immunity of parliamentarians 	Yes	Yes, but not if “the opinion expressed is prejudicial to the fundamentals of the religion, or the mandatory respect for the King, or is defamatory of the personal life of any

		person”
<ul style="list-style-type: none"> Abrogation clause for elected members in case of misuse of powers 	No	Newly added
<ul style="list-style-type: none"> Interpellation of Ministers, including the Prime Minister 	Right of any single member	At least five members requirement
<ul style="list-style-type: none"> No confidence vote against Ministers 	Normal majority	2/3 majority in the Chamber of Deputies
<ul style="list-style-type: none"> No confidence declaration against the Prime Minister 	2/3 majority to take it to the King who may then either remove the Prime Minister or dissolve the National Assembly; if he dissolves the Assembly and the new Assembly then votes again against the Prime Minister (by simple majority), the Prime Minister has to be relieved of his office	2/3 majority in the Chamber of Deputies to take it to the National Assembly. Another 2/3 majority in the Assembly then takes the matter to the King who may then either remove the Prime Minister or dissolve the National Assembly
<ul style="list-style-type: none"> Standing Committee for Citizen Complaints and Petitions 	Yes	No
<ul style="list-style-type: none"> Length of annual parliamentary session 	At least 8 months	At least 7 months

- With respect to the judiciary, the most important (and positive) amendment is that the concept of a Constitutional Court has been established and detailed in the Constitution (as opposed to a simple authorization in 1973).
- Looking at financial regulations, the 2002 Constitution combines some technical changes with some increased powers/checks for the Government:

	1973 Constitution	2002 Constitution
• Amendments to the Government's budget proposal by the National Assembly	No restrictions	Government approval required
• Budgetary period	1 year	May be longer than 1 year ¹⁷¹
• Partial approval of the budget proposal	Possible	Not possible
• Transfer of funds from one part of the budget to another (after approval of the budget)	Law required	No regulation (i.e., no law required)
• National Audit Court	Attached to National Assembly	No regulation, i.e., not attached to National Assembly

- Also, the 2002 Constitution reflects some topics that have gained in importance and/or that have historically developed since 1973. Examples of this include:
 - The stronger emphasis on women and women's rights, which are explicitly mentioned in both Art 1 lit e and Art 5 lit b of the 2002 Constitution;
 - The explicit mentioning of the protection of the environment and wildlife in the 2002 Constitution; and
 - The stronger focus on Bahrainisation with respect to (public) jobs.

Thinking of the fourth group of criticism mentioned earlier – that the 2002 Constitution stepped back behind the 1973 Constitution – one clearly has to say that there obviously was a shift towards more power for the King, and more restrictions for and checks on the elected representatives of the people. The claim that most individual rights have been stripped away from the citizens, on the other hand, is hard to substantiate (at least on the constitutional level).

¹⁷¹ Actually 2 years at the moment

Political Reform as Part of a Comprehensive Reform Approach

COMPREHENSIVE REFORM

The change to Bahrain's political setup, as discussed extensively above, does not come in an isolated way. Far from that, it is but one core element of a comprehensive reform approach, the purpose of which is to sincerely prepare Bahrain for its future. Economic reform, the reform of the labour market, education reform, and an overhaul of government bureaucracy are other core elements.

The Crown Prince of Bahrain, Shaikh Salman bin Hamad Al-Khalifa, explicitly reflected this comprehensive reform approach in his reply to a question about the main pillars of the reform process:

“When we launched the political liberalization program under the leadership of His Majesty King Hamad, the National Charter led to a new Constitution and the setting up of a bicameral house. Other projects included municipal councils, the abolition of the state security laws, new press freedoms, the creation of political societies, and the enfranchisement of women. [...]

Along with the political program we started a series of economic reforms to deliver a more sustainable future for the people of Bahrain. The economic reforms are focused around three main pillars. The first is about enabling the private sector to become the engine of growth for the economy. [...] The second pillar is about government and how we move it from being the main driver of the economy to playing a supporting role for the private sector. [...] The final and most important pillar is about investing in the people of Bahrain. [...] We are investing heavily in training and education to empower our people with the skills they need to become more productive members of society.”¹⁷²

This statement hits at all the key elements (“pillars”) of reform beyond the core political reforms, that Bahrain has embarked on over the last years:

- Economic reform,
- Labour reform,

¹⁷² K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 76
- 90 -

- Government reform, and
- Education reform

On top of those reforms, a number of efforts in other areas are also under way, including in the healthcare system or the judicial sector, to mention two examples.

ECONOMIC REFORM

The Crown Prince, Shaikh Salman bin Hamad Al-Khalifa, was asked in an interview in 2007 whether political reform or economic reform was more important. His reply gives a very interesting insight into the significance that is attributed to economic reform:

“I certainly think that economic reform and growth ensure the success of political reform. I’ve heard people talk about delaying political reform because economic reform is not yet sufficiently in place. It’s a fine balance, but if I was forced to choose, from personal experience, I would say that economic growth is a natural prerequisite for political reform. It makes the latter much easier and more stable. But if you are willing to work hard, then starting with political reform will yield the same results.”¹⁷³

Corresponding to the size of the country, its economy is relatively small by international comparison. In 2007, Bahrain’s GDP amounted to USD 19.66 billion, with industry contributing 43.6%, services 56%, and agriculture 0.4%.¹⁷⁴

In terms of economic characteristics, the petroleum industry as well as aluminum manufacturing play important roles. Currently, Bahrain sells over 480,000 tons of metal internationally, making it the biggest aluminum producer in the Middle East.¹⁷⁵

However, already today, Bahrain considers its flagship sector financial services, competing strongly with Dubai:

“Bahrain is the leading financial market in the Middle East. [...] According to the Global Investment House (GIH) banking activities in Bahrain have increased dramatically. [...] It came as no surprise when Dubai jumped into the ring with its own financial development, the Dubai International Financial Center (DIFC), which is now Bahrain’s main rival as they vie for the unofficial title of Financial Hub of the Middle East.”¹⁷⁶

¹⁷³ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 82

¹⁷⁴ CIO World Fact Book Bahrain

¹⁷⁵ Wall Street Market Research, Rising Bahrain Special Edition 2007, 41

¹⁷⁶ Wall Street Market Research, Rising Bahrain Special Edition 2007, 51

In addition, tourism and other service industries play an important role within Bahrain's economy.

However, many of the biggest players are still state owned. In addition, (private sector) players have frequently complained about too restrictive government regulations and excessive bureaucracy, as well as a lack of trade agreements, which are of particular importance for a country as small as Bahrain. These elements have therefore been key areas of push of economic reform:

“Landmarks of economic liberalization thus far have included the deregulation of the telecommunications industry, fundamental reform of the labor market, the privatization of key industries, and the negotiation of bilateral and multilateral trade agreements with nations in the Middle East and beyond.”¹⁷⁷

Clear sign of the strong will to drive economic reform, and to make Bahrain fit for the economic challenges of the future, has been the set-up and continuous strengthening of Bahrain's Economic Development Board, strongly modeled after the Singapore Development Board, which is widely considered a key engine in the overall development of Singapore, and chaired by the Crown Prince himself. The EDB's mission statement speaks in clear terms:

“Our mission is to grow and diversify Bahrain's economy by developing a strategy that supports the advancement of a modern and liberalized business environment, encourages inward investment and enables us to compete in the global marketplace. We are dedicated to elevating the standards of living by creating greater opportunities for our citizens and to make Bahrain the region's most welcoming, business friendly location.”¹⁷⁸

Bahrain's economic reform efforts focus on a combination of building and strengthening core sectors, including the attraction of new investors, and the enhancement of overall productivity and competitiveness, including the removal of bureaucratic hurdles. The purpose of these economic reforms is to ensure sustainable economic growth and development beyond the oil era – and to create sufficient jobs for Bahrain's citizens, especially the young ones. Those efforts are recognized internationally, as the following quote from MEED, a key source of business intelligence for the Middle East, demonstrates:

“And if the road to political liberalization is a little hazy, the government's planned economic direction is clear”¹⁷⁹

The key challenge from a public sector perspective in this might well be the future role of the state vis-à-vis the economy. When asked for the major

¹⁷⁷ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 73

¹⁷⁸ EDB, Developing Bahrain's Economy, 5

¹⁷⁹ Dunkley in MEED Special Edition Bahrain 2004, p. 32

economic challenges over the coming years, the Crown Prince, Shaikh Salman bin Hamad Al-Khalifa, actually referred to this area:

“The great challenge we will have in the future is defining the role of the state in this region – whether it will remain a welfare state or a state more similar to that of a modern economy. I think this will color a lot of the public debate, namely how much influence, control, and patronage the state will have versus how much independence, empowerment, and influence the private sector should have. When civil society, the free market, or the capitalist system clashes with the oil state, you will see the tensions”¹⁸⁰

LABOUR REFORM

Throughout history and across the world, unemployment – in particular youth unemployment – has often been a major contributor to unrest, radicalization, and on more than one occasion to some kind of revolution or overthrow of political systems.

Therefore, ensuring sufficient employment for its citizens is not only a humanitarian priority of the Gulf states, including Bahrain, but it is one that is of fundamental importance for stability and for preventing a further strengthening of radical movements.

Bahrain – like many of its neighbours – faces the situation that on the one hand, most of its (private sector) workforce actually consists of expatriates, while at the same time, citizens are either unemployed or holding government jobs:

“Many nationals find work instead on swollen government payrolls, underwritten by petrodollars. But Bahrain’s oilfields are running dry [...]. The [...] Bahraini state cannot afford to employ every citizen who wants a job. [...] This leaves many [...] Bahrainis in limbo. They cannot count on a government job; nor will they settle for a low private sector wage.”¹⁸¹

Part of the problem of the private sector wages, especially in the low and medium skills sector, is that the Gulf economies are actually built on the availability of very low-cost labour, with most workers coming from the Indian subcontinent.

In 2004, Bahrain therefore started an ambitious labour reform program. This program has been designed to level the playing field between expatriate labour and locals, on the one hand by introducing a labour fee system for expatriate workers. This money, on the other hand, is used to invest it via a newly created, dedicated institution, the Labour Fund, into measures that help providing more jobs for Bahrainis, and making Bahrainis fit to fill those jobs:

¹⁸⁰ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 83

¹⁸¹ The Economist, April 26th, 2008, 39

“Bahrain’s recently established Labour Fund invests the taxes on foreign workers [...] both in skill-building programs for the national workforce and in measures to increase private-sector productivity. [...] The Fund has also increased the level of loan financing for small private sector companies by guaranteeing access to loans from commercial banks.”¹⁸²

In addition, labour reform includes measures around labour market governance, and individual labour rights and obligations.

Labour reform has been – and partially still is – highly controversial, less so in regards of the need for it, but about the right approach. In addition, this has been a strong test for the new political climate, as labour reform was introduced in cooperation (and debate) between Government and Parliament, as well as other stakeholders such as the Chamber of Commerce and Industry.

While labour reform is still in the implementation phase and the final judgment is not yet in, there is optimism that this reform will actually make Bahrain a role model for other Gulf countries. In the words of the Crown Prince, Shaikh Salman bin Isa Al-Khalifa:

“It is a very exciting initiative, and my prediction is that this model will be followed by the rest of the Gulf.”¹⁸³

GOVERNMENT REFORM

One might wonder about the difference between political reform and government reform. Without doubt, they are very closely linked – and on many occasions, those two are actually used almost as synonyms.

However, government reform receives a separate mentioning in this thesis to bring out a clear distinction between the two areas of reform:

- Political reform, as understood in this thesis, focuses primarily on the change of setup of Bahrain’s politics, the shifting in relative powers and the overall system of governance.
- This is complemented by government reform, defined as the improvement of service delivery processes. Such “quality/efficiency improvements” could actually be made without changes in the political system, i.e., without political reform (even though, in the case of Bahrain, the spirit of reform that manifests itself in political reforms is the same that drives a lot of government reform). Government reform could also be called the fight against excessive bureaucracy.

¹⁸² G. Al-Kibsi/C. Benkert/J. Schubert, McKinsey Quarterly, 2007 Special Gulf Edition, 27

¹⁸³ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 78

Over the last years, awareness for the need of government reform has grown significantly, not only among those “regulated and administered”, but also among Government officials. In a number of areas, processes have already been redesigned or are currently subject to such redesigns. The focus in this is as much on internal optimization as on the improvement of the customer experience. The newly designed Labour Market Regulatory Authority (LMRA) is considered a showcase example of what should be achieved going forward. It might be just a random example, but anyone who enters the new premises of LMRA feels like in a very different environment, compared to what one would traditionally expect from an authority.¹⁸⁴

However, a lot still remains to be done – Bahrain has not reached its aspirations yet, many of which are guided by effectiveness and efficiency aspirations Singapore-style. The promises of the Government leadership to Bahrain’s people are significant. They will have to prove that they are able to really deliver against the promises.

EDUCATION REFORM

In the context of economic as well as labour reform, creating sufficient jobs for Bahrain’s citizens has been and still is a key driver. However, the aspiration is not to force all citizens to work in low qualification, low paying jobs. Rather, it is the aspiration to create highly qualified private sector jobs that are paying well and that sustainably enable Bahrainis to lead economically comfortable and secure lives, without depending on government employment and/or state support.

But these jobs will only go to local citizens if they are sufficiently educated. Hence, education plays a core role in the future development of Bahrain, and is the key to long-term sustainable success of the current comprehensive reform efforts, not only in an economic but certainly also in a political context. But currently, Bahrain – like most other Gulf countries – is still struggling with the quality of its education system:

“Having largely achieved the once-distant goal of providing free access to primary and secondary education for all nationals, the Gulf Cooperation Council (GCC) states [...] now face a much thornier challenge: raising the quality of that education.”¹⁸⁵

The 2003 TIMSS¹⁸⁶ scores spoke quite a clear language. Bahrain’s 8th graders on average scored 401 points on math achievements, while the international average

¹⁸⁴ Please refer to www.lmra.bh for further information and for pictures to demonstrate this point

¹⁸⁵ M. Barber et al, McKinsey Quarterly, 2007 Special Edition, 39

¹⁸⁶ Trends in International Mathematics and Science Study, an international examination conducted every 4 years. The most recent tests were administered in 2007. However, the results of those tests have not been made publicly available yet at the time of closing of this thesis in August 2008.

was 467 points, and Singapore's students (coming in at the top rank) reached 605 points.

Over the last approximately three years, education reform has moved to become one of the very top items on the political agenda. A dedicated cross-agency initiative was started in 2006, headed by the Deputy Prime Minister, working closely with the Ministry of Education, the individual schools, and other stakeholders. Bahrain's Economic Development Board has set up a dedicated support unit.

This is to meet the expectations as they are, for example, reflected in a statement by the Crown Prince, Shaikh Salman bin Hamal Al-Khalifa:

“As I mentioned, investing in people is very important to the future of Bahrain. So we have started a series of initiatives that aims to raise the output of the educational system [...].”¹⁸⁷

The initiatives mentioned include such as the introduction of a Quality Assurance Authority, a dedicated Teachers' Initiative, a Secondary Vocational Initiative, and others.¹⁸⁸ Unfortunately, it would exceed the scope of this thesis to look in detail at the different reform activities, but it is important to at least mention them. They are certainly key pillars of a truly comprehensive country reform program and will hopefully have deep and long-term impact on Bahrain's society.

SUMMARY AND OUTLOOK

As the above examples demonstrated, Bahrain has embarked on a very comprehensive transformational journey, covering a wide arena of ambitious reforms. It is a journey that brings with it a lot of change – change that is not always easy and that creates a significant amount of uncertainty among many citizens. Nevertheless, comprehensive reforms are necessary to prepare Bahrain for its future along a multitude of dimensions.

Going forward, Bahrain's Economic Development Board, together with all government institutions, has been mandated to develop a National Vision and Strategy, and define the implementation initiatives derived from that Vision. While at the time of closing this thesis¹⁸⁹, the Vision and Strategy were not published yet, it is expected that they will contain an ambitious working program for the coming years, continuing on the path of comprehensive reform.

¹⁸⁷ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 78

¹⁸⁸ EDB, Developing Bahrain's Economy, 32 - 39

¹⁸⁹ August 2008

Time is Moving On – Current Trends and Topics

Since 2002, the debate around the Constitution and its provisions has remained high on the political agenda. At the same time, life has continued and the political setup as defined by the 2002 Constitution has become a political reality.

Many of the opposition members, some of whom had actually left the country and only returned after the reforms started, are now actually holding important positions within the system. As one former opposition member, who was exiled and is now actually holding a significant semi-governmental office, told the author: “Change is required from the inside, and it is gradual. We need to be pragmatic, and have some patience.” In many cases, this pragmatism comes hand in hand with memories of the not too distant past:

“Even as they voice their unhappiness with the political system that is emerging, many Bahrainis are mindful of the fact that their country was until very recently a much more repressive place than it is today. They appreciate that they now enjoy the freedom to speak their minds in public, to join associations and attend seminars on political topics – and are able to vote at all. Even as they note that only time will tell how enduring these liberties turn out to be, Bahrainis embrace them.”¹⁹⁰

One of those who have not given up their desire for reform, but have chosen to work for it from the inside, is Dr. Munira Fakhro. She was involved in some of the petitions in the 1990s, was suspended from her job, and went to the United States for some years, before she returned to Bahrain in 2001. By now, she is an associate professor at the University of Bahrain, a member of The National Democratic Action Society, and holds a seat on the Supreme Council for Women. Her engagement focuses on women’s rights within the society, a movement that is gaining in importance in Bahrain, despite Dr. Munira Fakhro currently observing a tide of conservatism:

“Social norms and culture move slower than mental acceptance for new ideas – they accept the new ideas but at the same time they have the old culture and there is a conflict. [...] I think we are at the beginning of this movement in civil society. In the [Supreme] Council [for Women], we have a good strategy.”¹⁹¹

¹⁹⁰ Melia, *The People of Bahrain Want to Participate*, 7

¹⁹¹ *Woman This Month*, April 2006

Like the Supreme Council of Women, a number of new players have emerged that are playing key roles in reform and have become symbols for a new era. Among non-governmental organizations, the Bahrain Center for Human Rights (BCHR) is standing out. Founded by a group of 26 Bahrainis, it was officially registered in 2002. In November 2006 the Center was ordered to be closed in the wake of the Bandergate scandal¹⁹², but received such strong support within Bahrain as well as internationally that it remained open.¹⁹³ By now, the BCHR has managed to establish itself as an independent, internationally recognized human rights watchdog within and for Bahrain.

