

BAHRAIN

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The year Ahead the struggle for Constitution and repeal of Law 56

The disastrous public show exhibited at the Manama summit last month has confirmed the long-standing tribal feuding among the leaders of this troubled regional alliance. This time it was between Saudi Arabia and the host country, Bahrain. The essence of the problem lies in the competition to win the heart of the US administration to assist in combating the rising internal opposition to the autocratic rule in Manama and Riyadh. This time, the Al Khalifa had outmanuvred the Saudis through a programme of deception that had won the approval of the Americans. To Washington, what Sheikh Hamad had done was a timely help to the Americans who were struggling to prop up their slogan of "democratic partnership". Washington knows better than anyone else that what the Al Khalifa had done was no more than a window-dressing, but, in a region not well-known for political change, it was enough to consider it a major achievement. It is one of Washington's major mistakes in the region. The long-awaited political reforms should have made a difference, by transforming the tribal rule into a constitutional monarchy. The Bahraini situation is no where near that. Many Bahrainis had been hoping that the post-Saddam period would really bring a degree of democratization similar to the changes that followed the collapse of the Soviet Union. What they got has been a programme of deception, rich in words, but hollow in substance. The Bahraini example is certainly a sham of democracy.

The Saudis had been angered by Al Khalifa's economic pact with the US that would give them an edge in economic partnership with Washington. The preferential treatment that they would receive would put Saudi businesses in a less preferential situation. The Al Khalifa had not consulted their GCC partners, a step that had angered the Saudis. They wanted to snub the Al Khalifa by not giving enough weight to the Manama summit. They succeeded in weakening the show that Sheikh Hamad had intended to use to

bolster his image abroad after the disastrous step two months earlier, which resulted in the arrest and trial of a Bahraini human rights activist, Abdul Hadi Al Khawaja and thirty other citizens. That act alone had eroded three years of relentless efforts by the Al Khalifa to prove to the world their good behaviour. The Al Khawaja saga promptly ended that episode. Bahrain is no longer the only country in the Arab world without political prisoners. Most international human rights organizations were disappointed by the action of the Al Khalifa thugs, and issued statements condemning those repressive measures. Sheikh Hamad had been careful not to antagonize the US administration, which is eager to show to the world some achievements in democratic transformation. The economic pact between Washington and Manama that had been signed last September and is awaiting approval by the Congress, is meant to reflect a degree of trust between the White House and the Al Khalifa dictatorship. It has backfired badly for both sides.

Sheikh Hamad has paid a heavy price for running after the pact, and the Saudis have not waited long to snub him. Prince Abdulla did not attend the summit, a sign of the ageing of the regional alliance and the loss of heart by Saudi Arabia in one of its most successful enterprises. The other leaders who were attending the summit, were left dumbfounded. They had never expected to witness a public showdown between the two member states which had enjoyed the closest relations. What Sheikh Hamad had planned to be one of the most successful summits, has turned out to be one of the weakest and least innovative or productive. Sheikh Hamad is well aware of the stakes, and has rushed to Riyadh in order to rebuild the bridges and seek an understanding from the Saudi monarchy. The result has been rewarding to him. The Saudis have now conceded the oil production from the Abu Sa'afa oilfield should all be given to Bahrain. The 150,000 barrels per day production will

undoubtedly boost the Al Khalifa oil revenues and will lead to more enrichment of its most senior members, including the prime minister, Sheikh Khalifa bin Salman Al Khalifa. The oil revenues have always remained in their hands and would not concede sovereignty over production and export of its oil.

The extra revenue from Abu Sa'afa, is unlikely to improve the political isolation of the Al Khalifa. This isolation has been imposed by the people of Bahrain on the ruling family, some of whose members had committed serious crimes against humanity by indulging in serious human rights violations. The next four months will be crucial to the people of Bahrain. In May 2005, the UN Committee Against Torture, will review the extent of Bahrain's commitments to the articles of CAT (Convention Against Torture) which had been signed in 1999. The Al Khalifa commitment to CAT has been questioned after Sheikh Hamad had been forced to sign decree 56 which shelters torturers from the rule of law. The victims of torture have been calling for the closure of that chapter by re-addressing the needs of the victims, the investigation of all torture cases (that could run up to 10,000) over a span of quarter of a century, the rehabilitation of the victims and bringing to trial of those accused of committing heinous crimes against humanity. The Al Khalifa are not in a position to contain the situation, and have been in a state of psychological dis-orientation over the issue over the past two years. The outcome of this episode will determine the direction of the any reform programme. If Sheikh Hamad wants the West to acknowledge his "reform program" he has to drag his feet with his uncle, the prime minister, adopt a process of national reconciliation, repeal his ill-fated 2002 document, re-instate the only legal contract between his family and the people of Bahrain (1973 Constitution) and transform the country into a constitutional monarchy. Without these steps, his programme is doomed.

