

Voice of Bahrain

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Extra-constitutional changes by the Al-Khalifa:

A testimony for inability to rule with honour

Imposing extra-constitutional changes on the 1973 Constitution has, once again, illustrated the inability of the Al-Khalifa ruling family to honour its pledges and commitments. The Constitution is the only source of legitimacy of the hereditary rule and is a binding contract between the people of Bahrain and the Al-Khalifas. Article 104 of the Constitution stipulates that "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". Thus the initiative adopted by Sheikh Hamad bin Isa Al-Khalifa to impose certain changes to that historical document outside its remit is a gross violation of its articles.

The changes were prepared by the Al-Khalifa and presented to a 46-member committee handpicked by the ruling family to rubber-stamp them. When it became clear that the intention was to change the Constitution, several members of the committee withdrew in protest. The Al-Khalifa had already made up their mind and were not ready for any discussion of those changes. The committee held several meetings before announcing their endorsement of the changes, which was in clear violation of the tenets of the Constitution.

On 2 December, the members of the committee were handed the document and were told that by 23 December, they would be required to undersign the so-called charter so that another appointed body, a "popular congress", appointed by the government will ratify the changes. Soon after, it became clear that the government had an ill-intentioned plan. All seminars were banned and no journalist was allowed to criticise the arrangement. In fact, the members of the committee were told to keep all papers confidential.

The opposition provided the people of Bahrain with details of the so-called charter. It became obvious to the people of Bahrain that the Al-Khalifa had decided to re-write the history of Bahrain and to change the constitution. The changes were to create a bicameral parliament with an up-

per appointed chamber and a lower house that will also contain the ministers as ex-officio members. The two houses will need to meet for any issue pertaining to critical matters. It will mean that the government will have some 60% of the two houses appointed with only 40% directly elected.

Moreover, the Al-Khalifa want to convert Bahrain into a kingdom and hence a new language started to surface. "The Amir and his loyal people", "the Amir and his ministers", etc. The source of legitimacy is not the people and there is no constitutional framework as the so-called charter states clearly that the 46 members are "presenting the draft changes" and they leave it "to the discretion of His Highness the Amir to decide the way forward". This statement is the kingpin of the so-called charter. It is up to the Amir's discretion to do what he sees fit in whatever shape he wants. It is a testifying statement for the entire exercise where the source of legitimacy is to be officially moved from the people to the Amir (or future "king") and where the constitutional framework is replaced with the "discretion of His Highness".

The outcry of the public and the resistance mounted by the opposition to these flagrant moves have resulted in minor changes. These were the changing of the introduction of the so-called charter, which contained erroneous references to Bahrain's history, the cancellation of the popular congress on 23 December and its replacement with a vague promise to hold a referendum for the people to express their opinion.

In societies, which had experienced political upheavals, the norm has always been to go through a national reconciliation process. This would include a serious dialogue between the government and the opposition, releasing political prisoners, allowing a degree of freedom and debate on all issues of contention and bringing the society back to a degree of normality. None of these conditions have yet been met. The prisons contain political detainees some of whom have been behind bars for more than five years because of their political opinion. Bahraini opposition figures are prevented from returning to their country from exile. The emergency laws are in force while

public freedoms are curtailed. Any discussion of the future of the country is therefore a futile exercise.

The imposition of restrictions on the movement on former detainees and curtailing their liberties is a serious breach on individual freedoms. Almost all opposition figures that have been released since Sheikh Hamad came to power had to forfeit their natural rights. Accordingly, they are banned from engaging in political or religious activities of any kind. Those who attempted to exercise their constitutional rights have been summarily detained, tortured and made to sign on more stringent conditions. Last month several people were subjected to ill-treatment at the hands of the torturers and threatened with further abuse if they did not obey the orders. Restrictions on freedom of expression meant that no real debate took place on the main topics affecting the people. Open discussion of the charter was prohibited and all journalists were warned against taking up the issue. When the Amir delivered his speech on 16th December, it brought little comfort to the population that was waiting for courageous steps by a man whose media have exaggerated his "reform" programme.