Among (semi-)governmental organisations strongly driving reforms, Bahrain's Economic Development Board (EDB) deserves to be mentioned. Chaired by the Crown Prince, EDB has moved beyond its initial role of attracting foreign investors to Bahrain to being a core driver of progress in Bahrain. EDB has signed responsible for initiating reforms such as economic reform and labour reform. It is also heavily involved in education reform, and a number of other efforts. In other words, by now, EDB has significantly moved beyond its initial role in the economic domain, and has actually become a key player in the wider political arena, and a player that, for many Bahrainis, stands for the commitment of Bahrain's top leadership, especially the Crown Prince, to continued reform.

Despite all their "diversification", EDB's main concern and focus area is still sustainable economic development for Bahrain. And this sustainable economic development is closely linked to social welfare and the distribution of wealth, a topic that has recently taken a lot of centre stage. This also came through in an opposition workshop in August 2008, when asked about the key challenges going forward:

"Social justice and distribution of wealth are the key challenges going forward. There is de facto inequality between groups, whatever the laws are saying. Many people are struggling to make ends meet – in a country which is actually quite rich. The right for housing, for example. It is still not fulfilled, there is a long waiting list."¹⁹⁴

The discussions around social welfare and distribution of wealth are even more politically sensitive than they would be in most countries, as there is a strong sentiment that a number of inequalities are actually linked to sectarianism. As The Economist reported in April 2008:

"To make matters worse, these inequalities often have a sectarian tint. Most Bahrainis are Shias but the royal family is Sunni. The Shias are

¹⁹² Please refer to the chapter on the religious divide for further information

¹⁹³ www.bahrainrights.org

¹⁹⁴ Opposition societies workshop on "Bahrain since the National Charter", August 13th, 2008

more likely to be jobless; many government employers discriminate in favour of Sunnis.”¹⁹⁵

Even Sunni politicians such as Ebrahim Sharif of Wa’ad Society still admit differences: “Most of the Shias are worse off than the average Sunni.”¹⁹⁶

And this is where the cycle closes again towards discussions around political representation, especially in the Chamber of Deputies. In the August workshop already mentioned above, the topic of social discrimination very quickly turned towards a perceived preferred treatment of Sunnis in the country’s election system (on top of the strong prerogatives of the King and the Government):

“The electoral districts have been designed so that they are in favour of Sunnis. Also, there were some unclear procedures. We need fairer precincts and better election management for really fair elections.”

“The election system is not fair as of now. It is not guaranteeing democracy, it is giving too much weight to rich Sunni areas. This is just a show. We should not have participated in the [2006] elections!”¹⁹⁷

In fall 2006, the Crown Prince, Shaikh Salman bin Hamad Al-Khalifa, was asked whether he was concerned about some parties still remaining outside the formal political system and about the Shi’a hence being underrepresented, and he replied:

“With democracy there are freedoms, and there will always be those who disagree. [...] Thank God, there is a mechanism for the people to put those ideas into practice if they have a majority view, and at the very least express them peacefully. On the Shi’a, I beg to differ. Even with the boycott in the last elections [October 2002], we still had a very significant turnout, with 54% of the total electorate – people forget that. And with the participation of all parties this time [November 2006], the turnout will be more representative. You get out what you put in.”¹⁹⁸

And in fact, the Al Wafaq National Islamic Society, Bahrain’s main Shi’a opposition group, gained 17 out of 40 seats in the November 2006 elections and – together with other opposition groups – holds a clear majority in the Chamber of Deputies. However, the various political societies themselves need to concede that there is a lot of debate of principles among themselves, which in turn divides them, partially puts Parliament into a bad light, and gives Government more power. This was clearly reflected in the aforementioned workshop – the quotes speak for themselves:

¹⁹⁵ The Economist, April 3rd, 2008

¹⁹⁶ The Economist, April 3rd, 2008

¹⁹⁷ Opposition societies workshop on “Bahrain since the National Charter”, August 13th, 2008

¹⁹⁸ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 82

“A united front of the opposition is required, we need to act in the national interest, rather than that of some groups. Otherwise, we are no strong representation.”

“The Government cleverly uses that we are split.”

“The Government is very successful in distracting MPs from the true issues, for example by throwing at them Sunni – Shi’a issues. The Parliament is kept busy – and the Government does what it likes.”¹⁹⁹

For the author of this thesis, the following simple statement best summarizes the feelings (and frustrations) of many opposition members:

“Before 2002, we were not allowed to talk, and the Government did what it wanted. Now, we are allowed to talk, but the Government still does what it wants.”²⁰⁰

Obviously, Bahrain has not arrived yet at a stage where there is a general feeling about fair political participation, and that question still receives a lot of political attention, beyond day-to-day topics. In other words: It certainly still qualifies as a current political topic.

Also, the country’s leadership sees Bahrain still in transition. When asked about the impact of the new political freedoms and the relationship with the new Parliament, the Crown Prince, Shaikh Salman, replied:

“There are problems, as in the creation of any new systems, but they are not insurmountable ones. I think people feel empowered by the new process, but it will be a constant process of evolution.”²⁰¹

A constant process of evolution – it is the hope of many people in Bahrain that this process of evolution towards openness, tolerance and a developing democratic system will continue, and will not lose momentum (or even turn backwards) over the coming years.

¹⁹⁹ Opposition societies workshop on “Bahrain since the National Charter”, August 13th, 2008

²⁰⁰ Conversation with an active Al Wefaq member, July 2008

²⁰¹ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 81

The Journey has begun, but it is still long and stony – Final Conclusions

Is Bahrain the “testing laboratory for change and democratization in the Gulf”? What should one really make of the reforms of the last decade? Are they really that democratic and forward-moving?

This thesis has attempted to shed some more light on those fundamental questions. In the course of doing so, the author – and hopefully the readers – have had to realize that there isn’t a single, simple, and straightforward answer to this question. Bahrain’s political system has certainly not reached the stage of a fully-mature Western-style democracy yet (and a number of people would fervently dispute whether this should actually be the destination, or whether there is something that could be an “Arab version of democracy”). The Sunni – Shi’a divide still casts its shadow over Bahrain, and there are a lot of things opposition members are still asking for:

“The Parliament needs a stronger role, with less power for the Government. Within the Parliament, the Chamber of Deputies should be stronger than the Shura Council. And within the Chamber of Deputies, the current election districts should be reviewed for fairness.”²⁰²

However, certainly nobody would like to return to pre-1999 conditions. And many Bahrainis are immensely proud when comparing their country’s moves towards democracy and reforms with where many of their neighbours are standing: “Bahrain could be further, but at least, we have already come a long way.”²⁰³

Let the author of this thesis close it with actually the very first words the thesis started with, with a quote from the Crown Prince, Shaikh Salman bin Hamad Al-Khalifa, which now appears even more meaningful than at the beginning:

“Democracy is an evolutionary process that we firmly believe in. At times debate prolongs the process, but it ensures the inclusion of everyone in society. Gone are the days when you simply decree something and then expect it to happen.”²⁰⁴

Without doubts, Bahrain has embarked on a fascinating journey of transformation. But it has not reached its final destination yet. And the final

²⁰² Conversation with an active Al Wefaq member, August 2008

²⁰³ Former opposition member, who is now in a leading semi-governmental role, July 2008

²⁰⁴ K. de Boer/J. Kalkman, McKinsey Quarterly, 2007 Special Gulf Edition, 79

destination might not even be that clear for many. Nevertheless, the steps already taken and the ongoing commitment to reform, including by the country's leadership starting from the King and the Crown Prince, give reason for optimism.

Bahrain has the best preconditions to become a true show piece of democratization and political reform in the Middle East, and live up to its reputation as “testing laboratory for change and democratization in the Gulf”. However, the journey has only just begun, and it is still long and stony!

Appendix 1 – The Texts of the 1973 and 2002 Constitutions in Comparison

Over the following pages, the reader will find a detailed comparison between the 1973 and the 2002 Constitution. To facilitate this comparison, and also to enable the reader to come to her/his own judgment and conclusions, the author of this thesis has taken the text of the 2002 Constitution and allocated the corresponding provisions of the 1973 Constitution (where such exist) right next to it. The following points should be kept in mind:

- The 2002 Constitution has been kept in its official order. The provisions of the 1973 Constitution have then be re-ordered to best possibly match the structure and flow of the 2002 Constitution. However, the original article numbers of 1973 have been kept for correct reference.
- Differences are highlighted by grey marker. Only genuine differences in content have been highlighted.
- The authentic language of both the 1973 and the 2002 Constitution is Arabic; the English versions are translations only.
- For the purpose of this comparison, the author of this thesis has used the quasi-official translations, as provided by the Government of Bahrain and as they can be found, e.g., on the webpage of the UNDP Programme on Governance in the Arab Region (www.pogar.org). In addition, parts of the translation that appeared unclear or ambiguous in meaning have been checked back with qualified native Arabic speakers, to validate whether that ambiguity is a matter of translation or also a part of the Arabic version.
- It should be pointed out that different translators worked on the 1973 and the 2002 Constitution. They have partially used slightly differing words (e.g., “liberties” vs. “freedom”), and varying sentence structure. The translations have been kept as published, however, it is important that the reader attributes minor differences in wording and sentence structure to translation, rather than over-interpreting them. Throughout the texts, it is relatively obvious what is translation and what is a difference in content. Areas where this was not fully clear have been checked back with qualified native Arabic speakers.

1973 Constitution	2002 Constitution
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Part One: The State

Article 1

(a) Bahrain is an Arab Islamic State, independent and fully sovereign, and its people are part of the Arab nation. Neither its sovereignty nor any part of its territory shall be relinquished.

(b) The rule of Bahrain shall be hereditary, the succession to which shall be transmitted from His Highness Shaikh Isa bin Salman Al-Khalifa to his eldest son and then to the eldest son of this eldest son and so forth, generation after generation, unless during his lifetime, the Amir appoints one of his sons other than the eldest as his successor, in accordance with the provisions of the Decree of Succession provided for in the next clause.

(c) All rules of succession shall be regulated by a special Amiri decree which shall be of a constitutional nature and thus shall not be amended except in accordance with Article 104 of this Constitution.

(d) The system of government in Bahrain is democratic, under which sovereignty lies with the people, the source of all powers. Sovereignty shall be exercised in the manner specified in this Constitution.

(e) The citizens shall have the right to participate in the public affairs of the State and enjoy political rights, beginning with the right to vote, in accordance with this Constitution and the conditions and procedures set forth

Chapter I The State

Article 1

(a) The Kingdom of Bahrain is a fully sovereign, independent Islamic Arab State whose population is part of the Arab nation and whose territory is part of the great Arab homeland. Its sovereignty may not be assigned or any of its territory abandoned.

(b) The regime of the Kingdom of Bahrain is that of a hereditary constitutional monarchy, which has been handed down by the late Shaikh Isa bin Salman Al-Khalifa to his eldest son Shaikh Hamad bin Isa Al-Khalifa, the King. Thenceforward it will pass to his eldest son, one generation after another, unless the King in his lifetime appoints a son other than his eldest son as successor, in accordance with the provisions of the Decree on inheritance stated in the following clause.

(c) All provisions governing inheritance are regulated by a special Royal Decree that will have a constitutional character, and which can only be amended under the provisions of Article 120 of the Constitution.

(d) The system of government in the Kingdom of Bahrain is democratic, sovereignty being in the hands of the people, the source of all powers. Sovereignty shall be exercised in the manner stated in this Constitution.

(e) Citizens, both men and women, are entitled to participate in public affairs and may enjoy political rights, including the right to vote and to stand for elections, in accordance with this Constitution and the conditions and

in the law.

(f) This Constitution shall not be amended except in part and in the manner provided for therein, and no amendment thereto shall be proposed before the expiry of five years from the effective date of its commencement.

Article 2

Islam shall be the religion of the State; Islamic Sharia (Islamic Law) a main source of legislation; and Arabic the official language.

Article 3

The law shall specify the State's flag, emblem, insignia, medals, orders and national anthem.

Part Two: Fundamental Constituents of Society

Article 4

Justice is the basis of government. Co-operation and mutual understanding are firm bonds among citizens. Freedom, equality, security, trust, education, social solidarity and equal opportunities for citizens are the pillars of society guaranteed by the State.

Article 5

(a) The family is the corner-stone of society and its strength lies in religion, morality and patriotism. The law shall preserve its legal integrity and strengthen its bonds and values, and shall protect motherhood and childhood within the family. The law shall also protect the young and defend them against exploitation and moral, physical and spiritual neglect. The State shall take particular care of the physical, mental and moral growth of youth.

principles laid down by law. No citizen can be deprived of the right to vote or to nominate oneself for elections except by law.

(f) This Constitution may be amended only partly, and in the manner provided herein.

Article 2

The religion of the State is Islam. The Islamic Shari'a is a principal source for legislation. The official language is Arabic.

Article 3

The State flag, emblem, logos, honours and national anthem are laid down by law.

Chapter II Basic Constituents of Society

Article 4

Justice is the basis of government. Co-operation and mutual respect provide a firm bond between citizens. Freedom, equality, security, trust, knowledge, social solidarity and equal opportunities for citizens are pillars of society guaranteed by the State.

Article 5

(a) The family is the basis of society, deriving its strength from religion, morality and love of the homeland. The law preserves its lawful entity, strengthens its bonds and values, under its aegis extends protection to mothers and children, tends the young and protects them from exploitation and safeguards them against moral, bodily and spiritual neglect. The State cares in particular for the physical, moral and intellectual development of the young.

(b) The State shall ensure the accomplishment of necessary social security for citizens in old age, sickness, inability to work, orphanhood, widowhood or unemployment. The State shall also provide them with services of social insurance and medical care, and strive to protect them from ignorance, fear and poverty.

Article 6

The State shall preserve the Arab and Islamic heritage, it shall participate in the furtherance of human civilization, and it shall strive to strengthen ties with the Muslim countries and to bring to fruition the aspirations of the Arab Nation for unity and advancement.

Article 7

(a) The State shall patronize the sciences, literature and the arts, and shall encourage research. It shall ensure educational and cultural services of citizens. Primary education shall be compulsory and free in accordance with the law. The law shall lay down the necessary plan to eliminate illiteracy.

(b) The law shall regulate the various aspects of religious education and attention also be given to the strengthening of the citizen's personality and pride in his Arab Nationalism.

(c) Individuals and bodies may

(b) The State guarantees reconciling the duties of women towards the family with their work in society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of Islamic canon law (Shari'a).

(c). The State guarantees the requisite social security for its citizens in old age, sickness, disability, orphanhood, widowhood or unemployment, and also provides them with social insurance and healthcare services. It strives to safeguard them against ignorance, fear and poverty.

(d) Inheritance is a guaranteed right governed by the Islamic Shari'a.

Article 6

The State safeguards the Arab and Islamic heritage. It contributes to the advancement of human civilization and strives to strengthen the bonds between the Islamic countries, and to achieve the aspirations of the Arab nation for unity and progress.

Article 7

(a) The State sponsors the sciences, humanities and the arts, and encourages scientific research. The State also guarantees educational and cultural services to its citizens. Education is compulsory and free in the early stages as specified and provided by law. The necessary plan to combat illiteracy is laid down by law.

(b) The law regulates care for religious and national instruction in the various stages and forms of education, and at all stages is concerned to develop the citizen's personality and his pride in his Arabism.

(c) Individuals and bodies may

establish private schools under the supervision of the State and in accordance with the law.

(d) Inviolability of the educational institutions shall be guaranteed by the State.

Article 8

(a) Every citizen shall have the right to health welfare. The State shall care for public health and ensure means of prevention and treatment by establishing various kinds of hospitals and provide medical facilities.

(b) Individuals and bodies may establish hospitals, clinics or infirmaries under the supervision of the State and in accordance with the law.

Article 9

(a) Property, capital and work, in accordance with the principles of Islamic justice, shall be fundamental constituents of the social structure of the State and the national wealth. They are all individual rights with a social function regulated by the law.

(b) Public property shall be inviolable and its protection shall be the duty of every citizen.

(c) Private property shall be well protected. No one shall be prevented from disposing of his property except within the limits of the law. No property shall be expropriated except in the public interest, in accordance with the law and provided that just compensation is paid.

(d) General confiscation of property shall be prohibited. Confiscation of private property as a penalty may not be inflicted except by a court judgement and in the circumstances specified by the law.

establish private schools **and** **universities** under the supervision of the State and in accordance with the law.

(d) The State guarantees the inviolability of the places of learning.

Article 8

(a) Every citizen is entitled to health care. The State cares for public health and the State ensures the means of prevention and treatment by establishing a variety of hospitals and healthcare institutions.

(b) Individuals and bodies may establish private hospitals, clinics or treatment centres under the supervision of the State and in accordance with the law.

Article 9

(a) Ownership, capital and work — in accordance with the principles of Islamic justice — are basic constituents of the social entity of the State and the national wealth, and are all individual rights with a social function regulated by law.

(b) Public funds are inviolate, and it is the duty of every citizen to protect them.

(c) Private ownership is protected. No one shall be prevented from disposing of his property within the limits of the law. No one shall be dispossessed of his property except for the public good in the cases specified and the manner stated by law and provided that he is fairly compensated.