We demand democratic rights enshrined in a contractual constitution

The following is a statement by the Bahrain Freedom Movement on 13th December at the National Endowment for Democracy in Washington:

It is now more than thirty years since the US started to take active role in the politics of the Gulf. Following the withdrawal by Britain of her forces from the region in 1971, the United States entered into bilateral agreements with the small sheikhdoms that allowed them to use the bases that had been evacuated by the British. In the subsequent three decades the US did little to encourage democracy in those countries, while human rights violations became rampant. Tension within the evolving educated generation was rising as the monarchies became more dictatorial and repressive.

Bahrain has always stood out as a country of educated people who are aware, progressive and moderate. The opposition to the Al Khalifa ruling family had always existed, but became more organized and focused in the past two decades. The Iraqi invasion of Kuwait in 1990 marked a new phase in the geo-politics of the region. The American-led war against the Iraqi forces of occupation led to a marginal improvement in the internal situation. This is partly due to the fact that those monarchies were exposed as extremely weak in the face of any outside aggression, and that an internal openness was necessary. In 1992 the Bahraini elites, having sensed the international concern for the democratization process in the Gulf, signed a petition to the Amir calling for the reinstatement of the 1973 Constitution (that the ruling Al Khalifa family had suspended two years after it had been approved), the release of political prisoners and the repeal of the State Security Law. There was no response from the ruling family. In 1994 a popular petition was signed by 25,000 people calling for the same demands. A popular uprising erupted in December 1994 raising the same demands. The following five years witnessed one the bleakest periods of the country's history, as thousands were arbitrarily detained and tortured, scores killed and collective punishment exerted on the people.

In March 1999, Sheikh Isa bin Salman al Khalifa died and was succeeded by his son, Sheikh Hamad. After two years of silence, he introduced his "reforms programme" and lured the people to endorse a deceptive "National Charter". Under the continuing international pressures from human rights organizations and political groups, the new ruler ordered the release of political prisoners and allowed the return of the exiles. One year later, Sheikh Hamad took the most destructive action none of his predecessors

had undertaken. He, unilaterally, abrogated the 1973 constitution and imposed a tailor-made constitution. The people reacted angrily to this blatant step that had ignored the people's will, annulled the only binding legal document between the people of Bahrain and the ruling Al Khalifa family. The fury of the people led to a new political emergency that has thrown the country into confusion and uncertainty.

Toady, the people of Bahrain have resumed their peaceful struggle against the Al Khalifa dictatorship, calling for the reinstatement of the contractual constitution of 1973, abandoning the political naturalization programme (which aims at effecting a demographic change) and upholding the rule of law instead of Sheikh Hamad's way of ruling through gracious acts. The past few weeks have witnessed a serious decline in the political process. A known human rights activist was detained for several weeks for expressing a critical opinion of the prime minister, and tens of others were detained for protesting his arrest. It was, once again, the international pressure on the Al Khalifa family that forced them to release these innocent people.

Bahrain is today governed by absolute monarchical dictatorship, unprecedented in the country's history. It is backed by a constitution, written by the ruling family without the people's consent. It is being marketed through a programme of deception financed by increasing oil revenues. The public have no right to question the

country's finances which are in the hands of the ruling family. Human rights violations are rampant, and were administered heavy-handedly during the detention of the protestors. These rights have been compromised by Sheikh Hamad's Decree 56 which sheltered torturers and human rights violators. This decreed must be repealed. Freedom of expression is curtailed by the "Press bill" which makes it an offence to criticize the ruling family or exchange leaflets that are not sanctioned by it. The Societies bill is yet another example of the extent to which the Al Khalifa family are ready to go to institutionalize absolutism, totalitarianism and repression. Political naturalization remains the most dangerous programme undertaken by Sheikh Hamad, and is threatening the culture and existence of the original Al Baharna inhabitants of Bahrain. It is tantamount to cultural genocide.