Certainly, the ruling family has been advised by their friends to heed the calls for reforms if they wanted to retain a degree of stability in the country and safeguard their hereditary rule. British officials have repeatedly stated their policy of "constructive engagement" with the Al-Khalifa, while offering political support. It is not yet known who has encouraged the Al-Khalifa to change the country into a kingdom, or to distort the country's Constitution to suit their agenda, but it is widely believed that the Al-Khalifa would not act beyond what their backers allow them to do.

The hope is that these backers will act to stop the excesses of the Al-Khalifa, prevent them from mistreatment of the people of Bahrain, uphold the 1973 constitution and abandon their dream of turning Bahrain backward.

Meanwhile, the Bahraini people and opposition will work to ensure that the country does not slide into more tyranny and despotism.

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Demonstrators attacked

The security forces attacked a pro-Palestinian march on 22 December at 1.30 pm (local time) in Ras Romman, Manama. Citizens gathered after the end of Friday prayer in Ras Romman grand mosque to mark the Day of Quds. They started their peaceful march chanting pro-Palestinian slogans and calling for an end to Israeli aggression. Two lorries, four jeeps and two other vehicles, as well as several salon cars, fully laden with security forces and intelligence officers, started attacking the citizens with tear and smothering gases. Scores were arrested on the spot and many youths had their identity cards confiscated for further interrogations.

Repression

On 20 December, Sheikh Hussain Al-Akrafi was detained and then tortured by Farooq Al-Maawdah at the Budaya Police Station. Sheikh Al-Akrafi had spent many years in detention without charges and was released this year on the condition that he doesn't participate in public functions. In the past few days he attended a religious gathering and as a result, Farooq Al-Maawdah conducted a severe torturing session against him. He was forced to re-sign pledges that he would not participate in any future function. The torturer Al-Maawdah asserted that he would conduct similar torturing if Sheikh Al-Akrafi did not obey the interior ministry.

No freedom

The Associated Press (AP) reported on 20 December the annual survey issued by "Freedom House". Of the world's 192 nations, the study rated 86 as "free," meaning citizens enjoy a broad range of rights. Fifty-nine nations were rated "partly free," because of corruption, dominant ruling parties and religious strife. In the remaining 47 nations, citizens are "not free," because they are denied basic political rights and liberties, the study said. "The report noted some exceptions; some poorer nations offer high levels of freedom, such as Belize, Benin, Bolivia and Jamaica, and some prosperous nations have high degrees of repression, such as Bahrain, Brunei and Libya". Freedom House said in its report on Bahrain "despite conciliatory gestures, the government continued to repress Shiite activism, tried and sentenced political detainees en masse prior to Amnesty International's visit in order to reduce the number of administrative detainees..."

AFP Report on Bahrain

Dec. 19 (AFP): - Bahrain announced Tuesday democratic reforms to restore parliament which was dissolved in 1975 and set up a kingdom, as the exiled opposition called for guarantees to ensure fair elections. A high-level drafting committee chaired by Justice Minister Sheikh Abdullah bin Khaled al-Khalifa has approved a national charter

which will, be put to the emir, Sheikh Hamad bin Issa al-Khalifa, on Saturday and submitted to a referendum.

The plan, without fixing a date for the referendum or the polls, lays down Bahrain's new status as a constitutional monarchy and calls for an elected parliament and appointed shura (consultative) council as the legislative authority. "We have made our first steps on the road to democracy", said committee member Ibrahim Bashmi.

Last week, the emir announced the plans for Bahrain, a close ally of the neighbouring kingdom of Saudi Arabia, to restore a directly elected parliament, after the house was dissolved in 1975. In a series of popular moves to mark Bahrain's 29th national day, Shaikh Hamad at the same time decided to slash electricity fees and grant an extra month's salary to state employees.

Bahrain introduced an elected parliament in 1972 but it was dissolved three years later for "obstructing the work of government". The mainly Shiite Muslim opposition has campaigned for it to be restored, sparking unrest that cost at least 38 lives between 1994 and 1999. The unrest ended after Shaikh Hamad took over as emir last year after the death of his father.

Kuwait is the only other Gulf Arab monarchy to have an elected parliament, although women do not have the vote. Manama newspapers have said women would be given the vote in Bahrain.