(d) Public expropriation of funds is prohibited, and private expropriation shall be a penalty only by judicial ruling in the cases prescribed by law.

(e) The law shall regulate, on an economic basis with due regard being given to social justice, the relationship between landlords and tenants.

(f) The State shall strive to provide housing for citizens with limited income.

(g) The State shall make the necessary arrangements to ensure the utilization of arable land in a productive manner, and shall endeavour to raise the standard of farmers. The law shall specify the means whereby assistance and ownership of land are granted to small farmers.

Article 10

(a) The national economy shall be based on social justice. It shall be founded on fair co-operation between public and private sectors. Its aim shall be economic development within a well conceived plan and achievement of prosperity for citizens, all within the limits of law.

(b) The State shall strive for the attainment of Arab economic unity.

Article 11

All natural resources shall be the property of the state. It shall ensure their preservation and proper utilization, due regard being given to the requirements of the State's security and national economy.

(e) The relationship between the owners of land and real estate and their tenants shall be regulated by law on economic principles while observing social justice.

(f) The State shall endeavour to provide housing for citizens with limited income.

(g) The State shall make the necessary arrangements to ensure the exploitation of land suitable for productive farming, and shall strive to raise the standards of farmers. The law lays down how small farmers are to be helped and how they can own their land.

(h) The State shall take the necessary measures for the protection of the environment and the conservation of wildlife.

Article 10

(a) The national economy is based on social justice, and it is strengthened by fair cooperation between public and private business. Its objective, within the limits of the law, is economic development according to a well-ordered plan and achievement of prosperity for the citizens, all within the bounds of the law.

(b) The State endeavours to achieve the economic union of the Gulf Cooperation Council states and the states of the Arab League, and everything that leads to rapprochement, cooperation, coordination and mutual assistance among them.

Article 11

All natural wealth and resources are State property. The State shall safeguard them and exploit them properly, while observing the requirements of the security of the State and of the national economy.

Article 12

The State shall ensure the solidarity of society in shouldering burdens resulting from disasters and natural calamities, and shall provide compensation for damages or injuries suffered by people as a result of a war or as a result of performing their military duties.

Article 13

- (a) Work shall be the duty of every citizen necessitated by personal dignity and public good. Every citizen shall have the right to work and to choose his type of work in accordance with public order and moral standards.
- (b) The State shall ensure that work is made available to the citizens and that its terms are equitable.
- (c) No forced labour shall be imposed on anyone except in circumstances specified by the law for national emergency and with just remuneration, or as an implementation of a judicial decision.
- (d) Relations between employers and employees shall be regulated by the law on an economic basis, due regard being given to the principles of social justice.

Article 14

The State shall encourage co-operation and saving, and supervise the regulation of credit.

Article 15

- (a) Taxes and public imports shall be based on the principles of social justice, and the payment thereof shall be duty in accordance with the law.

Article 12

The State guarantees the common liability of society in bearing the burdens arising from public disasters and ordeals, and for compensating those affected by war damage or as a result of performing their military duties.

Article 13

- (a) Work is the duty of every citizen, is required by personal dignity and is dictated by the public good. Every citizen has the right to work and to choose the type of work within the bounds of public order and decency.
- (b) The State guarantees the provision of job opportunities for its citizens and the fairness of work conditions.
- (c) Compulsory work cannot be imposed on any person except in the cases specified by law for national exigency and for a fair consideration, or pursuant to a judicial ruling.
- (d) The law regulates the relationship between employees and employers on an economic basis while observing social justice.

Article 14

The State encourages cooperation and saving, and supervises the regulation of credit.

Article 15

- (a) Taxes and public costs are based on social justice, and their payment is a duty under the law.
- (b) The law regulates exemption of low incomes from taxes in order to ensure that a minimum standard of living is safeguarded.

(b) Citizens shall have equal opportunities to hold public offices in accordance with the conditions specified by the law.

Part Three: Public Rights and Duties

Article 17

(a) Citizenship shall be defined by the law, and no person enjoying citizenship by origin may be deprived of it except in cases of high treason and dual nationality and in accordance with the conditions specified by the law.

(b) Citizenship may not be withdrawn from a naturalised citizen except within the limits of the law.

(c) No citizen shall be deported from Bahrain, nor shall he be denied re-entry.

Article 18

People are equal in human dignity, and citizens shall be equal in public rights and duties before the law, without discrimination as to race, origin, language, religion or belief.

Article 19

(a) Personal liberty is guaranteed in accordance with the law.

(b) No person shall be arrested, detained, imprisoned, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement

Article 16

(a) Public jobs are a national service entrusted to their incumbents, and State employees shall have the public interest in mind when performing their jobs. Foreigners shall not be entrusted with public posts except in those cases specified by law.

(b) Citizens are equal in the assumption of public posts in accordance with the conditions specified by law.

Chapter III Public Rights and Duties

Article 17

(a) Bahraini nationality shall be determined by law. A person inherently enjoying his Bahraini nationality cannot be stripped of his nationality except in case of treason, and such other cases as prescribed by law.

(b) It is prohibited to banish a citizen from Bahrain or prevent him from returning to it.

Article 18

People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed.

Article 19

(a) Personal freedom is guaranteed under the law.

(b) A person cannot be arrested, detained, imprisoned or searched, or his place of residence specified or his freedom of residence or movement restricted, except under the provisions of the law and under judicial

be restricted, except in accordance with the law and under the supervision of the judicial authorities.

(c) No detention or imprisonment shall be imposed in places other than those specified in prison laws. In these places health and social welfare shall be observed, and they shall be subject to the supervision of the judicial authorities.

(d) No person shall be subjected to physical or mental torture, enticement or degrading treatment, and the law shall provide the penalty for these acts. Any statement or confession shall be null and void if it is proved to have been made under duress or enticement or degrading treatment or threat thereof.

Article 20

(a) No crime or penalty may be established except by virtue of law, and no penalty may be imposed except for offences committed after the relevant law has come

(b) Penalty is personal.

(c) An accused person shall be presumed innocent until proved guilty in a legal trial in which the necessary guarantees for the exercise of his right of defence in all the stages of investigation and trial are ensured in accordance with the law.

(d) No physical or moral injury shall be inflicted on an accused person.

(e) A council for the defence of any person accused of a felony shall be appointed with the approval of the accused.

(f) The right to trial shall be guaranteed in accordance with the law.

Article 21

Extradition or political refugees is prohibited.

supervision.

(c) A person cannot be detained or imprisoned in locations other than those designated in the prison regulations covered by health and social care and subject to control by the judicial authority.

(d) No person shall be subjected to physical or mental torture, or inducement, or undignified treatment, and the penalty for so doing shall be specified by law. Any statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void.

Article 20

(a) There shall be no crime and no punishment except under a law, and punishment only for acts committed subsequent to the effective date of the law providing for the same.

(b) Punishment is personal.

(c) An accused person is innocent until proved guilty in a legal trial in which he is assured of the necessary guarantees to exercise the right of defence at all stages of the investigation and trial in accordance with the law.

(d) It is forbidden to harm an accused person physically or mentally.

(e) Every person accused of an offence must have a lawyer to defend him with his consent.

(f) The right to litigate is guaranteed under the law.

Article 21

The extradition of political refugees is prohibited.

Article 22

Freedom of conscience is absolute. The State shall guarantee the inviolability of places of worship and the freedom to perform religious rites and to hold religious processions and meetings in accordance with the customs observed in the country.

Article 23

Freedom of speech and freedom to carry out scientific research shall be guaranteed. Every person shall have the right to express and propagate his opinion in words or in writing or by any other means, in accordance with the conditions and procedures specified by the law.

Article 24

Freedom of the press, printing and publication shall be guaranteed in accordance with the conditions and procedure specified by the law.

Article 25

Places of residence shall be inviolable. They may not be entered or searched without the permission of their occupants except in the circumstances and manner specified by the law.

Article 26

Freedom of postal, telegraphic and telephonic communications and the secrecy thereof shall be guaranteed. No communications shall be censored nor the contents thereof revealed except in cases of necessity prescribed by the law and in accordance with the procedures and guarantees stated therein.

Article 22

Freedom of conscience is absolute. The State guarantees the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings in accordance with the customs observed in the country.

Article 23

Freedom of opinion and scientific research is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or otherwise under the rules and conditions laid down by law, provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused.

Article 24

With due regard for the provisions of the preceding Article, the freedom of the press, printing and publishing is guaranteed under the rules and conditions laid down by law.

Article 25

Dwellings are inviolate. They cannot be entered or searched without the permission of their occupants except in cases of **maximum necessity** as laid down and in the manner provided by law.

Article 26

The freedom of postal, telegraphic, telephonic and **electronic** communication is safeguarded and its confidentiality is guaranteed. Communications shall not be censored or their confidentiality breached except in exigencies specified by law and in accordance with procedures and under guarantees prescribed by law.

Article 27

Freedom to form associations and trade unions on a national basis and for lawful objectives and by peaceful means shall be guaranteed in accordance with the conditions and procedures prescribed by the law. No one shall be compelled to join or remain in any association or union.

Article 28

(a) Individuals shall have the right of private assembly without permission or prior notification, and no member of the security forces may attend such private meetings.

(b) Public meetings, processions and gatherings shall be permitted in accordance with the conditions and procedures prescribed by the law, provided that their purpose and means are peaceful and not contrary to morale.

Article 29

Any individual can address the public authorities in writing and with his signature. Only duly constituted organizations and corporate bodies shall have the right to address the public authorities collectively.

Article 30

(a) Peace shall be the objective of the State, and the safety of the country shall be part of the safety of the Great Arab Homeland, and defending it shall be the duty of every citizen. Military service is an honour for the citizens and regulated by law.

(b) The State alone shall establish armed forces and public security bodies. Duties of this kind shall be

Article 27

The freedom to form associations and unions on national principles, for lawful objectives and by peaceful means is guaranteed under the rules and conditions laid down by law, provided that the fundamentals of the religion and public order are not infringed. No one can be forced to join any association or union or to continue as a member.

Article 28

(a) Individuals are entitled to assemble privately without a need for permission or prior notice, and no member of the security forces may attend their private meetings.

(b) Public meetings, parades and assemblies are permitted under the rules and conditions laid down by law, but the purposes and means of the meeting must be peaceful and must not be prejudicial to public decency.

Article 29

Any individual may address the public authorities in writing over his signature. Group approaches to the authorities may only be made by statutory bodies and corporate persons.

Article 30

(a) Peace is the objective of the State. The safety of the nation is part of the safety of the Arab homeland as a whole, and its defence is a sacred duty of every citizen. Performance of military service is an honour for citizens and is regulated by law.

(b) Only the State may establish the Defence Force, National Guard, and Public Security services. Non-citizens

entrusted only to citizens except in cases of dire necessity and in the manner regulated by the law.

(c) Full or partial mobilization of forces shall be regulated by the law.

Article 31

Public rights and liberties laid down in this Constitution shall neither be regulated nor defined except by a law, or in accordance therewith. Such regulation or definition shall not affect the essence of the right or liberty.

Part Four: Powers

Chapter 0: General Provisions

Article 32

(a) The system of government shall be based on the principle of separation of the legislative, executive and judicial powers, functioning in co-operation with each other in accordance with the provisions of this Constitution. None of the three powers may relinquish all or part of its competence prescribed in this Constitution. However, legislative authorization, limited for a certain period and in respect of a specified matter or matters, may be made, and shall be practised in accordance with the law of authorization and the condition thereof.

(b) Legislative power shall be vested in the Amir and the National Assembly in accordance with the Constitution; and the Executive power shall be vested in the Amir, the Cabinet and the Ministers. Judicial decrees shall be passed in the name of the Amir, all in accordance with the provisions of the Constitution.

are assigned such tasks only in case of maximum necessity and in the manner prescribed by law

(c) General or partial mobilisation shall be regulated by law.

Article 31

The public rights and freedoms stated in this Constitution may only be regulated or limited by or in accordance with the law, and such regulation or limitation may not prejudice the essence of the right or freedom.

Chapter IV Public Authorities

Section 0 General Provision

Article 32

(a) The system of government rests on a separation of the legislative, executive and judicial authorities while maintaining cooperation between them in accordance with the provisions of this Constitution. None of the three authorities may assign all or part of its powers stated in this Constitution. However, limited legislative delegation for a particular period and specific subject(s) is permissible, whereupon the powers shall be exercised in accordance with the provisions of the Delegation Law.

(b) Legislative authority is vested in the King and the National Assembly in accordance with the Constitution. Executive authority is vested in the King together with the Council of Ministers and Ministers, and judicial rulings are issued in his name, the whole being in accordance with the provisions of the Constitution.

Chapter I: The Amir

Article 33

(a) The Amir is the Head of the State, his person shall be immune and inviolable, [...]

(h) The Amir shall protect the legality of the government and the supremacy of law [...]

(a) [...] and he shall exercise his powers through his Ministers who shall collectively report to him on the general policy of the Government, and each Minister shall be responsible for the affairs of his Ministry.

(b) The Amir shall, after the traditional consultations, appoint the Prime Minister or relieve him of office by an Amiri decree. The Amir shall also appoint Ministers or relieve them of office by an Amiri decree, upon the recommendations of the Prime Minister.

(c) Ministers shall not be appointed from amongst the members of the National Assembly in the first legislative term, but they may be appointed from amongst the members of the National Assembly or others with effect from the second legislative term. Ministers appointed from amongst outsiders shall become ex officio members of the National Assembly. The total number of ministers shall not exceed 14.

(d) The Cabinet shall be reconstituted in the manner set out in this article at the beginning of every legislative term of the National Assembly.

Section 1 The King

Article 33

(a) The King is Head of State, and its nominal representative, and his person is inviolate. He is the loyal protector of the religion and the homeland, and the symbol of national unity.

(b) The King safeguards the legitimacy of the government and the supremacy of the constitution and the law, and cares for the rights and freedoms of individuals and organisations.

(c) The King exercises his powers directly and through his Ministers. Ministers are jointly answerable to him for general government policy, and each Minister is answerable for the business of his Ministry.

(d) The King appoints and dismisses the Prime Minister by Royal Order,

and appoints and dismisses Ministers by Royal Decree as proposed by the Prime Minister.

(e) The Cabinet shall be re-formed as aforesaid in this article at the start of each legislative season of the National Assembly.

(f) The King appoints and dismisses

(e) The Amir shall be the Supreme Commander of the Defence Force.

(f) The Amir shall confer Orders of Honour in accordance with the law.

(g) Currency shall be minted in the name of the Amir in accordance with the law.

(h) The Amir shall protect the legality of the government and the supremacy of law, and shall take the following oath at a special sitting of the National Assembly: "I swear by Almighty God to respect the Constitution and the laws of the State, to defend the liberties, interests and properties of the people, and to safeguard the independence and territorial integrity of the country".

(i) The Amir shall have an annual privy purse to be determined by a special Amiri decree. The privy purse may not be revised throughout the reign of the Amir, and shall thereafter be fixed by the law.

Article 34

(a) In the event of his absence outside the country and the inability of the Heir Apparent to act as deputy for him, the Amir shall appoint by an Amiri Order a

members of the Consultative Council by Royal Order.

(g) The King is the Supreme Commander of the Defence Force. He commands it and charges it with national tasks within the homeland and outside it. The Defence Force is directly linked to the King, and maintains the necessary secrecy in its affairs.

(h) The King chairs the Higher Judicial Council. The King appoints judges by Royal Orders, as proposed by the Higher Judicial Council.

(i) The King awards honours and decorations in accordance with the law.

(j) The King establishes, grants and withdraws civilian and military ranks and other honorary titles by Royal Order, and can delegate others to carry out these functions on his behalf.

(k) The currency is issued in the name of the King in accordance with the law.

(l) On ascending the throne, the King takes the following oath at a special meeting of the National Assembly: "I swear by Almighty God that I shall respect the Constitution and the laws of the State, that I shall defend the freedoms, interests and assets of the people, and that I shall safeguard the independence of the nation and the integrity of its territories."

(m) The Royal Court is attached to the King. A Royal Order shall be issued to regulate it. Its budget and the rules for the budget's control are set by a special Royal Decree.

Article 34

(a) In the event of his absence abroad and the inability of the Crown Prince to act for him, the King shall appoint a Deputy by Royal Order to exercise his

deputy who shall exercise his powers during his absence. The said Amiri Order may include a specified arrangement for the exercise of powers on behalf of the Amir, or a limitation on their scope.

(b) The provisions of item (b) of Article 86 of this Constitution shall apply to the Amir's deputy. If the Amir's deputy is a Minister or a member of the National Assembly he shall not take part in the functions of his Ministry or the National Assembly during the period he is acting as deputy for the Amir.

(c) Before assuming his powers, the Amir's deputy shall take the oath set forth in the previous article, with the following phrase added thereto: "and be loyal to the Amir". The oath shall be taken in the National Assembly if it is in session, otherwise it shall be taken before the Amir. The oath by the Heir Apparent shall be taken only once even if he acts as a deputy for the Amir more than once.

Article 35

(a) The Amir shall have the right to initiate laws, and he alone shall ratify and promulgate the laws.

(b) A bill shall be considered to have been ratified and shall be promulgated by the Amir if a period of **thirty days** from the date of its submission by the National Assembly to the Amir has expired without the Amir returning it to the National Assembly for re-consideration.

(c) If, within the period prescribed in the preceding clause the Amir returns the bill, by a decree stating the grounds therefor, to the National Assembly for re-consideration, then it shall be decided whether such re-consideration

powers during his period of absence. This Order may include a special regulation for the exercise of these powers on his behalf or may limit their scope.

(b) The conditions and provisions of Clause (b) of Article 48 of this Constitution shall apply to the King's Deputy. If he is a Minister or a member of the Consultative Council or the Chamber of Deputies, he shall not participate in ministerial or parliamentary business during the period he deputises for the King.