The US is well-advised to take serious steps to urge real democratization in Bahrain. This is an effective way to combat dictatorship that breeds extremism and terrorism. We have often called for a national reconciliation process which leads to a binding contractual constitution starting from the 1973 constitution. These are moderate demands that the Al Khalifa rulers have all along rejected. We appeal to you to support the struggle of the people of Bahrain to achieve democracy, stability and civility through peaceful means.

New initiatives outside the Al Khalifa restrictions

It is now three years since Sheikh Hamad abrogated the country's constitution and imposed his alternative document. On 14th February 2002, all hopes of real reform in this troubled island were dashed as the ruler announced his new document forcefully declaring that it would be put into effect immediately. Since then, the country has been plunged into a new era of darkness with absolute dictatorship. The difference is that dictatorship is now legalized by a royal decree. This is a much worse situation.

Last year, the Al Khalifa took an audacious decision to prevent international legal experts from participation in a conference intended to discuss the constitutional crisis. It was a fiasco. The people of Bahrain gained more international support for their moderate demands including their call to establish a constitutional monarchy to replace the present absolute dictatorship. The participants in the conference decided to launch a popular petition to call for the reinstatement of the country's only contractual constitution, abandon the deception pro-

gramme and uphold the rule of law. More than 70 thousand citizens signed the petition despite the arrest by the Al Khalifa of tens of young men who were collecting signatures.

This year, it is hoped that more protests will take place to commemorate the black day on which the people's constitution was replaced by the Al Khalifa document. The people's zeal for change has not diminished and the call for a constitutional monarchy is becoming a national slogan. This is, of course, in addition to the call for the dismissal and trial of the prime minister, who is accused of crimes against humanity, embezzlement of public funds and absolute dictatorship.

There is now a growing conviction among the activists that it is meaningless to work from within the system which is rotten to the core, and that it is more beneficial to work independently of the Al Khalifa's restrictions. More activities are thus expected, not from the political societies, but from the independent associations, whose activities are widening and more daring.

From Hope to Crisis: The rise and fall of Sheikh Hamad's programme

The following is the text of a speech delivered by Mr Hassan Mushaima' at the House of Lords on 16th December 2004.

As most of you know, we have submitted petitions signed by the general public to the government of Bahrain, calling for the implementation of political and economic reforms compatible with rapidly changing environment. The petitions have called for positive response to satisfy the aspiration of the Bahraini people by allowing a free environment for political participation and socialization. The government has refused to engage in serious dialogue to achieve a way out of the persistent crisis. The people responded with restraint in highly civilized manner. They have sought serious dialogue between the opposition and the government. The USA, Britain and others who are interested in stability are aware that Bahrain's opposition has been striving to achieve a democratic transformation in Bahrain and the Gulf. Now let me highlight some relevant facts:

The government is trying to oppress the natives by means of naturalizing selective people from selective regions for political agenda. We call upon you to assist us in combating this humanitarian crime and bringing it to an end. The political naturalization Bahrain violates human rights in many aspects:

- 1- Discrimination against native Bahrainis. While 18,000 Bahrainis are unemployed-15% of the labor forces as per the official figures, most of the naturalized people enjoy state jobs upon their arrivals to Bahrain. The ministries of defence, interior affairs and the national guards are the main employers of these new "Bahrainis". It's important to remark that the majority of the indigenous people are not allowed to work in these institutions. Most of the politically naturalized are granted houses from the government from day one of their arrival, whereas the native people have to wait for years.
- 2- It is an abuse of power and violation of the rule of law.
- 3- Political naturalization is a tool to achieve fake democracy and manipulation of election results.
- 4- Political naturalization is employed for security reasons and to repress political dissent by natives.
- 5- Exploitation of naturalization for creating social and sectarian division. The AL-Khalifa, who rule the only GCC state with a Shia majority, have adopted a resolutely repressive policy toward their vociferous opposition. This gives Bahraini political opposition a different feel from those of the other Gulf states.