Bahrain has since 1992 had an appointed consultative council of 40 members. In September, a new list included for the first time a Jew, four women, one of them a Christian, and a businessman of Indian origin. And the tiny Gulf Arab archipelago can declare itself a kingdom without any change in the ruling system of the constitutional monarchy, a senior official said on December 6.

The exiled Bahraini opposition group called Tuesday for national reconciliation before Manama goes ahead with the reforms. "The opposition demands a national reconciliation, which entails the release of all political detainees and prisoners, and the unconditional return of the exiled", said the London based Bahrain Freedom Movement (BFM).

"The Bahraini people who have not voted for 27 years do not have confidence in the government, and they need guarantees against referenda whose results are known in advance," BFM spokesman Mansour al-Jamri told AFP. "Credible elections need preparations with the participation of all categories of society, including the opposition, and a referendum in the presence of independent international observers," he said.

Amiri disappointment

Despite containing an implicit recognition of the rights of Bahraini people in the Amir's statement of 16 December, opposition forces expressed their disappointment

that the Amir did not take a brave step to end the political crisis in the country. He did not release all political detainees and prisoners, neither did he say anything about the restoration of the constitution. Instead, he dwelled on the changes to the constitution that aim at changing Bahrain's modern constitution into a medieval monarchy where citizens would be turned into subjects.

Only few political detainees were released. Sheikh Hussain Al-Deihi, Sheikh Sadiq Al-Durazi and Mr. Mahdi Sahwan were released after five to six years in detention. They spoke of the extent of torture they had been subjected to in order to force them to concede to the demands of the absolute dictatorship. Many more people remained in Al-Khalifa jails including Mr. Abdul Wahab Hussain, Mr. Hassan Mushaimaa, Sheikh Hasan Sultan and Seyyed Ibrahim Seyyed Adnan.

Bahraini exiles staged a protest picket in front of the Dorchester Hotel in London on 18 December and distributed opposition leaflets and statements to those attending a celebration organised by the Bahraini Embassy in London. The exiles called for an end to dictatorship, restoration of the National Assembly, and punishment of the torturers. A statement for the opposition said:

"1 - While the opposition welcomes any step to curtail the excessive human rights violations, it remains committed to the rule of law and rejects the policy of running the country by Amiri decrees and personal gestures.

2 - The main demands are clear: the reinstatement of the constitution, the release of all political detainees and prisoners, the unconditional return of exiles, the repeal of the emergency laws (i.e. State Security Law and State Security Court) and the investigation of all human rights abuses committed over the past 25 years.

3 - The people of Bahrain aspire to a new era in which the rule of law is upheld, constitutional governance is respected and pluralism practiced.

4 - Any changes to the Constitution can be processed through the mechanisms prescribed by its articles most notably Article 104 which states that: "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".

5 - Based on the above, any changes that may be proposed by the government-appointed committee will be considered null and void. If the government opted to enforce these changes it would be acting illegally and would pave the way for more instability in the country.

6 - Bahrain needs a modern democratic system and not an ancient regime. The opposition views with revulsion the proposed change of Bahrain into a kingdom with abso-

lute powers in the hands of a despotic king.

7 - It is difficult to be optimistic as the mechanisms that have facilitated human rights abuses and led to dictatorship remain intact. Unless these tools of repression and despotism (State Security Law and State Security Court) are removed, the situation is unlikely to improve.

8. A way out of the current constitutional impasse is for the government to involve all section of society (including the opposition and their representatives in exile) in the preparation for, and the execution of, a popular referendum to be held in the presence of acceptable independent international observers to ascertain the views of the Bahraini population towards the government's proposed constitutional changes and the way forward."

Lord Avebury's intervention

Conference on Bahrain (December 15, 2000, Moses Room, House of Lords)

It is exactly a year today since we last held one of these seminars, and this year we mark the sixth anniversary of the Popular Uprising in Bahrain. I was looking back at what I said on the last occasion, and since we are criticised by the Bahrian Embassy's PR representatives, The Policy Partnership, for never recognising any of the improvements in the human rights situation, perhaps I can begin by reminding you that I did welcome the release of some prisoners and the return of a few exiles.