(c) Before exercising his powers, the King's Deputy shall take the oath prescribed in the preceding Article, including the phrase: "and I shall be loyal to the King". The oath shall be taken in the National Assembly if in session, and if not it shall be taken before the King. The Crown Prince shall take this oath once, even if he deputises for the King a number of times.

Article 35

(a) The King may **amend the Constitution**, propose laws, and is the authority for their ratification and promulgation.

(b) A law shall be deemed ratified and the King shall promulgate it if **six months** have elapsed from the date on which it was submitted to him by the Consultative Council and Chamber of Deputies without it being returned to these Chambers for reconsideration.

(c) With due regard for the provisions pertaining to amendment of the Constitution, if within the interval prescribed in the preceding clause the King returns to the Consultative Council and the Chamber of Deputies

should take place during the same or the next session.

(d) If the Assembly re-confirms the bill by a majority vote of its members, the Amir shall ratify and promulgate the bill within one month from the date of the re-confirmation.

Article 36

(a) Offensive war is unlawful. The declaration of defensive war shall be made by an Amiri decree which shall be referred to the National Assembly immediately after the declaration has been made, for decision.

(b) Martial law shall be proclaimed only by law, unless otherwise dictated by urgent necessity to be by a decree giving the justification therefor, provided that the matter shall be referred to the National Assembly within two weeks for decision.

In all cases the period of martial law shall not exceed three months, but this period may be renewed in whole or in part once or more, provided that approval by a majority vote of the members constituting the National Assembly has been obtained. If the proclamation or renewal of martial law takes place during the period in which the National Assembly is dissolved, the matter shall be referred to the new Assembly at its first meeting.

Article 37

The Amir shall conclude treaties by decree and shall transmit them immediately to the National Assembly with the appropriate statement. A treaty shall have the force of law after it has

for reconsideration the draft of any law by way of a Decree in justification, he shall state whether it should be reconsidered in that same session or the next.

(d) If the Consultative Council and the Chamber of Deputies, or the National Assembly, re-approve the draft by a majority of two-thirds of their members, the King shall ratify it, and shall promulgate it within one month of its approval for the second time.

Article 36

(a) Aggressive war is forbidden. A defensive war is declared by a Decree which shall be presented to the National Assembly immediately upon its declaration, for a decision on the conduct of the war.

(b) A state of national safety or martial law shall be proclaimed only by Decree.

In all cases, martial law cannot be proclaimed for a period exceeding three months. This period may not be renewed except with the consent of the majority of the members of the National Assembly present.

Article 37

The King shall conclude treaties by Decree, and shall communicate them to the Consultative Council and the Chamber of Deputies forthwith accompanied by the appropriate

been signed, ratified and published in the Official Gazette.

However, treaties of peace and alliance; treaties concerning the territory of the State, its natural resources or sovereign rights or public or private rights of citizens; treaties of commerce, navigation and residence; and treaties which entail additional expenditure not provided for in the budget of the State, or which involve amendment to the laws of Bahrain, shall come into effect only when made by a law.

In no case may treaties include secret provisions contradicting those declared.

Article 38

Should necessity arise for urgent measures to be taken while the National Assembly is not in session or is dissolved,

the Amir may issue decrees in respect thereof which shall have the force of law, provided that they shall not be contrary to the Constitution or the appropriations included in the budget law. Such decrees shall be referred to the National Assembly within fifteen days following their issue if the Assembly is in session. If it is dissolved or its legislative term has expired such decrees shall be referred to the next Assembly at its first meeting.

If they are not thus referred they shall retroactively cease to have the force of a law without the necessity of any decision to that effect. If they are referred and the Assembly does not confirm them, they shall also

statement. A treaty shall have the force of law once it has been concluded and ratified and published in the Official Gazette.

However, peace treaties and treaties of alliance, treaties relating to State territory, natural resources, rights of sovereignty, the public and private rights of citizens, treaties pertaining to commerce, shipping and residence, and treaties which involve the State Exchequer in non-budget expenditure or which entail amendment of the laws of Bahrain, must be promulgated by law to be valid.

Under no circumstances may a treaty include secret clauses which conflict with those openly declared.

Article 38

If between the convening of both the Consultative Council and the Chamber of Deputies sessions, or during the period in which the National Assembly is in recess, any event should occur that requires expediting the adoption of measures that brook no delay, the King may issue relevant Decrees that have the force of law, provided they do not contravene the Constitution.

Such Decrees must be referred to both the Consultative Council and the Chamber of Deputies within one month from their promulgation if the two chambers are in session, or within a month of the first meeting of each of the two new chambers in the event of dissolution or if the legislative term had ended. If the Decrees are not so referred, their legal force shall abate retrospectively without a need to issue a relevant ruling. If they are referred to the two chambers but are not confirmed by them their legal force

retroactively cease to have the force of law, unless the Assembly approves their validity for the preceding period or settles in some other way the effects arising therefrom.

Article 39

(a) The Amir shall, by decrees, issue the regulations necessary for the execution of laws without amending or suspending such laws or making any exemption from their execution. A law may describe a less formal instrument than a decree for the issue of the regulations necessary for its execution.

(b) The Amir shall, by decrees, issue regulations for public order and health, and regulations necessary for the organization of public services and administration, not conflicting with any law.

Article 40

The Amir shall appoint and remove civil and military officials and diplomatic representatives to foreign countries and international organizations in accordance with the law and in the manner prescribed therein. He shall also accept credentials of the representatives of foreign countries and organizations.

Article 41

The Amir may, by decree, grant a pardon or commute a sentence. However, amnesty shall not be granted except by a law and then only in respect of offences committed prior to the proposal of the amnesty.

Article 48

shall also abate retrospectively.

Article 39

(a) The King shall lay down the regulations for implementation of the laws, by Decrees which shall not include amendment or suspension of those laws or exemption from their implementation. The law may prescribe a lower instrument than a Decree for promulgation of the regulations necessary for their implementation.

(b) The King shall lay down the control regulations and the regulations necessary for the organization of public directorates and departments, by Decrees in a manner which does not conflict with the laws.

Article 40

The King shall appoint and dismiss civil servants, military personnel, and political representatives in foreign States and with international organizations, within the bounds and on the conditions prescribed by law, and shall accredit the representatives of foreign States and organizations.

Article 41

The King may abate or commute a sentence by Decree. A total amnesty may be granted only by law, and shall apply to offences committed before the amnesty was proposed.

Article 42

(a) The King shall issue the Orders for elections to the Chamber of Deputies in accordance with the provisions of the law.

The Assembly shall start its ordinary session [...] upon a convocation by the Amir. [...]

Article 65

The Amir may dissolve the National Assembly by a decree in which the reasons for dissolution shall be indicated. However, dissolutions of the Assembly may not be repeated for the same reason. [...]

(b) The King shall invite the National Assembly to convene by Royal Order, and shall open its proceedings and bring them to a close in accordance with the provisions of the Constitution.

(c) The King is entitled to dissolve the Chamber of Deputies by a Decree that states the reasons for the dissolution. The Chamber cannot be dissolved for the same reasons once again.

Article 43

The King may conduct a popular referendum on important laws and issues connected with the interests of the State. The issue on which the referendum has been held is considered to have been agreed upon if approved by a majority of those who cast their votes. The result of the referendum shall be binding on all and effective from the date it is declared, and it shall be published in the Official Gazette.

Chapter III: Executive Power

Section I The Cabinet

Article 83

(a) A Minister shall satisfy the qualifications laid down in Article 44 of this Constitution. All Provisions regarding Ministers shall apply to the Prime Minister unless otherwise stated.

(b) Remuneration of the Prime Minister and Ministers shall be determined by law.

Article 84

Before assuming office, the Prime

Section 2 The Executive Authority

Article 44

The Council of Ministers shall consist of the Prime Minister and a number of Ministers.

Article 45

(a) The incumbent of a Ministry must be a Bahraini, aged not less than 30 years by the Gregorian Calendar and must enjoy full political and civil rights. Unless otherwise provided, the provisions pertaining to Ministers apply also to the Prime Minister.

(b) The salaries of the Prime Minister and Ministers shall be laid down by law.

Article 46

Before exercising their powers, the

Minister and Ministers shall take before the Amir the oath specified in Article 53 of this Constitution.

Article 85

- (a) The Cabinet shall have control over the departments of the State. It shall formulate the general policy of the Government, pursue its execution and supervise the functioning of the Government departments.
- (b) The Amir shall preside over the meetings of the Cabinet which he attends.
- (c) The Prime Minister shall supervise the functions and procedures of the Cabinet. He shall be responsible for the implementation of the Cabinet's decisions and the co-ordination among the various ministries, and to ensure that their functions are integrated.
- (d) The relinquishment of the position of the Prime Minister for any reason shall involve the relinquishment of all ministerial positions by the Ministers.
- (e) Deliberations of the Cabinet shall be secret. Resolutions shall be passed only when the majority of its members are present and with the approval of the majority of those present. In case of an equal division of votes, the side on which the Prime Minister has voted shall prevail. Unless they resign, the minority shall abide by the opinion of the majority. Resolutions of the Cabinet shall be submitted to the Amir for ratification in cases where the issue of a decree is required.

Article 86

- (a) Every Minister shall supervise the affairs of his Ministry and shall execute therein the general policy of the Government. He shall also formulate directives for the Ministry and supervise their execution.

Prime Minister and Ministers shall take the oath prescribed in Article 78 of this Constitution before the King.

Article 47

- (a) The Council of Ministers shall oversee State interests, lay down and follow through the implementation of general government policy, and supervise the course of business in the Government apparatus.
- (b) The King shall chair those meetings of the Council of Ministers which he attends.
- (c) The Prime Minister shall supervise performance of the tasks of the Council of Ministers and the course of its business, implement its decisions and coordinate between the various Ministries and integrate their business.
- (d) Relinquishment by the Prime Minister of his position for any reason shall entail removal of all Ministers from their posts.
- (e) The deliberations of the Council of Ministers shall be confidential. Its decisions shall be adopted when a majority of its members attend and there is a majority of those attending in favour. In the event of a tied vote, the side on which the Prime Minister's vote is cast shall prevail. The minority shall abide by the opinion of the majority unless they resign. Council decisions shall be submitted to the King for approval in cases where issue of a relevant Decree is required.

Article 48

- (a) Each minister shall supervise the affairs of his Ministry and implement the general government policy in that Ministry. He shall also decide the orientation of the Ministry and supervise the putting of it into practice.

(b) While in office, a Minister shall not hold any other public office or practice, even indirectly, any extragovernmental profession or undertake any industrial, commercial or financial business. He shall not participate in any concession granted by the Government or by public bodies or emulate the ministerial post with membership of the board of directors of any company, except as a representative of the Government and without remuneration. Further, during the same period, a Minister shall not buy or take on hire any property of the State even by public auction, nor shall he let, sell or barter any of his property to the State.

Article 70

If, for any reason, the Prime Minister vacates his office he shall continue to discharge the urgent business thereof until his successor is appointed.

Article 87

(a) The law shall regulate general and municipal self-government bodies in such a way as to ensure their independence under the direction and supervision of the State.

(b) The State shall direct bodies of public interest in such a way that they conform to the general policy of the State and the benefit of the citizens.

Chapter II: Legislative Power

(b) While in charge of his Ministry, a Minister may not assume any other public office, nor may he even indirectly practise a profession or conduct industrial, commercial or financial business, nor may he participate in contracts concluded by the Government or public institutions, or combine his ministerial position with the membership of the board of directors of any company except as a non-remunerated Government representative. Also during this period the Minister may not purchase or rent a State asset even by way of public auction, nor may he lease, sell, or barter any of his assets to the State.

Article 49

If the Prime Minister or the Minister relinquishes his position for any reason, he shall continue to discharge urgent business of his function until a successor is appointed.

Article 50

(a) The law shall regulate public institutions and municipal departmental bodies so as to ensure their independence under State direction and supervision. The law shall ensure the municipal departmental bodies can administer and oversee the services that have a local character and are within their area.

(b) The State shall direct public welfare institutions for the public good in a manner consistent with general State policy and the interest of its citizens.

Section 3 The Legislative Authority

National Assembly General Provision

Article 51

The National Assembly consists of two Chambers: the Consultative Council

and the Chamber of Deputies.

Part 1 The Consultative Council

Article 52

The Consultative Council is composed of forty members appointed by Royal Order.

Article 53

A member of the Consultative Council must be a Bahraini, enjoy full political and civil rights, be on an electoral list,

must not be less than a full thirty five years of age by the Gregorian Calendar on the day of appointment, and must be experienced or have rendered distinguished services to the Nation.

Article 54

(a) The term of membership of the Consultative Council is four years, and members may be reappointed when their term has expired.

(b) If for any reason the place of a member of the Consultative Council becomes vacant before his term is due to expire, the King shall appoint a replacement to serve until the end of the term of his predecessor.

(c) Any member of the Consultative Council may ask to be exempted from membership of the Council by applying to the President of the Council, and the President is to submit the request to the King. Membership shall not terminate until the date on which the King accedes to the request.

(d) The King shall appoint the President of the Consultative Council for the same period as the Council, and the Council shall elect two Vice-Presidents for each convening period.

[Article 44

A member of the National Assembly must:

(a) have been registered in one of the electoral rolls, not be suspended from exercising his right to vote, and be a Bahraini citizen by origin.

(b) be not less than thirty full calendar years of age on the day of election.

(c) be able to read and write Arabic well.]

Article 45

The term of the National Assembly shall be four calendar years commencing from the date of its first meeting. [...]

Article 43

The National Assembly shall be composed of:

(a) Thirty members elected directly by universal suffrage and secret ballot, in accordance with the provisions of the electoral law. The number of these members shall be increased to forty with effect from the elections for the second legislative term. Electoral constituencies shall be determined by the law.

(b) The Ministers by virtue of their portfolios.²⁰⁶

Article 44

A member of the National Assembly must:

(a) have been registered in one of the electoral rolls, not be suspended from exercising his right to vote, and be a Bahraini citizen by origin.

(b) be not less than thirty full calendar years of age on the day of election.

(c) be able to read and write Arabic well.

Article 55

(a) The Consultative Council shall meet when the Chamber of Deputies meets, and the convening period for both Chambers shall be the same.

(b) If the Chamber of Deputies is dissolved, sessions of the Consultative Council shall be halted.

Part 2 The Chamber of Deputies**Article 56**

The Chamber of Deputies comprises forty members elected by direct, secret general ballot in accordance with the provisions of the law.

Article 57

A member of the Chamber of Deputies must meet the following requirements:

(a) He must be a Bahraini enjoying his full civil and political rights, and his name must be on an electoral list.

(b) On the day of his election he must be not less than thirty years of age by the Gregorian Calendar.

(c) He must read and write Arabic fluently.

(d) His membership of the Consultative Council or the Chamber of Deputies must not have been abrogated by decision of the Chamber to which he

²⁰⁵ Limited direct comparability as the 1973 Constitution envisioned a uni-cameral model combining elected members and the appointed Ministers, while the 2002 Constitution provisions for bi-cameral one, with only the Chamber of Deputies elected by the public

²⁰⁶ maximum of 14 ministers, according to Art 33 lit c; i.e., always at least 2/3 majority for elected members

belonged due to loss of confidence and esteem or for being in breach of duties of membership. However, a person whose membership has been abrogated may put himself forward as a candidate if the legislative season during which the decision to abrogate his membership was taken has elapsed, or if the chamber of which he was a member adopts a decision to cancel the impediment to candidature entailed by abrogation of membership upon expiry of the convening period during which the decision to abrogate his membership was taken.

Article 45

The term of the National Assembly shall be four calendar years commencing from the date of its first meeting. Elections for the new Assembly shall take place within two months preceding the expiry of the said term, due regard being given to the provisions of Article 65 of this Constitution. Members whose term of office expires may be re-elected. The term of the National Assembly may not be extended except for necessity in time of war and by a law passed by two-third majority of the members constituting the Assembly.

Article 46

If, for any reason, a seat in the National Assembly becomes vacant before the end of the term, the vacancy shall be filled by election within two months from the date on which the Assembly declares the vacancy. The term of the new member shall last until the end of that of his predecessor.

If the vacancy occurs within six months immediately prior to the expiry of the legislative term of the Assembly

Article 58

The term of the Chamber of Deputies is four years by the Gregorian Calendar from the date of its first session. Elections for a new Chamber of Deputies shall be held during the last four months of that term, while observing the provisions of Article 64 of the Constitution. A person whose period of membership has ended may be re-elected.

The King may, when necessary, extend the legislative season of the Chamber of Deputies by Royal Order for a period not exceeding two years.

Article 59

If for any reason the place of a member of the Chamber of Deputies becomes vacant before his term is due to expire, his replacement shall be elected within two months from the date of announcement of the vacancy by the Chamber, and the new member shall serve until the end of term of his predecessor.

If the vacancy occurs within the six months that precede the end of the legislative season of the Chamber,

no successor shall be elected.

Article 54

The National Assembly shall elect at its first sitting and for the duration of its term a Speaker, Deputy Speaker and a Secretary from amongst its members. If any office becomes vacant the Assembly shall elect a successor for the remainder of its term.

In all cases election shall be by an absolute majority vote of the members present. If this majority vote is not attained in the first ballot, another election shall be held between the two candidates receiving the highest number of votes. If more than one candidate receives an equal number of votes in the second place, all such candidates shall participate in the second ballot. In this case the candidate who receives the greatest number of votes shall be elected. If there is a tie in this last ballot, the choice shall be by lot.

The Prime Minister shall preside over the first sitting until the Speaker has been elected.

Article 55

The Assembly shall form, within the first week of its annual session, the committees necessary for its functions. These committees may discharge their duties during the recess of the Assembly with a view to submitting their recommendations to it when it meets.

Article 57

The Supreme Civil Court of Appeal shall be the competent authority to deal with election disputes of the National Assembly, but this competence may be

there shall be no election of a replacement member.

