

# Americans for Democracy & Human Rights in Bahrain (ADHRB) and Iraqi Development Organization (IDO)

## *For consideration at the 27<sup>th</sup> session of the Universal Periodic Review*

1. ADHRB is a non-profit organization that fosters awareness of and support for democracy and human rights in Bahrain and the Middle East.
2. ADHRB's reporting is based primarily on its United Nations (UN) complaint program, by which it works with victims of human rights violations on the ground in the region to document evidence of abuses and submit this evidence to the UN Special Procedures. ADHRB has repeatedly requested permission to formally visit Bahrain in order to consult with official human rights bodies, such as the National Institute for Human Rights (NIHR), but has been so far denied access. As yet, the Government of Bahrain has declined to cooperate with ADHRB on any level.
3. IDO is a non-governmental organization founded in Baghdad that aims to promote development in the areas of science, health, human rights, and other important fields in Iraq and the greater Middle East and North Africa (MENA) region.
4. ADHRB and IDO welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Bahrain. This submission focuses on Bahrain's compliance with its second-cycle recommendations to establish a national human rights institution that adheres to the Paris Principles.

### Introduction

5. The Government of Bahrain fully accepted recommendations **115.34 (Indonesia)**, **115.35 (Maldives)**, and **115.36 (Poland)** concerning the creation and function of a national human rights institution in accordance with the Paris Principles. <sup>i</sup>
6. Although the government established the Bahrain National Institute for Human Rights (NIHR) in 2009, it has failed to bring it into full compliance with the Paris Principles, a set of international guidelines for national human rights institutions. <sup>ii</sup> The NIHR is not sufficiently independent, it lacks adequate investigatory powers, and it has ultimately had little positive effect on the country's human rights situation. At worst, the NIHR has even endorsed government action that is in clear violation of international human rights standards.
7. This submission is divided into the following sections:
  - A. Background
  - B. Competence and Responsibilities
  - C. Independence and Composition
  - D. Reporting

## E. Conclusion and Recommendations

### A. Background

8. The Bahraini government created the NIHR with the stated purpose of serving as an independent monitor of human rights in the country. While the king nominally revised its mandate to better meet certain provisions of the Paris Principles in 2014, the NIHR retains structural flaws that prevent it from meeting these standards and fulfilling its function. For example, the NIHR is not independent from the government, it has been unable to secure the confidence of victims of human rights violations, and it regularly fails to address cases of torture, unfair elections, and politically motivated human rights violations, among other problems.
9. In late 2015, the NIHR submitted itself for review before the International Coordinating Committee (ICC), the accreditation body for national human rights institutions charged with assessing their compliance with the Paris Principles. Recognizing its failings, the Global Alliance of National Institutions for the Promotion and Protection of Human Rights' (GANHRI) Sub-Committee on Accreditation (SCA) determined that Bahrain's NIHR did not meet its obligations and assigned it "B" status in its 2016 review.<sup>iii</sup> This ranking, which is just one level above failure, provides the NIHR with only non-voting membership in the ICC and prevents it from enjoying many privileges, such as speaking at the UN Human Rights Council (HRC). The NIHR remains in violation of sections 3(a), 3(b), 3(c), and 3(d) of the "Competence and responsibilities" category, sections 1 and 2 of the "Composition and guarantees of independence and pluralism" category, and subsections (e), (f), and (g) of the "Methods of operation" category.

### B. Competence and Responsibilities

10. Sections 3(a), 3(b), and 3(c) of the "Competence and responsibilities" category state that the NIHR must, among other things, promote national legislation, regulations, and practices that adhere to international human rights standards and instruments; encourage the ratification of, or accession to, these instruments; ensure the effective implementation of legislation and instruments; and draw attention to instances where human rights are violated. The NIHR neither promotes legislation that conforms to international human rights norms, nor does it criticize legislation in clear violation thereof. Although it has previously supported legislation that would allow female Bahraini citizens to pass their citizenship on to their children, the NIHR has rarely endorsed other laws intended to advance human rights in Bahrain or engender greater observance of international standards. When it has in fact called for reform, it has typically failed to yield concrete government action. In 2014, for example, the NIHR recommended the ratification of additional international human rights instruments for the first time in its history, but the government has yet to act on this proposal.
11. The NIHR has exhibited a reluctance to follow through with its obligations under those instruments or institutions already ratified by the Bahraini government. Despite having acceded to the International Covenant on Civil and Political Rights (ICCPR) in 2006, the government has never submitted a report to the Human Rights Committee, and it has fallen increasingly behind on its other treaty-mandated reporting. At time of writing, there is no evidence to suggest that the NIHR has recommended these reports be submitted. This inaction is in clear violation of section 3(d) of the "Competence and responsibilities" category of the Paris Principles, which states that a national human rights institution must contribute to the reports required by the

“United Nations bodies and committees ... pursuant to their treaty obligations.” The NIHR has neither urged the government to fulfill these duties nor taken any substantive action to address the considerable backlog.