The AL-Khalifa, clearly lacking any legitimacy among a substantial part of the population, rule through force. Call in THE FAMILY-Michael herb) They do not eschew parliaments because they are weak and fear that a parliament will push them into the abyss of revolution, and this shows why the experiment of 1975 was abandoned and why the ruling family's current refused to resume parliamentary life under 1973 constitution. The immediate cause was the imminent loss by the government of a vote on a restrictive public security law, and they seem to have decided that they did not want to pay the moderate cost of sharing some of their power with the parliament. Today's constitutional crisis is worse than the crisis of the nineties. Between 1992 and 1999 (when the present ruler took over from his deceased father), Bahrain experienced a fierce struggle for democracy and the rule of law. When the king came up with his project of political reform, the whole democratic forces embraced his calls for political and administrative change with unprecedented vigor. The Amir's project was initiated with a referendum on a national charter that was carried out in February 2001.

The situation has, however, changed on 14th February 2002 when the ruler imposed his own constitution. Instead of honoring the pledges and commitments or abiding by article 104 of the constitution which stipulates that amendments are only implemented by the elected assembly, the state leadership acted alone and appointed a ministerial committee to enact a completely new constitution. This unilateral action was a breach of the 1973 constitution and a violation of the National Charter.

The four political societies consider the new gifted constitution to be illegitimate for the following reasons:-

1. The new "constitution" is a clear violation of the non-retrogression principle of constitutional law, which holds that "government may extend protection beyond what the constitution requires, but it cannot retreat from that extension once made" (Jeffries, J & Levins, D, California law review, 1998).
2. By giving the appointed chamber the same legislative rights that are entertained by the elected one, the percentage of the elected membership of the parliament of 1973 has been reduced from 75% to 50% (forty people elected and forty appointed) and this big negative change has undermined the effectiveness of the elected legislative power. In other words it nullified the constitutional doctrine of the sovereignty of the people and abolished the principle of the separation of three powers. Since the new

gifted "constitution" does not provide the minimum political participation which was provided in the constitution of 1973 as it gives the executive branch of government a considerable hegemony over the elected chamber. Based on the above, and in order to deprive the government from claiming that the new "constitution" was consented to, indirectly, through the opposition participation in the election, the four main political associations and many independent political activists have taken the decision to boycott the election. Moreover the election laws and procedures including the restriction put on political societies which forbids them from direct political participation have all strangled the democratic process.

The present constitution has made it impossible for the people to have any effect on the government through the ballot box. A government whose members do not have to go before the electorate, and is not appointed by an elected body or person, has no democratic legitimacy. The king is the head of the three branches of government: executive, legislative and judicial. He chairs the higher judicial council (Article 33). He amends the constitution (Article 35). He has power to proclaim a state of national safety or marital law (Article 36). He appoints civil servants, military personnel and ambassadors (many of those in important embassies are also members of the royal family (Article 40) and he has power to dissolve the chamber of Deputies.

These are not minor flaws which can be corrected with the passage of time. King Hamad is to be congratulated on putting an end to the torture that used to be practiced under his father, but the torturers were granted immunity for their crimes. Decree law 56 has allowed known torturers to escape retribution for the suffering they had inflicted on hundreds of people. That Decree is unlawful, and is in breach of the state's obligations under the convention against torture.

I am sure that life in Bahrain will not stand still. The opposition forces are determined to pursue their struggle to the end. The government faces a choice: uproot all the people, which is impossible, or satisfy the aspirations of the democrats.

The people of Bahrain assure all governments and nations of the world of their peaceful nature and urge free people of the world to support the constitutional demands. These demands, if implemented, will save the country from endless violent cycles. We wish all just governments further security and stability and we wish for all nations freedom and dignity.

Bahrain: a gateway to reforms in the Gulf

The following is an excerpt of a paper presented by Dr Abdul Jalil Al Singace at a recent meeting on Bahrain.

Bahrain has a key role to introduce reforms which will lead to local and regional stability. Hence, long lasting and genuine reforms will pave the path for similar move in the other states in the area.

Nevertheless, and irrespective of the positive move in this direction, many hurdles exist, which augment resistance towards belief and acceptance to change and reforms.

2- Obstacles

Constitutional Hurdles: focus of power in the hands of the king, representative of people cannot exercise their role to legislate (king appointee share that role), mandate to allow the executive body to manipulate, obstruct and legislate.

Absolute power (final say in the hand of the king):

The new constitution produced unilaterally on 14th February 2002 extends and broadens the power of the head of the state, the King. He practically holds in his hands all powers.

He appoints the ministerial Cabinet and administers the country through it.