Article 60

At its first session the Chamber of Deputies shall choose from among its members a President and two Vice Presidents for the same duration as the Chamber's term. If the place of any of them falls vacant, the Chamber shall choose a replacement to serve out his term.

In all cases election shall be by an absolute majority of those present. If there is no such majority on the first ballot, the election shall be conducted again between the two who secured the most votes. If a third party tied with the second of the two, he shall participate with them both in the election in the second ballot, and in this case the election shall be by proportional majority. If this proportional majority results in a tie, the Chamber shall choose by lot.

The first session shall be chaired by the eldest member until such time as a President of the Chamber of Deputies is elected.

Article 61

The Chamber shall form the committees necessary for its business during the first week of its annual assembly. These committees may exercise their powers while the chamber is in recess.

Article 62

The Court of Cassation shall have jurisdiction to rule on challenges relating to elections to the Chamber of Deputies, in accordance with the

transferred to any higher court which may be set up by law.

Article 58

The National Assembly shall be the competent authority to accept resignation of its members, and no resignation shall be considered final except from the time the Assembly has decided to accept it.

Article 65

[...] In the event of dissolution, elections for the new Assembly shall be held within a period not exceeding two months from the date of dissolution.

If the elections are not held within the said period, the dissolved Assembly shall be restored to its full constitutional authority and shall meet immediately as if the dissolution had not taken place. The Assembly shall then continue functioning until a new Assembly is elected.

relevant law.

Article 63

The Chamber of Deputies is the authority competent to accept a resignation from its membership. The resignation shall be deemed final only from when the Chamber decides to accept it, and the place shall become vacant from the date of that acceptance.

Article 64

(a) If the Chamber of Deputies is dissolved, elections for a new Chamber of Deputies must be held not later than four months from the date of dissolution.

If elections are not held during that period the dissolved Chamber of Deputies shall regain its full constitutional powers, and meets immediately as though the dissolution never occurred, and shall continue its business until a new Chamber is elected.

(b) Notwithstanding the preceding clause, the King may defer election of the Chamber of Deputies if there are compelling circumstances whereby the Council of Ministers considers holding elections is not possible.

(c) If the compelling circumstances mentioned in the preceding clause continue, the King, taking the opinion of the Council of Ministers, may restore the dissolved Chamber of Deputies and invite it to convene. This Chamber of Deputies shall be regarded as extant from the date of promulgation of the Royal Decree restoring it. It shall exercise its full constitutional powers. The provisions of this Constitution shall apply to it including those pertaining to completion of the Chamber's term and dissolution. The

session the Chamber holds in such a case shall be regarded as its first session irrespective of the date of its commencement.

Article 67

Every member of the National Assembly may address to the Prime Minister and to Ministers interpellations with regard to matters falling within their competence.

The debate on such interpellations shall not take place until at least eight days have elapsed after its presentation, unless the Minister concerned agrees to hold the debate earlier.

An interpellation may lead to the vote of confidence being put to the Assembly in accordance with the provisions of Articles (68) and (69) of this Constitution.

Article 72

Upon a request signed by at least five members, any subject of general interest may be put to the National Assembly for discussion with a view to securing clarification of the Government's policy and to exchange views thereon. All other members shall also have the right to participate in the discussion.

Article 68

(a) Every Minister shall report to the National Assembly on the affairs of his Ministry.

(b) The question of confidence in a Minister may not be raised except upon his request or upon demand signed by ten members following a debate on an interpellation addressed to him. The Assembly may not make its decision

Article 65

Upon an application signed by at least five members of the Chamber of Deputies, any Minister may be questioned on matters coming within his sphere of competence.

The question must not pertain to a private interest of the questioner or his relatives to the fourth degree, or be made by his proxy.

The question shall not be debated until at least eight days after the day on which the question was posed, unless the Minister agrees to bring the debate forward.

The question may lead to the matter of confidence in the Minister being put to the Chamber of Deputies under the provisions of Article 66 of this Constitution.

Article 66

(a) Each Minister shall be responsible to the Chamber of Deputies for the business of his Ministry.

(b) A question of confidence in a Minister may be put forward only at his own wish or upon an application signed by at least ten members of the Chamber of Deputies following the debate of the question put to him, and

upon such a request before the lapse of seven days from the presentation thereof.

(c) If the Assembly passes a vote of no confidence against a Minister he shall be considered to have resigned his office as from the date of the vote of no confidence and shall submit his formal resignation immediately. Withdrawal of confidence from a Minister shall be by a majority vote of the members constituting the National Assembly excluding Ministers. In all cases Ministers shall not participate in the vote of confidence.

Article 69

(a) The question of confidence in the Prime Minister shall not be raised before the National Assembly, unless out of necessity, he holds a portfolio with the premierships, and then he may be questioned about the affairs of such portfolio like any other minister.

(b) If two-thirds of the members of the National Assembly decide, in the manner specified in article (68) of this Constitution, that they cannot cooperate with the Prime Minister, the matter shall be submitted to the Amir for settlement. The Amir may either relieve the Prime Minister of office and appoint a new Cabinet or dissolve the National Assembly. If the Assembly is dissolved and the office of the said Prime Minister is renewed but the new Assembly decide by a majority vote of the members constituting the National Assembly that it cannot cooperate with the said Prime Minister, he shall be considered to have resigned his office as from the date of the decision of the Assembly in this respect and a new Cabinet shall be formed.

the Chamber may not give its decision on the application until seven days after its submission.

(c) If the Chamber of Deputies decides by a majority of two-thirds of its members to give a vote of no confidence in a Minister, he shall be regarded as having withdrawn from the Ministry from the date of the no-confidence vote, and he shall submit his resignation forthwith.

Article 67

(a) The subject of confidence in the Prime Minister shall not be raised in the Chamber of Deputies.

(b) If, two-thirds of members of the Chamber of Deputies consider it not possible to cooperate with the Prime Minister, the matter will be referred to the National Assembly to consider it.

(c) The National Assembly cannot issue its decision on the lack of possibility of cooperating with the Prime Minister prior to seven days from the date the matter was referred to it.

(d) If the National Assembly decides by a majority of two thirds of its members that it is not possible to cooperate with the Prime Minister, the matter is submitted to the King for a decision, either by relieving the Prime Minister of his post and appointing a new Government, or by dissolving the Chamber of Deputies.

Article 73

The National Assembly shall express its wishes to the Government regarding public matters. If the Government cannot comply with these wishes, it shall state to the Assembly the reasons therefor. The Assembly may comment once on the Government's statement.

Article 74

The National Assembly shall at all times have the right to set up committees of enquiry or to depute one or more of its members to investigate any matter within the assembly's competence as prescribed in the Constitution.

Ministers and all Government officials must produce testimonials, documents and statements requested from them.

Article 75

The Assembly shall set up, among its annual standing committees, a special committee to deal with petitions and complaints submitted to the Assembly by citizens. The committee shall seek explanation thereon from the competent authorities and shall inform the person concerned of the result. A member of the National Assembly shall not interfere with the work of either the Judicial or the Executive Power.

Article 42

No law may be promulgated unless it has been passed by the National Assembly and ratified by the Amir.

Article 68

The Chamber of Deputies may express its wishes in writing to the Government on public matters. If the Government finds itself unable to meet these wishes, it must give its reasons in writing to the Chamber.

Article 69

The Chamber of Deputies may at any time form commissions of inquiry or delegate one or more of its members to investigate any matter coming within the powers of the Chamber stated in the Constitution, and the commission or member is to present the findings of the inquiry not later than four months from the date of commencement of the inquiry.

Ministers and all State employees are to provide such testimony, documents and statements as are asked of them.

Part 3 Provisions Common to Both Chambers**Article 70**

No law shall be promulgated unless approved by both the Consultative Council and the Chamber of Deputies, or the National Assembly as the situation demands, and ratified

Article 48

The Assembly shall start its ordinary session during the month of October of every year upon a convocation by the Amir. If the decree of convocation is not issued before the first of the said month, the time for the meeting shall be deemed 9 a.m. on the third Saturday of that month. If such a day happens to be an official holiday, the Assembly shall meet in the morning of the first day following the holiday.

Article 47

The National Assembly shall have an annual session of not less than eight months. The said session may not be prorogued before the budget has been approved.

Article 49

Notwithstanding the provisions of the preceding two Articles, the Amir shall summon the National Assembly to hold its first meeting within two weeks from the end of the general election. If the decree of convocation is not issued within the said period, the Assembly shall be deemed to have been convoked for the morning of the day immediately following these two weeks, due regard being given to the provision of the second paragraph of the preceding Article. If the date of the meeting of the Assembly falls after the annual date mentioned in Article 48 of the Constitution, the duration of the session specified in Article 47 herein shall be reduced by the difference between the said two dates.

Article 61

The Amir shall open the annual session

by the King.

Article 71

The National Assembly shall convene on the second Saturday in the month of October unless the King decides to invite it to convene before this date. If that day is an official holiday, it shall convene on the first working day following that holiday.

Article 72

The normal convening period for both the Consultative Council and the Chamber of Deputies shall last for at least seven months, and this convening period may not be closed before the budget is approved.

Article 73

As an exception to the provisions of the two foregoing Articles, the National Assembly shall convene on the day following the expiry of one month from the date of appointment of the Consultative Council or election of the Chamber of Deputies whichever occurs later, unless the King decides to invite it to convene before that date.

If the date of convening the National Assembly in that period is later than the annual date prescribed in Article 71 of the Constitution, the convening period prescribed in Article 72 of the Constitution shall be reduced by the amount of the difference between the two aforesaid dates.

Article 74

The King shall inaugurate the ordinary

of the National Assembly whereupon he shall deliver an Amiri Speech reviewing the state of affairs of the country and the most important public matters which happened during the preceding year, and outlining the projects and reforms the Government plans to undertake during the coming year. The Amir may depute the Prime Minister to open the Assembly or to deliver the Amiri Speech.

Article 62

The National Assembly shall choose, from amongst its members, a committee to draft the reply to the Amiri Speech which will embody the comments and wishes of the Assembly. After the reply has been approved by the Assembly, it shall be submitted to the Amir.

Article 50

The National Assembly shall, by decree, be called to an extraordinary session if the Amir deems it necessary, or upon the request of the majority of the members of the Assembly. In an extraordinary session, the Assembly may not consider matters other than those for which it has been convened except with the consent of the Government.

Article 51

The Amir shall announce the prorogation of ordinary and extraordinary sessions, by a decree.

Article 52

Every meeting held by the National Assembly at a time or place other than that assigned for its meeting shall be invalid, and resolutions passed thereat shall be null and void.

convening period of the National Assembly with a royal address. He may delegate the Crown Prince or whomever he decides to inaugurate the convening period and deliver the royal address on his behalf. [...]

Article 74 (cont'd)

[...] Each of the two chambers shall choose a committee from among its members to prepare the draft reply to the address, and each chamber shall submit its reply to the King after it is approved.

Article 75

Both the Consultative Council and the Chamber of Deputies shall be called, by Royal Decree, to meet in extraordinary session if the King deems it necessary, or if so requested by a majority of members of either chamber.

When in extraordinary session the two chambers may not consider matters other than those for which it has been called to convene.

Article 76

The King shall declare ordinary and extraordinary convening periods closed by Royal Order.

Article 77

Any meeting of the Consultative Council or the Chamber of Deputies which is not held at the prescribed time and place shall be null and void and decisions taken thereat shall be invalid.

Article 53

Before assuming their duties in the Assembly or its committees, members of the National Assembly, including the Ministers, shall take the following oath in a public sitting: “I swear by Almighty God to be faithful to the Country and to the Amir, to respect the Constitution and the laws of the State, to defend the liberties, interests and properties of the people and to discharge my duties honestly and truthfully”.

Article 56

Sittings of the National Assembly shall be public. However, they may be held in camera upon the request of the Government, the Speaker of the Assembly or ten of its members. The debate on such request shall be held in camera.

Article 59

For a meeting of the National Assembly to be valid, more than half of its members must be present. Resolutions shall be passed by an absolute majority of the members present, except in cases where a special majority is required.

When the votes are equally divided, the motion shall be deemed rejected.

Article 78

Every member of the Consultative Council or the Chamber of Deputies shall take the following oath in public session, prior to pursuing their work in the Chamber or its committees:

“I swear by Almighty God that I shall be loyal to the country and the King, shall respect the Constitution and the laws of the State, shall defend the freedoms, interests and assets of the people, and shall perform my work honestly and sincerely.”

Article 79

Sessions of the Consultative Council and the Chamber of Deputies shall be open to the public. They may be held in secret at the request of the Government, the President of the Chamber, or ten members, and the request shall be debated in secret session.

Article 80

For a meeting of both the Consultative Council or the Chamber of Deputies to be valid, a quorum of more than half the members of each chamber must be present. Decisions shall be taken on an absolute majority of members present, except in cases where a special majority is stipulated. In the event of a tied vote, the matter shall be decided in favour of the side that includes the President of the chamber. If the voting relates to the Constitution, voting shall be conducted by calling upon members by name.

If there is a lack of quorum for either chamber to convene on two successive occasions, the meeting of the chamber shall be deemed valid provided that the number of members attending is not less than one quarter of the chamber's

members.

Article 81

The Prime Minister shall present bills to the Chamber of Deputies, which is entitled to pass, amend or reject the bill. In all cases the bill shall be referred to the Consultative Council, which is entitled to pass, amend or reject the bill or to accept any amendments which the Chamber of Deputies had introduced to the bill, or had rejected or amended them. However, priority of debate shall always be given to bills and proposals put forward by the Government.

Article 82

If the Consultative Council does not approve a bill passed by the Chamber of Deputies, whether the Consultative Council's decision involves rejection, amendment, deletion or addition, the President of the Council shall return it to the Chamber of Deputies for reconsideration.

Article 83

If the Chamber of Deputies accepts the bill as it receives it from the Consultative Council, the President of the Consultative Council shall refer it to the Prime Minister who will submit it to the King.

Article 84

The Chamber of Deputies may reject any amendment made to a bill by the Consultative Council, and may insist on its previous decision without introducing any new amendments to the bill. In such a case the bill shall be returned to the Consultative Council for reconsideration. The Consultative Council may accept the decision of the Chamber of Deputies or insist on its previous decision.

Article 85

If the two Chambers differ twice over any bill, the National Assembly shall convene in joint session under the chairmanship of the President of the Consultative Council to discuss those clauses in dispute. For the bill to be accepted, the decision of the National Assembly must be taken on a majority of members present, and when the bill is rejected in this manner it shall not be presented to the National Assembly again in the same convening period.

Article 86

In all cases in which a bill is approved, the President of the Consultative Council shall refer the approved bill to the Prime Minister so that he submits it to the King.

Article 87

Every bill that regulates economic or financial matters, and the Government requests its urgent consideration, shall first be submitted to the Chamber of Deputies so that it takes a decision on it within fifteen days. When that period elapses, the bill is presented to the Consultative Council with the opinion of the Chamber of Deputies if there is such an opinion, so that the Consultative Council decides on it within a further period of fifteen days. If the two Chambers should disagree on the bill in question, the matter is referred to the National Assembly for a vote on it within fifteen days. If the National Assembly does not reach a decision on it within that period, the King may issue the bill as a Decree that has the force of a law.

Article 60

Immediately upon its formation, every Cabinet shall present its programme to the National Assembly, and the

Article 88

As soon as it is formed, each Government shall submit its program to the National Assembly which may

Assembly may make comments with regard to such a programme.

Article 63

(a) A member of the National Assembly represents the entire people. He shall safeguard the public interest and shall not be subject to any authority in the discharge of his duties in the Assembly or in its committees.

(b) A member of the National Assembly shall be free to express any views or opinions in the Assembly or in its committees, and under no circumstances shall he be held liable in respect thereof.

(c) Except in cases of flagrante delicto, no measures of detention, investigation, search, arrest, imprisonment or any other penal measure may be taken against a member while the Assembly is in session without the authorization of the Assembly. If the National Assembly is not in session, authorization shall be obtained from the Speaker of the Assembly. If the Assembly does not give a decision regarding a request for authorization within one month from the date of its receipt, permission shall be deemed to have been granted. The Assembly shall be notified of any measure that may be taken during its session in accordance with the foregoing paragraph. The Assembly shall always, at its first meeting, be notified of any measure taken against any of its members during its annual recess.

put forward any observations it deems appropriate regarding the program.

Article 89

(a) A member of either the Consultative Council or the Chamber of Deputies represents the people and cares for public interest. He shall not come under the sway of any authority in his work in the either chamber or its committees.

(b) No member of the Consultative Council or the Chamber of Deputies shall be called to account for expressing his opinions or ideas in the Council or its committees unless the opinion expressed is prejudicial to the fundamentals of the religion or the unity of the nation, or the mandatory respect for the King, or is defamatory of the personal life of any person.

(c) Other than in a case of flagrante delicto, it shall be impermissible during the convening period for any detention, investigation, search, arrest or custodial procedures or any other penal action to be taken against a member except with the permission of the chamber of which he is a member. Outside the convening period, permission must be sought from the President of the relevant chamber.

The non-issue of a decision by the chamber or its President on the permission which is being sought within one month from the date of receipt of the request shall be regarded as permission.

The chamber must be informed of any measures which may be taken under the preceding paragraph while it is convened, and it must invariably be informed at its first session of any action taken against a member during the chamber's annual recess.

Article 64

The Amir may, by a decree, adjourn the meeting of the National Assembly for a period not exceeding one month. Adjournment may be repeated during the same session with the consent of the Assembly, and then once only. The period of adjournment shall not be counted in computing the duration of the session provided for in Article 47 of this Constitution.

Article 66

Every member of the National Assembly may put to the Prime Minister and to Ministers, questions with a view to clarifying matters falling within their competence. The questioner alone shall have the right to comment once on the answer, and if the Minister adds something new then the right of the member shall be renewed.