12. Additionally, the NIHR has largely failed to address ongoing human rights abuses in Bahrain. Since 2009, the NIHR has refused to criticize a series of legislation enacted by the government in clear contravention of international human rights law, including decrees that impose seven-year prison sentences for publicly insulting the king, prohibit free interaction between civil society organizations and foreign governments, and grant broad detention authority to the security forces. In 2014, the NIHR took no action as the government prosecuted members of the Al-Wefaq opposition party for meeting with US Assistant Secretary of State for Democracy, Human Rights, and Labor, Tom Malinowski. It similarly did not act when the government later branded Malinowski *persona non grata* and expelled him from the country. In 2016, the NIHR did release statements criticizing the government’s use of travel bans against activists and its publication of detainees’ photographs prior to the conclusion of legal proceedings, but it also failed comment on the increased denaturalization and judicial harassment of human rights defenders and religious leaders, as well as the closure of Al-Wefaq National Islamic Society, the largest opposition group. Moreover, the NIHR recently praised the government’s stated efforts to protect privacy and freedom of expression on social media, despite its continued detention and prosecution of individuals for online speech, such as human rights defender and Bahrain Center for Human Rights (BCHR) president Nabeel Rajab.
13. When the NIHR has taken decisive action, it has often served to obscure or ostensibly legitimize government abuse. In 2013, for example, the NIHR endorsed 22 recommendations made by the Bahrain National Assembly that sought to ban peaceful gathering in Manama and enable security forces to arbitrarily detain vaguely-defined “terror suspects.” Though the Bahrain Independent Commission of Inquiry (BICI) provided contradictory recommendations in 2011, the NIHR argued that the National Assembly’s proposal was consistent with international human rights norms and urged critics to “stand behind the Kingdom’s wise leadership.” After the king passed the recommendations into law, the government routinely exploited the legislation to stifle dissent and criminalize protest. This overt support for abusive government practices is representative of the NIHR’s wider failure to effectively document and guard against violations of human rights in Bahrain.

### **C. Independence and Composition**

14. In addition to its inability or unwillingness to meet the standards of “Competence and responsibilities,” the NIHR has also exhibited structural problems concerning the Paris Principles’ requirements of independence and pluralism. Section 1 of the “Composition and guarantees of independence and pluralism” category requires a national human rights institution to “ensure the pluralist representation of the social forces (of civilian society),” namely through the representation of human rights organizations, unions, and professional associations, as well as independent academics and journalists.<sup>iv</sup> According to the Paris Principles, government employees should serve only in an advisory capacity if they are included in the membership a national human rights institution at all.
15. Bahrain’s NIHR has not observed these principles. On the contrary, it has permitted a number of government officials to serve as full members while excluding representatives from independent

civil society actors, such as human rights NGOs. In 2013, the NIHR indicated in its newsletter that many of its staff are, or have been, members of the government or government-affiliated organizations. These members have included former employees of the Ministry of Interior (Mol) and the Public Prosecutor's Office (PPO) – two of the institutions most clearly implicated in the government's systemic human rights abuses. The NIHR's chairperson, Dr. Abdulaziz Hassan Ali Abul, is a royally-appointed member of parliament. Two other members, Jameela Ali Salman Nassif and Khalid Abdulaziz Alshaer, are also members of the parliament. Others, including Farid Ghazi Jassim Rafee and Abdulrahman Abdulhusain Jawahery, hold high-level positions within the government.

16. At 28<sup>th</sup> session of the HRC in March 2015, Alshaer publicly threatened to use his influence over the Mol to bring charges against a human rights defender if the activist entered a room to attend an event. Though UN security eventually removed Mr. Alshaer from the scene, he later accosted ADHRB's executive director, Husain Abdulla, threatening members of Mr. Abdulla's family in Bahrain if he continued his human rights-related activities. These events have been documented by both the Presidency of the Human Rights Council and the Special Rapporteur on the subject of human rights defenders.
17. The NIHR's close relationship with government officials is exacerbated by its failure to adhere to Section 2 of "Composition and guarantees of independence and pluralism," which states that a national human rights institution must have its own independent infrastructure in order to facilitate the "smooth conduct" of its activities, and "in particular adequate funding" so that it might maintain "its own staff and premises." Further, the national human rights institution must maintain this infrastructure "independent of the Government and not be subject to financial control which might affect its independence." Bahrain's NIHR does not possess such an infrastructure, nor does it maintain sufficiently independent staff, as demonstrated. Though the 2014 revisions to the NIHR's mandate ostensibly eliminated the king's power to dismiss members, the Bahraini government reserves a significant degree of direct supervisory authority over the institution. The king retains the power to appoint NIHR board seats, for example. The public prosecutor — who is supervised by the Ministry of Justice (MoJ) and appointed by the king — is also free to manage court-ordered investigations into NIHR activities. The NIHR has additionally signed an official memorandum of understanding with the Mol's Office of the Ombudsman, a subdivision of the Mol tasked with investigating allegations of abuses committed by the security forces. ADHRB has received reports that persons who have submitted complaints regarding human rights abuses to the Ombudsman, however, have been subjected to retaliatory acts of torture by Mol employees. ADHRB has also reviewed the structure of the Ombudsman's Office, finding that it remains financially and administratively dependent on the MOI, undermining its ability to transparently monitor these security forces. Nevertheless, the NIHR has long refused to criticize the Ombudsman and its activities. By effectively partnering with a compromised subdivision of the Mol, the NIHR has exceeded the consultative role envisioned by the Paris Principles, and has potentially jeopardized its ability to protect its own complainants from reprisals. Moreover, while it directly collaborates with the Mol, the NIHR has continued to marginalize the contribution of independent NGOs. ADHRB, for example, has submitted over 50 complaints to the NIHR, but, despite repeated follow-up communications, the NIHR has refused to acknowledge a single ADHRB complaint at time of writing.
18. Combined with the semi-formal exchange of personnel, the government's legal authority to determine NIHR membership and oversee NIHR activities undermines the institution's ability to