This year also I begin by acknowledging that further releases of prisoners have taken place and some more exiles have been allowed to return, and I join with Amnesty International in welcoming the establishment of a human rights body within the Shura Council, and the ratification of the UN Convention Against Torture. However, I also share their concern, that the mechanisms which facilitated gross human rights violations in the past remain in place.

The power to detain a person indefinitely without trial not only still exists, but is still being exercised. No reason has ever been given for the detention of Abdul Wahab Hussain, though the Minister, Mr Peter Hain, told me on October that over 1,000 prisoners had been released and only a small number still remained in custody. In 1999, the Red Cross said they had visited over 1,300 prisoners the previous year when they published their report in June.

This year, at the middle of December they are still several weeks away from announcing the figures, so we can assume that it is large enough to cause them some difficulty with the arithmetic. Peter Hain said there was an 'ongoing programme of releases of long-term detainees', but apart from Abdul Wahab Hussain, several others arrested in January 1966 are still detained including Hassan Sultan, Hussein al-Daihi, Hassan Mishma'a, and Sayyid Ibrahim Adnan

al-Alawi. All of them have been pressured to sign a document admitting misconduct and undertaking not to take part in any political activity if they are released. It is no doubt because of their staunch refusal to bend the knee and forfeit their political rights that they are still languishing in prison after nearly four years.

You may remember that Abdul-Wahab Hussain, one of the original 14 signers of the 1994 petition to the Amir and a member of the Committee of the Popular Petition (CPP), was released on March 17, 2000 following an order from the High Court of Appeal, but he was rearrested after spending an hour at home.

Among others arrested at the beginning of 1996 were Shaikh 'Ali Mirza Al-Nakkas, a blind cleric aged 50, who died in incommunicado detention in June 1997; Shaikh Abdul Amir Al-Jamri, Shaikh 'Ali Bin Ahmad al-Jedhafi and Sheikh Ali Ashoor. The latter three detainees were released but under humiliating conditions, forfeiting the right to freedom of expression in a way that violates Article 19 of the ICCPR, because the restrictions imposed on them were not provided by law, but were arbitrarily imposed as an administrative condition of their freedom.

Sheikh Ali Ashoor, for instance, was made to sign an undertaking not to take part in any political activity, and in particular, not to ask for restoration of the Constitution, or to pray in certain areas.

Shaikh 'Ali Bin Ahmad al-Jedhafi, who was also made to sign an undertaking when he was released in July 1999 after spending more than three years in detention without charge or trial, was beaten up on the street when he nevertheless continued to preach, and has kept silent for the last year.

Now the UN Working Group on Arbitrary Detention is to visit Bahrain at the end of February 2001, a visit which has twice been delayed, and I expect the remaining detainees to be let out by then. If they can hold out, they may be able to avoid the conditions imposed on the others. But the Working Group's main task will not be to deal with particular cases, if any are still in prison without trial: it will be to secure the rule of constitutionality, under which nobody will be arbitrarily detained in future.

The same applies to the practice of exile. Yes, some exiles have returned, voluntarily humbling themselves like a defeated enemy; but other citizens, who tried to go back to their native land, perhaps after hearing of the assurances that were given by the Amir in his National Day speech last year, were stooped at the airport and expelled after varying lengths of detention.

Yes, the Crown Prince repeated the invitation to return when he visited Britain at the end of February, though he qualified the welcome back by hinting that some returnees might be liable to prosecution for unspecified offences. Obviously, if any citizen returning would have to obey the laws of

Bahrain like anybody else living there and if that was all the Crown Prince said, it was perfectly acceptable. But if he meant that returnees could be prosecuted for their opposition to the hereditary dictatorship during their years abroad, that would be totally unacceptable. One can understand why most exiles prefer to wait until the rule of law has been established in Bahrain before they risk being thrown into prison on or after their arrival, but in the meanwhile I hope that in the Amir's speech this year he will restore the unconditional right of return prescribed by international law.

We have had some curtain raisers for the National Day announcements, so we have some idea already of what is proposed.