Article 71

A member of the National Assembly shall have the right to initiate bills.

A bill initiated by a member and rejected by the Assembly may not be

Article 90

The King may by Royal Order postpone the convening of the National Assembly for not more than two months, and such postponement shall not be repeated more than once in any one convening period. The period of postponement shall not be counted within the convening period provided by Article 72 of this Constitution.

Article 91

Any member of the Consultative Council or the Chamber of Deputies may direct written questions at Ministers to clarify matters coming within their sphere of competence, and only the questioner may comment once on the reply. If the Minister adds anything new, the member shall be further entitled to comment.

The question may not relate to an interest of the questioner or his relatives to the fourth degree, or be made by proxy.

Article 92

(a) Fifteen members of the Consultative Council or the Chamber of Deputies are entitled to request proposing an amendment to the Constitution. Any member of the two chambers is entitled to propose laws. Each proposal shall be referred to the relevant committee in the chamber in which the proposal was made for an opinion. If the chamber sees fit to accept the proposal, it shall refer it to the Government to formulate it as a draft amendment of the Constitution or as a draft law and present it to the Chamber of Deputies during the same or succeeding period.

(b) Any proposal for a law which has been presented in accordance with the

re-introduced during the same session except with the approval of the Government.

Article 76

The Cabinet shall be represented in the sittings of the Assembly by the Prime Minister and by some Ministers.²⁰⁷

The Prime Minister and Ministers shall be given the floor whenever they ask for it. They may call for assistance upon any senior officials or depute them to speak on their behalf.

The Assembly may ask for a Minister to be present whenever a matter relating to his Ministry is under discussion.

Article 77

(a) The law shall prescribe the procedure of the National Assembly and its committees and the rules pertaining to discussion, voting, questions, interpellation and all other functions prescribed in the Constitution. The law shall also prescribe the sanctions to be imposed on any member who violates order or absents himself from the meetings of the Assembly or the committees without good cause or legitimate reason.

(b) The National Assembly may make necessary regulations complementary to the law referred to in the preceding clause.

Article 78

The maintenance of order in the National Assembly shall be the responsibility of its Speaker.

The Assembly shall have a special guard under the authority of the

preceding paragraph and rejected by the chamber to which it was presented may not be re-represented during the same convening period.

Article 93

The Prime Minister and Ministers may attend sessions of the Consultative Council and Chamber of Deputies, and both chambers shall listen to the Prime Minister and Ministers whenever they ask to speak. They may co-opt such senior officials or their deputies as they may wish.

A chamber may require the competent Minister to attend when a matter relating to his Ministry is being debated.

Article 94

(a) The regulations for the course of business in both the Consultative Council and the Chamber of Deputies and their committees, and the principles governing debate, voting, questioning, cross-examination and all the powers prescribed in the Constitution shall be prescribed by law, and similarly the penalties for a member being in breach of the regulations or failing to attend chamber or committee sessions without acceptable excuse.

(b) Each chamber may add to the law that regulates it such supplementary provisions as it sees fit.

Article 95

Maintenance of order within the Consultative Council and Chamber of Deputies is a matter for its President. Guards shall be allocated to each chamber and they will receive their

²⁰⁷ Sentence moved from end of Article to the beginning to facilitate comparison

Speaker of the Assembly.

No other armed force may enter the Assembly or be stationed close to its gate unless so required by the Speaker.

Article 79

Remuneration of the members of the National Assembly shall be fixed by a law. In the event of a revision of the said remuneration, such revision shall not take effect until the next legislative term.

Article 80

Membership of the National Assembly shall be incompatible with public office except in the case of Ministers.²⁰⁸ In such cases, the right to the remuneration for membership and the right to the salary of the portfolio shall not be combined. The law shall specify other cases of incompatibility.

Article 81

During his term, a member of the National Assembly shall not be appointed to the board of directors of a company, nor shall he participate in concessions granted by the Government for by public bodies, except in those cases prescribed by the law.

Further, during the said term he shall not buy or rent any property of the State nor shall he let, sell or barter any of his property to the State, except by public auction or tender, or in compliance with the system of compulsory acquisition.

orders from the chamber's President.

No armed force may enter either chamber of the National Assembly or remain in the vicinity of its doors unless so requested by its President.

Article 96

The remuneration of members of the Consultative Council and Chamber of Deputies shall be laid down by law. If this remuneration is amended, such amendment shall not take effect until the start of the next legislative season.

Article 97

Membership of the Consultative Council and Chamber of Deputies may not be combined, nor may membership of either chamber be combined with the assumption of public office. Other cases of non-combination shall be prescribed by law.

Article 98

During his period of membership a member of the Consultative Council or the Chamber of Deputies may not be appointed to the board of directors of a company or participate in contracts concluded by the Government or public institutions except in those cases prescribed by law.

Nor during that period may he purchase or rent a State asset, or lease, sell or barter any of his assets to the State, unless by way of public auction or invitation to tender or application of the regulations governing expropriation in the public interest.

²⁰⁸ Difference resulting from different Parliament concepts – Under the 1973 Constitution, all Ministers were automatically part of the National Assembly, hence this exception

Article 99

If a state of incompetence arises with respect to a member of Consultative Council and Chamber of Deputies during his membership, his membership shall be abrogated, and his place become vacant on a decision taken by two-thirds of the members of the chamber of which he is a member. The membership of a member of the Consultative Council or Chamber of Deputies may also be abrogated for loss of confidence or esteem or for being in breach of the duties of membership. A decision to abrogate membership must secure a two-thirds majority of the members of the chamber of which he is a member. If taken by the Consultative Council, the decision shall be submitted to the King for approval.

Article 82

During their term, members of the National Assembly with the exception of Ministers²⁰⁹ may not be awarded decorations.

Article 100

Members of the Consultative Council and Chamber of Deputies shall not be awarded medals or decorations during their term of membership.

Part 4 Provisions on the Convening of the National Assembly

Article 101

In addition to the occasions when both chambers of Consultative Council and Chamber of Deputies, that is the National Assembly, convene as a congress under the Constitution, the King may call such a meeting of his own initiative or at the request of the Prime Minister.

²⁰⁹ Difference resulting from different Parliament concepts – Under the 1973 Constitution, all Ministers were automatically part of the National Assembly, hence this exception. There is no restriction under the 2002 Constitution re. presenting honours applying to Ministers.

Article 59

For a meeting of the National Assembly to be valid, more than half of its members must be present. Resolutions shall be passed by an absolute majority of the members present, except in cases where a special majority is required. When the votes are equally divided, the motion shall be deemed rejected.

Chapter IV: Judicial Power

Article 101

(a) The honour of the judiciary and the integrity and impartiality of judges are the bases of rule and a guarantee of rights and liberties.

(b) 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.

(c) The law shall specify the rules for public prosecution, rendering of legal opinions, drafting of legislation and representation of the State before the courts, and those who are engaged in these matters.

Article 102

The joint National Assembly meeting shall be chaired respectively by the President of the Consultative Council, or in his absence by the President of the Chamber of Deputies, followed by the First Vice-President of the Consultative Council, followed by the First Vice-President of the Chamber of Deputies.

Article 103

In the cases other than those in which the Constitution requires a special majority, joint sessions of the two chambers of the National Assembly shall not be deemed legally valid unless they are attended by the majority of the members of each individual chamber. Decisions shall be taken by a majority of the votes of members present with the exception of the President, who is to cast the decisive vote in the event of a tie.

Section 4 The Judicial Authority

Article 104

(a) The honour of the judiciary, and the probity and impartiality of judges, is the basis of government and the guarantee of rights and freedoms.

(b) No authority shall prevail over the judgment of a judge, and under no circumstances may the course of justice be interfered with. The law guarantees the independence of the judiciary, and the law shall lay down the guarantees of judges and the provisions pertaining to them.

(c) The law shall lay down the provisions pertaining to the Public Prosecution Office, the tasks of the office for delivery of formal legal opinions, the preparation of legislation, State representation before the law, and personnel employed on such matters.

(d) The law shall regulate the legal profession.

Article 102

(a) The law shall regulate the various kinds and degrees of courts and specify their functions and jurisdictions.

(b) The jurisdiction of courts martial shall be restricted to military crimes committed by members of the armed and security forces and shall not extend to others except during the time of martial law and within the limits determined by law.

(c) Sittings of the courts shall be public save in exceptional cases prescribed by the law.

(d) A Supreme Council of the Judiciary shall be formed by a law which shall supervise the functions of the Courts and the offices relating thereto. The law shall specify the jurisdiction of the said Council over the functional affairs of both the judiciary and the public prosecution.

Article 103

The law shall specify the judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations and shall determine its jurisdiction and procedure. The law shall ensure the right of both the Government and interested parties to challenge the constitutionality of laws and regulations before the said body. If the said body decides that a law or a regulation is unconstitutional it shall be considered null and void.

(d) The provisions governing advocacy shall be regulated by law.

Article 105

(a) The various types and degrees of the courts shall be regulated by law, and the law shall state their functions and jurisdiction.

(b) The jurisdiction of military courts shall be confined to military offences committed by members of the Defence Force, the National Guard, and the Security Forces. It does not extend to other persons except when martial law is declared and within the bounds prescribed by law.

(c) Court hearings shall be held in public except in exceptional cases prescribed by law.

(d) A Higher Judicial Council shall be established by law to supervise the smooth running of work in the courts and their supporting organs. The powers of the Higher Judicial Council in the functional affairs of judicial personnel and the Public Prosecution Office shall be prescribed by law.

Article 106

A Constitutional Court shall be established, and shall comprise a President and six members, all of whom are appointed by a Royal Order for a period specified by the law. The court's area of competence is to watch over the constitutionality of laws and statutes.

The law shall state the regulations that ensure that the members of the Court are not liable to dismissal, and specifies the procedures that are followed before the Court. The law shall guarantee the right of the Government, Consultative Council, the Chamber of Deputies and notable individuals and others to challenge before the Court the

constitutionality of laws and statutes. A ruling by the Court that a text in a law or a statute is unconstitutional shall have a direct effect, unless the Court specifies a subsequent date for the purpose. Thus if the Court's rule on unconstitutionality is related to a text in the penal code then the convictions made on the basis of such a text are deemed null and void.

The King may refer to the Court any draft laws before they are adopted to determine the extent of their agreement with the Constitution. The Court's determination is binding on all State authorities and on everyone.

Section II Financial Affairs

Article 88

(a) No general tax may be established, amended or abolished except by law. No-one may be exempted, wholly or partially, from the payment of such taxes except in the cases specified by the law. No-one may be required to pay any other tax, fee or imposition except within the limits of the law.

(b) The law shall prescribe rules for the collection of taxes, fees and other forms of public funds and the procedure for their expenditure.

(c) The law shall lay down rules for the protection of State properties, their administration, the conditions of their disposal, and the limits within which any of these properties may be relinquished.

Article 89

(a) Public loans shall be contracted by law. The State may grant or guarantee a loan by a law, or within the limits of the funds appropriated for this purpose in the budget.

(b) Local bodies such as municipalities

Chapter V Financial Affairs

Article 107

(a) Public taxes shall only be established, amended and abolished by law, and persons shall only be exempted from paying them wholly or in part in those cases prescribed by law. A person may only be instructed to pay other taxes, duties and costs within the bounds of the law.

(b) The provisions governing the collection of taxes, duties and other public monies, and the procedures for their disbursement, shall be prescribed by law.

(c) The provisions governing the maintenance and management and the terms for the disposition of State property, and the limits within which any part of such property may be assigned, shall be prescribed by law.

Article 108

(a) Public loans shall be contracted by law. The State may lend or guarantee a loan by law within the credit limits prescribed for the purpose in the Budget Law.

(b) Local bodies such as municipalities

or public bodies may grant, borrow or guarantee loans in accordance with their own regulations.

Article 90

- (a) The fiscal year shall be fixed by a law.
- (b) The Government shall draw up the annual budget, comprising the revenue and expenditure of the State, and submit it to the National Assembly for examination and approval, at least two months before the end of each current fiscal year.
- (c) The budget shall be discussed in the National Assembly part by part. None of the public revenues may be allocated for a specific purpose except by a law.
- (d) The budget shall be issued by a law.
- (e) If the budget law has not been promulgated before the beginning of the fiscal year, the preceding budget shall be applied until the new one is issued, and revenues shall be collected and disbursements made in accordance with the law in force at the end of the preceding year. However, if the National Assembly has approved one or more parts of the new budget, they shall be put into effect.
- (f) In no case shall the maximum estimates of expenditure, included in the budget law or the laws amending it, be exceeded.

Article 91

Any expenditure not included in the budget, or in excess of the budget appropriations, as well as the transfer

or public institutions may lend, borrow or guarantee a loan in accordance with the laws relevant to them.

Article 109

- (a) The financial year shall be prescribed by law.
- (b) The Government shall prepare the draft overall annual budget of State revenue and expenditure and present it to the Chamber of Deputies at least two months before the end of the financial year, for debate and referral to the Consultative Council to consider it in accordance with the provisions of the Constitution. Any amendment can be introduced into the budget with the agreement of the Government.
- (c) The budget shall be debated on the basis of the classification of its contents. The budget may be prepared for more than one financial year. No public revenue may be allocated for a particular expenditure except by law.
- (d) The State general budget shall be promulgated by law.
- (e) If the Budget Law is not promulgated before the beginning of the financial year, the previous budget shall be adhered to until the law's promulgation, and revenue shall be collected and expenditure disbursed in accordance with the laws in force at the end of that year.
- (f) Under no circumstances may the maximum estimates of expenditure stated in the Budget Law and laws in amendment thereof be exceeded.

Article 110

Any disbursement which is ex-budget or in excess of the budget estimates must be made by operation of law.

of any funds from one part of the budget to another, shall be effected by a law.

Article 92

(a) Funds for more than one fiscal year may be appropriated by a law if the nature of the expenditure so requires. In this case, each annual successive budget shall include the funds allocated for that year in the way established by the said law.

(b) An extraordinary budget valid for more than one fiscal year may be drawn up separately for the expenditure referred to in the preceding item.

Article 93

The budget law may not include any provision for establishing a new tax, increasing an existing law, or evading the issue of a law on a matter in respect of which this Constitution provides that its regulation shall be by a law.

Article 94

The final account of the financial affairs of the State for the preceding year shall be submitted to the National Assembly within the five months following the end of the fiscal year. The ratification of the final account shall be by a decision of the National Assembly, together with its comments.

Article 95

The law shall prescribe the provisions of both the independent and the supplementary general budgets and the final accounts thereof to which the provisions regarding the budget of the State and the final account thereof shall be applied. The law shall also prescribe

Article 111

(a) Particular sums of money may be allocated to more than one financial year by law if the nature of the disbursement so requires. The appropriations for each, as decided by the aforesaid law, shall be tabled in the successive annual budgets of the State.

(b) An exceptional budget running for more than one financial year may also be allocated for the disbursement referred to in the preceding clause.

Article 112

The Budget Law may not contain any wording establishing a new tax, increasing an existing tax, or amending an existing law, or avoiding the promulgation of a law on a matter for which the Constitution provides that it shall be regulated by law.

Article 113

The final account of the financial affairs of the State for the year elapsed shall be submitted firstly to the Chamber of Deputies during the five months following the end of the financial year. It shall be approved by a decision rendered by both the Consultative Council and Chamber of Deputies, accompanied by their observations, and shall be published in the Official Gazette.

Article 114

The provisions pertaining to independent public budgets, their appendices, and their final accounts, shall be laid down by law, and they shall be subject to the provisions governing the State budget and its final account. The provisions governing the

the provisions of the budget and the final accounts thereof of the municipalities and the public bodies.

Article 96

Together with the draft annual budget, the Government shall submit to the National Assembly a statement on the financial and economic position of the State and arrangements made to implement the appropriation of the budget in effect and the effect thereof on the new draft budget.

Article 97

A financial control and audit commission shall be established by a law, which shall ensure its independence. The commission shall be attached to the National Assembly and shall assist the Government and the National Assembly in controlling the collection of the State revenues and the disbursement of its expenditures within the limits of the budget. The commission shall submit to both the Government and the National Assembly an annual report on its activities and its observations.

Article 98

(a) No concession for exploitation of either a natural resource or a public service may be granted except by a law and for a limited period. In this respect the preparatory measures shall facilitate the operations of prospecting and exploration and ensure publicity and competition.

(b) No monopoly shall be granted except by a law for a limited period.

Article 99

The law shall regulate currency and banking and determine standards,

budgets and final accounts of municipalities and local public institutions shall also be laid down by law.

Article 115

Together with the draft annual budget the Government shall present the Chamber of Deputies with a statement on the financial and economic condition of the State, the measures taken to implement the budget appropriations in force, and the effect of the whole thereof on the new draft budget.

Article 116

A Financial Control Office shall be established by law, and the law shall guarantee its independence. It shall assist the Government and the Chamber of Deputies in controlling the collection of State revenues and the disbursement of its expenditure within the budget limits. The Office shall submit an annual report on its business, with its observations, to both the Government and the Chamber of Deputies.

Article 117

(a) Any commitment to exploit a natural resource or a public utility shall be only by operation of law and for a limited time. The preliminary procedures shall ensure that the search and exploration work are facilitated and that openness and competition are realized.

(b) Any monopoly shall only be awarded by law and for a limited time.

Article 118

The law shall regulate cash and the banks, and shall regulate weight,

weights and measures.

Article 100

The law shall regulate salaries, pensions, compensation, subsidies and gratuities which are a charge on the State treasury.

Part Five: General and Final Provisions

Article 104

(a) Notwithstanding the provision of Article 35 of this Constitution, for an amendment to be made to any provision of this Constitution, it is stipulated that it shall be passed by a majority vote of two-thirds of the members constituting the Assembly and ratified by the Amir.

(b) If a proposed amendment to the Constitution is rejected, it shall not be put forward again before the lapse of one year from the time of its rejection.