operate autonomously. As such, the current NIHR infrastructure cannot guarantee independence or compositional pluralism, nor can it support the smooth conduct of NIHR activities free from government obstruction.

#### D. Reporting

19. In January 2014, five years after it was created, the NIHR issued its first official report to the Government of Bahrain. Although the report documents a number of significant human rights abuses, it also attempts to obscure NIHR dereliction. Rather than acknowledge its history of institutional and operational failings, the report knowingly misrepresents the NIHR's dubious record. It falsely asserts that the NIHR has publicly opposed all government legislation enacted in contravention of international human rights law. At the same time, the report fails to note that the NIHR has explicitly endorsed laws that were used by the government to violate human rights in Bahrain, such as those proposed by the National Assembly to criminalize peaceful protest. While it does provide some valuable recommendations that would advance human rights if adopted by the government, the NIHR has been unable to leverage its otherwise excessive connections to the state in order to gain the necessary support.
20. In 2015, the NIHR released its second report. The report documented the institution's inability to implement recommendations made the previous year, a failure it characterized as having resulted from a recent election and a new cabinet. Fully half of the second annual report is dedicated to the legal provisions of the NIHR, and much of the remainder documents its activities to promote and protect human rights in Bahrain. However, the report fails to address cases of torture, unfair elections, and politically motivated human rights violations, though numerous international organizations continue to document the systematic use of torture and criminalization of free speech in Bahrain. The report additionally lacked any details concerning incidents, violating parties, how it addressed these violations, or how it resolved the 36 complaints it claims were resolved.
21. As noted in the SCA's recent review, the NIHR's reporting on visits to detention facilities also particularly lack transparency. The SCA specifically called on Bahrain's NIHR to publicly release its report on an August 2013 visit to Dry Dock Detention Center, for example. Until the NIHR's field visits are spontaneous and adequately and transparently documented, the SCA noted that it will continue to fail to receive "A" status accreditation with the Paris Principles.

#### E. Conclusion and Recommendations

22. Ultimately, Bahrain's NIHR has failed to meet international standards for national human rights institutions, and it has not received full accreditation under the Paris Principles. To fully implement second-cycle UPR recommendations **115.34 (Indonesia)**, **115.35 (Maldives)**, and **115.36 (Poland)**, the Government of Bahrain should:
  - Establish independence for the NIHR by ensuring that staff members are not influenced by government pressure and by replacing staff that currently hold or recently held government positions, especially those relating to law enforcement or public prosecution.
  - Include more representatives from civil society, such as human rights organizations, unions, and professional associations, as well as independent academics and journalists.
  - Adopt and implement strict criteria regarding recruitment and appointment for membership within the institution, including standards dictating that future members cannot have held a

government position within the last four years and cannot have been directly implicated in human rights infringement and abuse.

- Restrict the king's power to appoint NIHR board members.
- Guarantee government funding for the institute without government input on institution activity.
- Limit the PPO's oversight of NIHR activities.
- Eliminate cooperation between the NIHR and the MoI's Ombudsman until such time as the latter has undergone significant reform to secure sufficient independence from the government in order to protect complainants from reprisal and ensure proper function.
- Require the NIHR to be more transparent in its resolution of complaints, while taking necessary measures to ensure the privacy of complainants and prevent reprisal.
- Require the NIHR to conduct spontaneous site inspections, particularly of detention facilities, and release its findings publicly.
- Invite foreign delegations and non-governmental organizations to observe and support NIHR activities and to report on the human rights situation in the country.
- Set a timeframe for the implementation of the above recommendations and any additional reforms necessary to improve the NIHR's compliance with the Paris Principles from "B" status to "A" status.

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i Universal Periodic Review Twenty-first Session, "Report of the Working Group on the Universal Periodic Review: Bahrain," United Nations Human Rights Council, 6 July 2012, A/HRC/21/6, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/150/49/PDF/G1215049.pdf?OpenElement>.

ii "The Paris Principles and General Observations," ICC Sub-Committee on Accreditation (SCA), <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>

iii "Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)," Global Alliance of National Institutions for the Promotion and Protection of Human Rights, 9-13 May 2016, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>

iv "Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993," Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>