First, there is already a Supreme National Committee, under the chairmanship of the Justice Minister Sheikh Abdullah bin Khalid al-Khalifa, a member of the royal family, which holds practically every important position in Bahraini society, from Ministers to judges to Ambassadors, to the head of the Bahrain Union of Table Tennis just appointed, Sheikh Haya bint Abdul Aziz al-Khalifa. This National Charter Committee has been appointed to produce a new Constitution, and has been discussing a draft written by foreign experts since December 2. The document is to be approved and handed on to a larger group of 3,000 people, also entirely appointed, and presumably it is then promulgated by decree.

One problem with these arrangements is that under Article 104 of the existing Constitution, as I pointed out to the Ambassador, amendments can only be made by a two-thirds majority of the Assembly, which of course has not met since 1975. However, if the intention is genuinely to replace a partly elected Assembly, as it was under the 1973 Constitution, with a fully elected Assembly having plenary legislative powers, nobody is going to argue with that.

Indeed, if that is all there is to the proposal, it is hard to see why no public discussion of the draft has been allowed. Six people resigned from the National Charter Committee after they were ordered not to distribute copies of the draft, and two seminars to discuss the proposals were forbidden by the Government. If the al-Khalifa say they are offering people greater freedom and democracy, it is a paradox that right at the beginning of the process, all debate is silenced outside the closed doors of an appointed Committee. Virgil's tag, I fear the Greeks, even when they are bearing gifts, has to apply to the offer being made by the Amir, and as I told the Ambassador when we discussed it recently, we need to look at the small print.

If the new elected Parliament had unfettered power to enact legislation, and if there is separation of the executive, the Parliament and the judiciary from each other, as was first explained to me, I should welcome the proposed changes. But from what has leaked out, the proposals are not democratic.

Why is it necessary in a small country like Bahrain to have the top-heavy structure of a two-chamber legislature? As I said to the Ambassador, the Scandinavian countries all have single-chamber Parliaments. So do many other smaller states such as Guyana, with a population a little bigger than Bahrain's, or Papua New Guinea, with a population of over three million. This proposal arouses the suspicion that the intention is to create a House like the House of Lords of a century ago, to frustrate the will of the people.

I understand that the prerogative of appointing Ministers is still to be held by the Amir, who would thus continue to enjoy powers equivalent to those of a US President, but without the popular mandate. Also, unlike the US, these Ministers would occupy a third of the seats in the lower house, giving the Amir a significant power over legislation as well.

In addition, there is a provision that on certain important issues, the two Houses have to meet jointly, giving the appointed members of the upper House and the Ministers in the lower House a built-in majority.

The draft contains no proposals for repealing the State Security Law and dissolving the State Security Court, as I had been led to expect. The President of the State Security Court, who is of course a member of the royal family, is also one of the members of the Committee which is expected to rubber stamp the proposals. True, the National Committee suggests that the new 'democratic system' should 'segregate the powers of the executive and the judiciary, and if this means that the State Security Court is to be abolished, I warmly welcome that as a positive development. However, we should note a comment made by In a book published in 1977 by Professor Nathan Brown of George Washington University

"if rulers cannot out manoeuvre, mollify, or avoid independent Judges then their authority is truly circumscribed. No government in the Arab world is likely to allow such a situation to develop willingly... Neither an ambitious judicial actor (such as Egypt Supreme Constitutional Court) nor a democratic movement (such as Kuwait parliament) has been able to restrict executive authorities in matters deemed critical by senior executive authorities".

An independent judiciary, with the right to strike down acts of the executive which the courts decide are unconstitutional, would certainly restrict the powers of the executive. If that is what the Committee wants, they should make themselves clear. And if their Constitution is to be based, as they say in yesterday's Gulf Daily News, on 'long-standing democracies throughout the world', it must incorporate basic human rights such as freedom from arbitrary arrest and imprisonment, the right to a fair trial, the right to life, the right to freedom of religion including the right to manifest one's religion. I did not see anything in the Committee's statement about

the human rights content of the new Constitution, or about how citizens who claim their rights have been violated are to be given an effective remedy.