(c) Under no circumstances shall the principle of the hereditary rule of Bahrain, the principle of liberty and equality set forth in this Constitution, as well as Article 2 thereof, be proposed for amendment.

(d) The powers of the Amir, specified in this Constitution, may not be proposed for amendment when a Deputy Amir is acting for him.

Article 105

(a) The application of this Constitution shall not affect treaties and conventions previously concluded by Bahrain with other States and international organizations.

measures and standards.

Article 119

The law shall regulate emoluments, pensions, compensation, relief and remuneration being a charge on the State Treasury.

Chapter VI General and Final Provisions

Article 120

(a) Exceptionally to clauses b, c and d of Article 35 of this Constitution, for any provision of this Constitution to be amended the amendment must be approved by a two-thirds majority of the members of whom both the Consultative Council and Chamber of Deputies are composed, and the amendment must be approved by the King.

(b) If an amendment to the Constitution is refused, it may not be re-submitted earlier than one year from that refusal.

(c) It is not permissible to propose an amendment to Article 2 of this Constitution, and it is not permissible under any circumstances to propose the amendment of the constitutional monarchy and the principle of inherited rule in Bahrain, as well as the bicameral system and the principles of freedom and equality established in this Constitution.

(d) The powers of the King stated in this Constitution may not be proposed for amendment in an interval during which another person is acting for him.

Article 121

(a) The application of this Constitution does not breach the treaties and agreements which Bahrain has concluded with states and international organisations.

(b) All provisions of laws, decrees, regulations, orders and decision in effect upon the coming of this Constitution into force, shall continue to be applicable unless amended or repealed in accordance with the procedure prescribed in this Constitution, provided that they are not contrary to any of its provisions.

Article 106

Laws shall be published in the Official Gazette within two weeks of their promulgation and shall come into effect one month after their publication. The latter period may be extended or reduced for any law by a special provision included in it.

Article 108

No provision of this Constitution may be suspended except when martial law is in force and within the limits specified by the law. Under no circumstances shall the meetings of the National Assembly be suspended, nor shall the immunities of its members be interfered with, during such period.

Article 107

Laws shall apply to that which takes place after the date of their coming into force, and thus shall have no effect in respect of that which has taken place before such date. However, in other than penal matters, a law may, with the approval of a majority vote of the members constituting the National Assembly, prescribe otherwise.

(b) Exceptionally to the provision of the second clause of Article 38 of this Constitution, all laws, laws by Decree, Decrees, statutes, orders, edicts and circulars that have been issued and are in force prior to the first meeting convened by the National Assembly remain proper and valid, unless amended or rescinded in accordance with the regulations prescribed in this Constitution.

Article 122

Laws are published in the Official Gazette within two weeks of their issue, and are enforced one month after the date of their publication, and this period may be shortened or prolonged if the law specifically prescribed it.

Article 123

It is impermissible to suspend any provision of this Constitution except during the proclamation of martial law, and within the limits prescribed by the law. It is not permissible under any circumstances to suspend the convening of the Consultative Council or the Chamber of Deputies during that period or to infringe upon the immunity of their members, or during the proclamation of a state of national safety.

Article 124

The provisions of the laws apply only to what occurs from the date the laws came into force, and have no retroactive effect. The law may state, in articles other than those pertaining to the penal code, that its provisions have a retroactive effect, with the agreement of the majority of the members of both the Consultative Council and the Chamber of Deputies, or if circumstances require it, the National

Assembly.

Article 109

This Constitution shall be published in the Official Gazette and shall come into force as from the date of the meeting of the National Assembly which shall be not later than the Sixteenth Day of December, 1973.

Signed by: Isa Bin Salman Al-Khalifa,
Amir of the State of Bahrain

Article 125

This amended Constitution shall be published in the Official Gazette, and shall be effective from the date of its publication.

Signed by: Hamad bin Isa Al-Khalifa

Appendix 2 – The National Action Charter of 2002

FINAL STATEMENT

The final statement at the conclusion of the meetings of the Supreme National Committee, assigned to prepare the draft of the national action charter.

In line with the Amiri orders number 36 and 43 for the year 2000 on establishing the Supreme National Committee to draft the National Charter, and in pursuance of the great responsibility felt by the members of the Committee, the Committee held several meetings at Riffa palace, in which deliberations and discussions including positive ideas and suggestions were discussed. And, with the help of God the almighty and the support of H.H the Amir, the Committee was able to achieve its task, and wishes that it would satisfy the will of H.H the Amir, and the aspirations of the people of Bahrain. In this regard, the Committee, affirms that the national action charter draft will achieve a considerable turning point in the process of the national action, the role of which will- constructively, contribute in affecting radical changes within the program of action and performance. And considering the response received from the members of the Committee to agree with the scope of the wide vision of H.H the Amir Shaikh Hamad bin Isa Al-Khalifa whose democratic style was clearly manifested in his dialogue, in his meetings with various national sectors and several national public gatherings, the Committee expresses its deep honour and pride over the close bond and cohesion between the leader and the people, which in fact form a solid foundation for the national action and a true pillar to preserve the cultural and civilized accomplishments in the country and also affirming the adherence to non-squandering of any inch of the soil of this cherished nation. And in implementation of the process of modernizing state's powers and institutions, in preparation for the electing of a freely elected representative council along with an appointed council comprising deep-visioned experts, eventually leading to a constitutional invigoration and institutional modernizing on a well-balanced formula that takes into consideration the lessons of the past and prepares for the future, the Committee reaffirms its absolute support that enables Bahrain to continue its aspired path for a better future.

The Committee also affirms that, despite the crisis and wars that the region had faced, the state of Bahrain has advanced in great strides toward comprehensive development and has, through determination and resolve, continued the path of process and growth, and accordingly the state of Bahrain occupies its position competently amongst the progressive constitutional monarchies. In affirmation of the harmony and integration between the far- sightedness of the Amir and the

aspirations of the people of Bahrain, the Committee decided, at the end of its meeting, to submit this National Action Charter draft, representing a renewed document of loyalty and allegiance to H.H the Amir Shaikh Hamad bin Isa Al-Khalifa, to take the necessary and appropriate measures that serve the interests of the country.

NATIONAL ACTION CHARTER OF THE STATE OF BAHRAIN

Chapter I – Basic principles of the society

No society can be as stable for scores of centuries as successful in building a distinctive civilization as Bahrain unless the same is solidly attached to a set of core values that ensure its cohesion, progress and development and strengthens its entity as a state. With its solemn belief in Islam and Arab identity and true to its deep-rooted traditions, the Bahraini society has been attached to a set of core principles that are congruent with Arab-Islamic values. These core values and principles must be upheld and safeguarded as they are co-opted by the entire society. They have always been and maintained through generations since time immemorial in the interest of both people and the state. Hence, these core values and principles are sacrosanct. Neither a public authority nor a citizen can compromise any of them. These core values and principles can be enumerated as follows:

First – Goals and basis of Government:

Government goals are to protect the country, to maintain national unity and to achieve comprehensive, sustainable development in political, socioeconomic, cultural and other fields. Justice is the basis of government. Equality, rule of law, liberty, security, peace, education, social solidarity and equal opportunity are all core principles of the society that are ensured by the state. Over the years, those core values – solemnly attached to by the Amir, government and people of Bahrain – have been the basis of government. They are reinforced by solidarity, cooperation and cohesion between the ruler and the people. Justice is one such principle that has remained an article of faith that is further ensured with the upholding of values including solidarity and cordiality.

Second – Protection of individual freedoms and equality:

Individual freedoms quality, justice and equal opportunity are core principles of the society. The State shoulders the responsibility of ensuring them for all citizens on an equal footing. This is based on a broader principle, namely, that people are equal insofar as human dignity is concerned, a principle that has been consecrated by Islam since fourteen centuries. Addressing believers during his ‘Hajjatul Wada’ a (or the last pilgrimage), Prophet Mohammed laid emphasis on this principle by saying that people are as equal as dents of a comb are, that no Arab claims a preference over an ‘Ajami’ (or a non-Arab) and no white man can claim preference over a black man except on the basis of righteousness and

good deeds. A natural flow of this great principle of Islam and indeed humanity is a set of related principles, namely:

1- All citizens are equal before the law in terms of rights and duties, without distinction of race, origin, language, religion or belief. This has been reiterated by H.H. the Amir in his first address to the people in the wake of his assumption to the power.

2- Personal liberty is ensured under the law. Unless according to procedure established by the law and under judicial supervision, no person shall be arrested, detained in custody, inspected or put under house arrest, restricted residence or movement.

3- No person shall in any way be subjected to any kind of physical or moral torture, inhumane, humiliating or indignant treatment. Any confession or utterance obtained under torture, threatening or persuasion shall be null and void. In particular, an accused shall not be subjected to any physical or moral harm. Law ensures punishment of those who commit an offense of torture, a physically or psychologically harmful act.

4- An offense and punishment for the same shall be established only by law. No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence.

5- Punishment is individual. An accused person remains innocent until convicted in a fair trial in which all guarantees are provided with a view to ensuring to an accused person the right to defense throughout investigation and prosecution under law. A person accused of a felony shall have the right to be defended by a lawyer of his choice. The right to litigation is ensured under law.

6- Places of residence are inviolable. Unless authorized by its legal occupants, no place of residence shall be entered or inspected. However, in case such an entry or inspection is deemed extremely necessary by way of exception, such an entry or inspection may be carried out in cases specified by law and under judicial supervision.

7- Personal correspondence shall enjoy inviolability and secrecy. Mail, cable, telephone, electronic and other correspondence shall be protected. Save in cases where law deems it necessary, and subject to judicial supervision, such correspondence shall not be censored or inspected.

Third – Freedom of belief:

The state ensures freedom of belief. Freedom of conscience shall be absolute. The state maintains inviolability of houses of worship and guarantees freedom to practice religious rites according to considered custom of the land.

Fourth – Freedom of expression and publishing:

Every citizen shall have the right to express himself orally, in writing or in any other way of expression of personal opinion or creativity. Under this law,

freedom of scientific research, publishing, press and printing are ensured within the scope specified by law.

Fifth – Civil Society Activities:

With a view to enabling the society to make use of all civil capabilities and activities, the state ensures the freedom to form non- governmental, scientific, cultural, professional associations and unions at a national level for legitimate purposes through peaceful means under terms and conditions as may be prescribed by law. No one shall be forced to join an association or union or to remain member thereof.

Sixth – Family as the basis of society:

Based on the firm belief that family is the nucleus of the society and that good family is key to a cohesive society as well as key to upholding religious and ethical values and national sense of belonging, the state protects the legal form of family as well as maternity and childhood, provides care to children, protects them from exploitation and moral, physical and spiritual negligence. In particular, the state pays special attention to physical, moral and mental development of youth. In this respect, the state ensures necessary social security for citizens in cases of aging, invalidity, orphanage, widowhood and unemployment. The state also secures social insurance services for citizens in such cases. The state secures health care and puts in place health policies that are conducive to achieving the objective of health for all. The state ensures the solidarity of the society in sharing burdens arising from natural calamities and disasters, compensation of those who may be injured due to war or on account of military duty. The state endeavours to support women's rights and the enactment of laws on protection of family and family members.

Seventh – Employment as both a duty and a right:

Employment is a duty of every citizen. This is in the interest of individual dignity and public good. Subject to public law and order, every citizen has the right to practice a profession or to carry on any occupation, trade or business. Taking into account that save in a case prescribed by law for a national necessity and against a fair consideration, no one shall be forced into a specific job, the State ensures employment opportunities under fair terms and conditions for citizens within national economic development programs. Subject to rules of social justice, the law organizes employer- employee relations on an economic basis.

Eighth – Education, culture and science:

The state promotes science, literature and arts. It encourages scientific research and ensures education and cultural services for citizens. Education shall be compulsory and free in initial stages as may be prescribed by law. Also law prescribed literacy plans. Law organizes religious education and pays attention to civics, building citizens personalities with a solid sense of belonging to national unity and Arab nationalism through all stages and disciplines of education. Universities are beacons of intellectual radiance and scientific advances a fact that necessitates ensuring academic freedom, the practice thereof and

maximizing their access to knowledge. The state encourages private education and the establishment of private universities and institutes. In the same vein, it shall support science and technology research institutions, a better linkage between education system and labour market with a view to ensuring availability of qualified labour force that meet current and future requirements.

Chapter II – Government System

For centuries, ever since the Al-Khalifa ruling family assumed rule of the country, Bahraini society has been distinctive as to the basis of relationship between the ruler and the people. This has been one of cohesion, direct contact and mutual understanding in the interest of both individuals and the country. True to this tradition, the people of Bahrain now have the resolve that salient features of the government system in the country should be as follows.

First – The Amir:

Government system of Bahrain shall be a constitutional monarchy as may be prescribed by the constitution and the Amiri Decree on succession. The Amir is the head of state. His person is inviolable. He is the Supreme Commander of Armed Forces, the symbol of national stability and the fulcrum of government system of the state of Bahrain. The Amir exercises his powers through ministers who are accountable to him. He appoints to, and relieves from, premiership and ministerial posts within his powers as prescribed by the constitution.

Second – Constitutional Form of the State:

In view of the stability enjoyed, progress achieved, strides made and challenges surmounted by Bahrain by the Grace of God Almighty, and in view of the fact that it has assumed its full-fledged role as a state both in terms of international relations and sovereign institutions based on equality of all citizens, common good and national unity, it is deemed proper that Bahrain should join democratic constitutional monarchies with a view to meeting peoples aspirations to further progress.

Third – Islamic Shari'a and Legislation:

Islam is the religion of the state. Islamic Shari'a is the principal source of legislation.

Fourth – People as the source of all powers:

Government system of the state of Bahrain is a democracy where all powers vest with the people. Sovereignty is exercised as prescribed by the constitution.

Fifth – Separation of Powers:

With a view to consecrating a stable democracy, the government system is based on checks and balances, i.e., the separation of, and cooperation among, the three powers namely, the legislature, the executive and the judiciary as set forth in the constitution. H.H the Amir is at the helm of the three powers.

Sixth – Rule of Law and Independence of the Judiciary:

Government in the state of Bahrain is based on the rule of law. The independence and immunity of the judiciary are two key guarantees for protecting rights and freedom. The state shall complete the judicial system as prescribed in the constitution. It shall specify the judicial authority vested with the jurisdiction over disputes as to whether a given law or executive regulations are consistent with the constitution. The state shall specify a judicial authority vested with the jurisdiction of the Attorney General.

Seventh – People’s right to participation in Public Affairs:

Citizens, men and women alike, have the right to participate in public affairs and political rights including suffrage and the right to contest as prescribed by law.

Chapter III - Economic Fundamentals of the Society

The state of Bahrain has made great strides in the field of economic development with a view to raising per capita income. This has been achieved despite high population density and scarce natural resources including land and water. It is due to wise policies put in place by the leadership and government to ensure a streamlined effective use of available resources that Bahrain has achieved such an outcome. This has helped Bahrain achieve a higher level of human development and economic freedom. However, policies that would ensure a stable economic growth rate that offsets high population growth rate must be put in place. This charter reiterates that the state of Bahrain is solemnly attached to the following economic fundamentals:

First – The Principle of Free Economy:

The economic system of the state of Bahrain is based on individual initiative, freedom of capital movement in terms of investment and transfer. It lays emphasis on the role of private sector in resource development as well as in activating the economy. Over the year, this economic system has provided for a tangible economic and investment activity and resulted in substantial capital inflows for investment. An open-door policy must be accompanied by a new public administration mindset, one that is oriented to streamlined procedure, transparency, elimination of jurisdictional overlapping, improved services and updated economic legislation within a framework of integrity and equal opportunity. In order for auditing and administrative supervision to be effective and for bureaucracy to become more transparent, there is a need to institute an Auditor General and an Administrative Supervisory Authority.

Second – Private Ownership:

Private ownership is inviolable. Subject to law, every person has the right to dispose of his property. Subject to a fair compensation, a private property shall be expropriated only for public good purposes within the scope set forth in and as prescribed by law.

Third – Economic Justice and Balanced contracts:

Private ownership, capital and work are individual rights of a social nature. Law organizes such rights and the practice thereof on an economic and socially equitable basis. Law determines rules that ensure a balanced relationship among elements of production as well as balanced contractual relationship.

Fourth – Diversification of Economic Activity and Sources of National Income:

The state of Bahrain has been a pioneer of diversification of economic activity and sources of national income among Gulf Arab countries. The idea was to avoid dependence on a single main source of income, to be able to ensure a reasonable standard of living for future generations and to avoid vulnerability to external economic fluctuation. As a result, Bahrain has grown into an important regional financial center and an internationally acclaimed tourist-attracting point. Through support made available to manufacturing, high value added, informatics and services industries, it has been possible to develop a platform for economic development and to offer employment opportunities to citizens.

Fifth – Environment and Wildlife:

Due to increasing pressure on scarce natural resources, the state of Bahrain has been bent upon rationalizing utilization of natural resources, environment-friendly development and public health. In so doing, it takes into account worldwide trends in preventing, and addressing, major environmental problems. This is being done through a national environment protection strategy, taking appropriate legal measures and procedures with a view to reducing pollution from different sources. Other incentives being put in place include: offering facilities to manufacturers to shift to clean production and requiring that Environment Impact Assessment (EIA) be made before a project is launched. Moreover, the State puts in place measure to protect wildlife, particularly different habitats of fauna and flora of which Bahrain is famous. This is being done through developing appropriated plans for land use and coastal zone management and delimitation of a system of sanctuaries such as the Al- Areen and Hawar sanctuaries, the latter along with surrounding waters being of a worldwide fame for its rare species of animals and birds.

Sixth – Public property and natural resources:

Public property is inviolable. It is incumbent upon every citizen to protect the same while public authorities are under duty to take all necessary measures to maintain the same. All natural resources are a property of the State that shall maintain, and put in place best ways and means to utilise, the same.