He appoints members of the Constitutional Court

He appoints the Supreme Council of the Judiciary,

He appoints one half of the members of the National Council

He proposes changes in the constitution

He initiate marshal laws

He dissolves the house of representatives with a decree

He can extend a legislation as well as dissolution period

Focusing of the new Constitution to all powers at the hand of the head of the state (legislation is not enacted without his approval.) undermines the citizens' actual right to political participation as stipulated by international charters and casts shadows over the claimed democracy.

No segregation of powers; Judiciary System as means of repression

An independent and neutral judiciary is the last resort for rendering justice especially in view of the strength of the executive authority that dominates the executive authority. With the existence of laws that restrict freedoms, the judiciary is not only unable to play its role in protection and rendering justice with respect to infringement of rights and freedoms but becomes an effective tool used by the executive authority to tame the non-government forces and to penalize mem-

bers of the opposition. Therefore, the court cases filed against the executive authority or its staff members were not admitted. On the other hand, the executive authority used the tough laws and judiciary to rein in the local press as well as bringing pressure upon those who lend their support to cases of administrative and financial corruption. The same applies to the role played by societies and activists.

The Constitutional Monarchy

The basis of the National Action Charter is to employ the concept of the constitutional monarchy, which necessitates the existence of a royal family rooted to the king and his descendants of the virgin son. No member of the royal family should be engaged in any official post. Al-khalifa, Royal Family after 2002 constitution, represents not more than 0.5%, yet they possess about 60% of the official posts in the Government (Director and higher)

Continuous abuse of human rights

The Bahrain Constitution is glorified by a number of freedoms and rights, but leaves their regulation to the law, which makes laws, how bad they become, to have a constitutional basis. Many of the enacted laws were legislated in absence of an elected legislative body when there was no democracy and violate the principles of the Constitution itself. These laws, especially those related to basic rights, came to restrict freedoms, give a free hand and absolute power to the executive authority. Of the laws that are still in force there are the Penal Code promulgated in 1976, and Societies Law No.21 of 1989. In fact, the laws introduced by the government post Charter period are of the same nature. It includes the new Press, Printing and Publication Law no 47 of 2002. (see *Continuous Violations of Human Rights and Curtailment of Civic Liberties in Bahrain*)

The economical situation (poverty, deprivation and hardship)

As per the Poverty Report for the Bahrain Center for Human Rights issued on 24th September 2004, Half of the Bahrainis endures poverty and dreadful financial situation and tens of thousands are unemployed. There is no social security for the unemployed or underpaid, no there is one for elderly, divorced or widowed. This came as a result of corruption, lack of accountability, and mal distribution of wealth and state resources. Such environment will create popular resentment and could be expressed in many formats reflecting instable situation. There is no doubt that such environment is not suitable for long term planning and investment.

The Rule of law and abuse of power:

In Bahrain, tycoons and corrupt cannot be brought to justice and are above the law. Al-khalifa cannot be brought to civic courts. They have their own courts formed by the Al-khalifa Family council. There are many instances when investors and businessmen lost their cases as they were involved with some corrupt or linked, directly or indirectly to a member of Al-khalifa.

Recommendations

a- Constitutional changes:

These changes are very essential in putting life back in the reform program. They should fulfill the following objectives:

1- enabling representatives of people to exercise legislation freely without being obstructed by others (the king or his appointees and/or the executive body)

2- enabling representatives of people to prevent others (the king or his appointees and/or the executive body) from legislation without their consent.

3-enabling representatives of people to exercise administrative and financial monitoring on all members of the executive body, including the prime minister

Immediate action, in parallel to a long term plan, has to be made to alleviate the poverty and economical hardship. These would include introducing a social security scheme for the unemployed, underpaid, disabled, elderly and homeless, as well as employing Bahrainis in the State security establishments (Ministry of interior, Ministry of Defense and the National Guards) and replacing the non-Bahrainis in them.

Fighting all forms of corruption and stopping flow of public funds to the pockets of the tycoons in the country, starting by the prime minister, who has been in this post for over 30 years and responsible for all the corruption, poverty and unemployment, degradation in the human rights values and freedom of expression. It is under his government which was responsible for the set back in all these issues over the last period and a call for his prosecution and retirement is a must to enable process all development schemes in the country.

Legislating Election Constituencies by a code and not by a royal decree, ensuring a fair distribution of equal constituencies of tolerance governed by international standards.

Inaction of the constitutional monarchy as stipulated in the National Action Charter, unanimously ratified in February 2002, which necessitates that members of Al-khalifa belongs to the Royal family and hence should not be engaging a public posts.