Much credit has been given to the Government of Bahrain for establishing a Human Right Committee, including a mention by the FCO in their annual report. I wrote to the Chairman of the Shura Council on September 15 asking him what the Committee had done, and was disappointed not to get a reply, considering that one of the Committee's functions, as I discovered by asking a Parliamentary Question in lieu of direct contact with the Committee, is 'activating joint work with similar Gulf, Arab and international committees'. It would be useful if the Parliamentary Human Rights Group could know what the Bahrain counterpart is doing. It apparently has no remit to consider individual complaints, and nor does any other organisation in Bahrain. The Committee does have the responsibility of 'following up human rights issues', but as it has done nothing public, one has no idea what these issues are. Has it looked at torture, or freedom of expression, or freedom of assembly?

What does the Committee think about the Government's prohibition of an NGO human rights committee? Eighteen people applied to form a Bahrain Human Rights Society on August 12. After two and a half months the Minister of Labour, Mr al-Shoalla, called a meeting of some of the 18 and told them (a) he thought the government committee was sufficient and (b) this was not the right time.

What does it think about the idea that Government should have unlimited power to stop private individuals forming committees or meeting to discuss current affairs? Has it provided any input to the Supreme National Committee? Has it had anything to say about the right of the Committee for Popular Petition to have a say on the new Constitution, and to be involved in the process of examining it?

If the Amir claims to have popular support for his scheme of constitutional reform, why not subject it to the test of public opinion, by holding an election under the existing constitution at which there can be a full public debate? If voters like the scheme, they will elect representatives who promise to carry it into effect. The Assembly can then make the constitutional changes in a way that is lawful under the existing constitution. It seems to me perverse to say that you are going to return to an even stricter adherence to constitutionality than you had before and then immediately to violate the existing constitution, by using decree powers.

Under the existing proposals, there is to be no genuine test of popular opinion. Once the constitutional amendments have been agreed behind closed doors by the 45 persons chosen by the Ruler, now reduced to 39 by resignations, they will be submitted to a gathering of 3,000, also hand-picked, and their task will be to ratify the document

without amendment. With that many people, it would be impossible to have a line by line discussion, as would be normal in a constituent assembly which is in effect deciding a brand new Constitution. What can be expected is that a series of speakers will heap extravagant praise on the document and the Ruler, and it will then be passed without a dissenting voice, as in the national forums of communist states.

At the same time, there is to be a great extravaganza of fireworks, balloon displays, car and motorcycle displays on what is described as the 'Well of Death', exhibitions by various ministries and expatriate communities, and 'fun games'. Perhaps, like the Roman Emperors, the al-Khalifas hope to distract the people from more serious matters by a cheap circus.

I am told, by the PR agency which has been engaged by the Bahrain Embassy, that I should say something positive about the changes which have occurred since Sheikh Hamad succeeded his late father. It strikes me that if Bahrain really had a good story to tell, they would not need to employ PR agents at all, and I deprecate the practice of using lobbyists which is universal in Washington but has happily been avoided in London up to now. I think that it would be in the public interest if these firms were obliged to disclose the amounts they spend on behalf of their foreign clients, including the hospitality dispensed to MPs and peers who visit their countries.

I do not believe it is my duty to echo the lackeys for whom everything the al-Khalifas do is wonderful. There are a good many of them, and perhaps one dissenting voice may be permitted. If I cannot make comments which grate on the ears of the royal family in London, what chance is there of an opposition being allowed to develop in Bahrain? And democracy without an opposition would be an antinomy, a philosophical contradiction. But let's be fair, and welcome the decision to give every adult the right to vote. Even if the 'Parliament' is unable to pass any legislation that does not meet with the approval of the royal family, it may provide a forum in which opposition voices can be heard. And once people taste the right to vote, their preferences naturally have to be considered by the candidates.

The right to elections also means the right to form political parties, to publish manifestos, to hold meetings, to distribute literature, and to have fair access to the media. Therefore however limited the role of the new Parliament may be, it could be the means of allowing the people to come out and express their views on matters that are not within the competence of the Parliament. It would be possible, even, for the CPP to put up a list of candidates. Whether or not the rules of the game are to be framed so as to allow all this to happen remains to be seen.

(Note: The so-called "popul congress" was cancelled without an official notice.)