Seventh – Labour and training:

The State of Bahrain maintains that the greatest assets in it are its own citizens who have proved themselves in educational and cultural attainment, and distinctively so. Therefore, providing citizens with support through continuous training and retraining would ensure infusing fresh blood and experience into labour market, with ensuring greater employment opportunities for citizens.

Chapter IV – National Security

National security is the safeguard of the country, its territorial integrity and its socioeconomic and political gains. It supports comprehensive development efforts particularly in changing regional and international circumstances. The fulcrum of national security is to strengthen Bahrain Defence Force (BDF) with a view to enabling the same to properly discharging its duty. Also it calls for providing necessary equipment and other related requirements for security forces to ensure that they perform their duty in maintaining security and public law and order throughout the country. It also makes it necessary to strengthen the National Guards as a line of support for both BDF and Security Forces. The entirety of these efforts would support development efforts and maintain economic achievements, protect every inch of land, sea and air of Bahrain. To serve in national security system is a duty and a source of pride for every citizen. Hence comes the importance of the BDF.

It is a symbol of national unity, a support to our brethren and nation so as to ensure security and stability, not only for our fatherland but also for our beloved Gulf region and, indeed, the Arab World. Needless to say that, true to traditions of Bahrain, BDF has been, indeed, a bastion to defend our country's culture, ethics and well-being. It has been, since day one, a message of goodwill and peace to the entire mankind, an honest reflection of the values we all stand for. The fact that H.H the Amir, the Supreme Commander of BDF, is its first soldier and founder since 'the first light' is a source of full-fledged faith therein. In a world where science and technology advances are revolutionary, sources of threat, and harm to security are quite enormous; it becomes all the more necessary to secure advanced weaponry and security and defence systems. Of no less importance is the human element. As those systems should be run by men, policies related to training of qualified personnel and care for the welfare of BDF personnel are sine qua non for ensuring Bahrain's security.

In this respect, enhancing the capabilities and operational, logistics and technical preparedness of BDF, through training and organization of the best quality-, must be accorded the highest priority. The BDF's ability to fulfill its mandate cannot be considered in isolation. It is organically linked to a clear defence policy that is supported by detailed programs designed to help achieve relevant objectives. This calls for a regular review of our strategic vision, adaptation to new technologies and definition of perceived sources of threat.

Chapter V – Democratic Life

Bahrain has experienced direct democracy ever since Al-Khalifa assumed the rule of the country. Constant contact and consultation between the ruler and people, free and full access by the people to the ruler – the constant relationship between the government and the people in Bahrain has helped moulding all government policies in a way that is consistent with the wishes and interests of the people. In fact, the government remains to be fully receptive to the feelings of

the people and, hence, has worked for the sole purpose of serving public good. Against this background, democracy has been reflected in practice through the constitution and the elected National Council and further enhanced by the addition of a Shura (consultative) council that has proved to be a forum of serious discussion, examination and advice over an entire matrix of public issues of concern to the country. Moreover, the Shura council has proved to be capable of being sufficiently receptive to new developments. Its cooperation with the government – in public interest – has been exemplary.

However, democracy is dynamic by nature, the wider its horizon, the greater the practice thereof. In this respect, it is worth mentioning that many a deep-rooted democracies are bicameral ones, in which cases one chamber represents the whole gamut of ideas and views on current affairs as reflected by representatives of people from all brackets whereas the other chamber would serve as a forum of experts and expertise. The experience of those democracies has proved that a bicameral system is of great importance in political terms. In order to broaden people's participation in public affairs, in line with principle of Shura, a basic Islamic principle of the government system of Bahrain, and in true belief of the right of the entire people to practice their constitutional political rights and with a view to being congruent with deep-rooted democracies, it is in the interest of the state of Bahrain to adopt a bicameral system whereby the legislature will consist of two chambers, namely one that is constituted through free, direct elections whose mandate will be to enact laws, and a second one that would have people with experience and expertise who would give advice as necessary. This bicameral structure of the legislature, a balanced one indeed, would offer many interrelated advantages, including people's participation in legislation-related affairs and interaction among all ideas and orientations within a single legislative council. This proposed structure of the legislative council would require an amendment of the constitution. It would achieve the dual benefit of making use of wisdom and expertise on the one hand and a variety of views of Bahraini electorate. Such an amendment would certainly allow for a wider horizon for democracy. This would support efforts being made for development, stability and prosperity. It is a democracy that supports social peace and national unity.

Chapter VI – Gulf Relations

The government and people of Bahrain firmly believe that the peoples of GCC countries share the same goals, interests and destiny. They share blood relationships that are further galvanized by common history, culture and custom. These have been sufficient grounds for Bahrain to be a founding member of GCC along with other sisterly Gulf Arab countries.

A serious cooperation among GCC countries is of utmost importance to the highest interests of all sisterly member-states, including maximum development for the countries and peoples of GCC. In this respect, GCC has proved to be capable of defending the freedom and sovereignty of its member-states and to serve as a shield to protect their independence. Therefore, the state of Bahrain

shall always work, with all its force, to strengthen GCC and to support the just causes of its sisterly member-states. The state of Bahrain considers this as one of its policy core constants that are organically related to Bahrain belief that its security and prosperity are part and parcel of those of other sisterly GCC member- states.

The state of Bahrain shall work closely with its sisterly GCC member-states for greater coordination, rapprochement and integration within GCC particularly in those areas that still require a more effective coordination such as economic integration, defence cooperation, information as well as people's participation in GCC organizations.

Chapter VII – Foreign Relations

The state of Bahrain is proud of its Arab identity, its people are part of the Arab nation and its territory is part and parcel of the Arab world. This sense of belonging is reflected in common language, religion and culture as in common hopes, sufferings and history. Therefore, the state of Bahrain shall continue to effectively and closely work with other sisterly member-states of the league of Arab states. It shall continue to pursue its efforts, in close cooperation with other Arab countries, to further enhance the role of the Arab League in order to maintain the same as a political and legal institution that embodies Arab unity and furthers joint Arab action and common will. The state of Bahrain reiterates its support of all forms of inter-Arab economic cooperation.

The manifestations of this considered policy of the state of Bahrain include the following: Bahrain offers unqualified support to Arab just causes. It is committed to stand by Arab brethren on their critical causes. In this respect, the state of Bahrain supports and stands for, Palestinian legitimate rights, particularly the right of the Palestinian people to have their independent state with Al-Quads Al-Sharif as its capital. It reiterates the need to secure the restoration, and respect, of all Arab rights under international legal rights. Within the Organization of Islamic Conference (OIC) and true to its firm belief in Islamic values of right, good, justice and peace, the state of Bahrain maintains the cooperation among OIC members is of utmost importance to support national independence and self-determination issues and to reach a higher level of economic development in member states.

The state of Bahrain hopes that OIC will be more effective. In the realm of international political relations, the state of Bahrain, maintains that world and regional peace is a core, strategic goal that justifies the greatest effort. Accordingly, it reiterates that it is solemnly attached to the core principles of peaceful settlement of all international disputes, prohibition of use of force at the expense of the territorial integrity or political independence of any country. The state of Bahrain encourages and supports all international efforts for peaceful settlement of regional disputes. It is noted that since it joined the United Nations, Bahrain has contributed to all UN activities, resolutions, events, agreements and

conventions, particularly those related to human rights, civil, political and socioeconomic rights, women's rights as well as the work of UN specialized agencies. In the realm of international economic and trade relations, the considered policy of the state of Bahrain stands for free international trade, movement of investment, capital and labour while taking into account national interests of individual countries. In so believing, the state of Bahrain maintains that each country enjoys the better title over its own natural resources that cannot be disposed of under any external pressure or dictation.

Outlook

In view of the consensus of both the government and people as to the content of this charter; In view of the fact that it serves as a future national action instrument, and in view of the fact that it requires certain amendments of the constitution, it is deemed necessary to decide on the following :

First – The Name of the State of Bahrain:

An amendment of the constitution shall determine the official name of the state of Bahrain as may be adopted by the Amir and the people of Bahrain.

Second – The Legislature

The provisions of part 4 Chapter 2 of the constitution on the legislature shall be amended to be consistent with democratic and constitutional developments worldwide in so far as the introduction of bicameral system is concerned. This would mean that one chamber is constituted through free, direct elections whose mandate will be to enact laws while a second one would have people with experience and expertise who would give advice as necessary. Laws shall be enacted as prescribed in detail by the constitution and in congruence with constitutional norms and traditions followed in deep-rooted democracies. The people's consensus on this charter is a true reflection of their will to have a more stable, prosperous future under the leadership of H.H Shaikh Hamad bin Isa Al-Khalifa, Amir of the State of Bahrain. We pray to God Almighty to help us be among "those who faithfully observe their trusts and their covenants" as described in the Holy Quran. In God Almighty "we put our trust." Verily, God Almighty "is the best to protect and the best to help."

THE SUBLIME ADDRESS OF HIS MAJESTY THE KING SHAIKH HAMAD BIN ISA AL-KHALIFA

Adress to the head and members of the Supreme National Committee assigned to draft the national charter, who submitted the draft of the national action charter of the state of Bahrain, at Riffa, on Saturday, 7th Ramadan 1421 h, 23rd December 2000

Dear brothers and sisters,

May peace and God's blessings be upon you.

Today is the dearest day in the history of Bahrain and a glorious moment in our dignified and honoured path. We confidently can say that your accomplishing of the national charter draft, represents an advanced step in the course of the modernizing the political structure of the state including the systems and institutions, in such a way that meet the aspiration of the progressing of the people of Bahrain towards further civilized progress and rising.

It is our pride to achieve this national unanimity in the form of the charter draft after several gatherings of useful dialogue with various sectors of our civilized community and its representatives. Accordingly you had gathered within the context of this national committee and from various positions, thus enriching the common visions with constructive views and free exchange of opinion in free Bahrain, to strengthen the principles of human coexistence and civilized dialogue which embodied, and over ages, the democratic feature and practices that are formulated today by the charter. You have in fact demonstrated your ability to process this pioneering mission in the history of the nation and proved your competence to shoulder the task for the interest of all citizens. These are only the first step that precedes a number of dialogue and forums within our national course, fortunately coinciding with last ten days of Ramadan, a document which shall be remembered by next generations as Ramadan document.

Our brothers and sisters,

With every confidence and pride we receive from you the draft of the charter, the allegiance document, as you wished, and it will be the subject of our recognition and consideration and a responsibility that we care for as we, pledged since the beginning and in light of our great confidence in the awareness of this dear citizens.

This will be submitted to a general public referendum according to the procedures in this regard, in order receive the opinions and views of the people. Once we are satisfied that there is general consensus about this draft, we shall endorse it as a basis for our national path, upon which we shall be guided in processing the national action and complement the modernizing of the state institutions and its constitutional power, while implement in each stage those parts deemed to be in line with the aspirations of the citizens,

Dear brothers and sisters,

We shall remain hand in hand and united over the course of this process and I hereby stretch my hand to every single Bahraini, men and women, as it showed the pledge of allegiance and it will show a new formula of allegiance. The new formula and the national modernization shall be the features of our best days to come.

May peace and God's blessings be upon you.

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²¹⁰ All quoted sources available online as of the closing of this thesis on August 18th, 2008

Curriculum Vitae of the Author – Andreas Baumgartner

- Andreas was born in Melk, Austria, on December 13th, 1976. He is the eldest son of Dipl.Paed. Irene Baumgartner, a secondary school principal, and Mag. Helmut Baumgartner, a real estate broker.
- After primary school in Melk, he attended the “Stiftsgymnasium der Benediktiner Melk” (Benedictine Preparatory School, Melk) and spent one semester at St. John’s Preparatory School in the United States of America. He was president of his class in Melk, and graduated best-in-class “summa cum laude” in 1995.
- After his military service, Andreas Baumgartner started his university studies at the University of Vienna in February 2006. During his time as full-time student at the University of Vienna, he also participated in the ERASMUS program, spending one year at the University of Wales Swansea, Great Britain.
- Andreas graduated from the University of Vienna’s Business School (Mag. rer. soc. oec., International Business Administration) “summa cum laude” in 03/2000, and finished his PhD studies (Dr. rer. soc. oec.) “summa cum laude” in 03/2002.
- Andreas also graduated from the University of Vienna’s Law School (Mag. iur.) in 10/2000, and finished his S.J.D. studies (Dr. iur.) “summa cum laude” in 04/2002.
- In addition, Andreas completed the European Master of Business Sciences program, a joint program for selected students of multiple European business schools (including – at that time – the University of Vienna and the University of Wales Swansea) by graduating in 07/2000 “with distinction.”
- Andreas started his political sciences studies in 03/2002. From the beginning, his special interests caused him to look beyond the Austrian political system, leading him to focus on comparative political sciences (including seminars on Japan as well as Latin America, to mention two examples) and international politics (with a special interest in international law).
- Andreas was also actively involved in the Austrian National Union of Students (OeH). Among multiple other positions, he was a member of the Senate of the University of Vienna from 12/1997 – 10/1998 and again from

10/1999 – 06/2002. He also served as National Treasurer of the Austrian National Union of Students from 07/1999 – 06/2001.

- In 2001/02, Andreas first completed his internship at the District Court I of Vienna and the Vienna Commercial Court, before starting to work at Vienna law firm CMS Strommer Reich-Rohrwig Karasek Hainz
- In 09/2003, Andreas joined the international consulting firm McKinsey & Company. Originally based in Vienna, he focused mainly on Europe, before he started working intensively for clients in the Middle East, among them many public sector clients. In 09/2006, he transferred to the McKinsey Middle East office and relocated to Bahrain.

Executive Summary

Bahrain is a small archipelago in the Arabian Gulf, which features a long and proud history. The newest chapters of this history are comprehensive reform efforts to open and modernize Bahrain and make it ready for the challenges of a future without oil production.

Political reforms are at the very heart of these comprehensive reforms, which started when the current King became the ruler in 1999. In particular, the events since 2001/2002 and the new Constitution are of major significance. The latter was promulgated by the King in 2002, and has remained the subject of heated debates ever since.

To help the reader understand the political changes, as well as their boundaries, this thesis first gives some context by providing key facts about Bahrain, including about its history, as well as an overview of the political context of Bahrain's neighbours. It also refers to the tensions between Sunni and Shi'a in Bahrain, which are a major determining factor in politics.

Subsequently, the thesis looks at the political concepts as found in the 2002 Constitution (including a comparison with the old 1973 Constitution) and analyzes the perspectives of both the Government and the opposition groups. In doing so, it strives to find an answer to the following question: Do the reforms make Bahrain the show case of democracy in the Middle East, or are they rather a step backwards, compared to where Bahrain already stood in the mid-1970s?

To draw a comprehensive picture, the political reforms are put into the context of the whole comprehensive reform programme (incl. economic reform, labour reform, education reform, etc.). In addition, some current discussions and trends are highlighted.

The thesis finally comes to the conclusion that over the course of the last few years, Bahrain has indeed undertaken major steps towards democratization and comprehensive reform. Together with Kuwait, it is currently taking the lead among the Gulf states. However, the journey has only just begun, and it is still long and stony!

Zusammenfassung

Bahrain ist ein kleiner Inselstaat im Arabischen (Persischen) Golf, der bereits über eine lange und stolze Geschichte verfügt. Das jüngste Kapitel dieser Geschichte sind Bestrebungen zu einem umfassenden Reformprogramm, durch das Bahrain geöffnet, modernisiert und für die Herausforderungen einer Zukunft ohne Ölproduktion vorbereitet werden soll.

Ein Kernbestandteil dieses Programms, das mit dem Amtsantritt des derzeitigen Königs 1999 begann, sind politische Reformen. Diese spiegeln sich insbesondere in den Ereignissen der Jahre seit 2001/2002 sowie in der 2002 erlassenen, bezüglich ihrer Legitimität heftig umstrittenen Verfassung wider.

Um es dem Leser zu ermöglichen, die politischen Veränderungen, aber auch ihre Beschränkungen zu verstehen, bereitet die Diplomarbeit zunächst den Kontext vor, indem sie Grunddaten über Bahrain anbietet sowie sich mit einer historischen und regionalen Betrachtung auseinandersetzt. Danach geht sie auf die Spannungen zwischen Sunni und Shi'a in Bahrain ein, ohne deren Kenntnis sich die Reformen und die Reaktionen darauf ebenfalls nicht verstehen lassen.

Schließlich trachtet die Diplomarbeit, durch eine Analyse der Konzepte der Verfassung aus 2002 (inklusive eines Vergleichs mit der alten Verfassung aus 1973) und einer Auseinandersetzung mit den Sichtweisen sowohl der Regierung als auch der politischen Oppositionsgruppen eine Antwort auf die Frage zu finden, inwiefern Bahrain tatsächlich auf dem Weg in Richtung Demokratisierung ist. Machen die Reformen Bahrain zu einem Lehrbeispiel für Demokratie im Mittleren Osten oder handelt es sich eher um "Schritte rückwärts" im Vergleich zu den Rechten, die Mitte der 1970er Jahre (vor einer 25jährigen autoritären Phase) bereits erreicht waren?

Um ein vollständiges Bild zu zeichnen, werden die politischen Reformen schließlich noch in den Kontext des gesamten Reformprogramms eingebettet (inkl. Wirtschaftsreform, Arbeitsmarktreform, Bildungsreform, etc.) sowie einige derzeit aktuelle Diskussionen und Trends aufgezeigt.

Die Arbeit kommt zu dem Ergebnis, dass Bahrain über die letzten Jahre tatsächlich signifikante Schritte in Richtung Demokratisierung und umfassende Reform gesetzt hat. Bahrain ist damit (gemeinsam mit Kuwait) zu einem Vorreiter unter den Golfstaaten geworden. Aber der Weg zum Ziel umfassender Demokratie und Reform ist noch lang und beschwerlich.