

Defective and Deficient:

A Review of Bahrain's National Human Rights Bodies



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Defending and promoting human rights in Bahrain

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The vast majority of our operations are carried out in Bahrain, while a small office in exile, founded in 2011, is maintained in Copenhagen, Denmark, to coordinate our international advocacy program. For more than 18 years, BCHR has carried out numerous projects, including advocacy, online security trainings, workshops, seminars, media campaigns and reporting to UN mechanisms and international NGOs. BCHR has also participated in many regional and international conferences and workshops in addition to testifying in national parliaments across Europe, the EU parliament, and the United States Congress. BCHR receives its fund from the Norwegian Human Rights Fund (NHRF), National Endowment for Democracy (NED), Sigrid Rausing Trust (SRT), CIVICUS, the International Federation for Human Rights (FIDH), IFEX and Digital Defenders Partnership (DDP).

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Table of Contents

List of Acronyms	5
Introduction	6
The Special Investigation Unit	8
The prisoners and detainees rights commission	14
MOI Omdudsman	17
NIHR	22
Conclusion	30
Recommendation	31
Appendix1	32
Appendix2	37

List of Acronyms

BICI	Bahrain Independent Commission of Inquiry
SIU	Special Investigation Unit
PPO	Public Prosecution Office
AIP	International Association of Prosecutors
MOI	Ministry of Interior
CID	Criminal Investigation Directorate
NIHR	Bahrain's National Institution for Human Rights
PDRC	Prisoners and Detainees Rights Commission
MOI Ombudsman	Office of the Ombudsman at the Ministry of the Interior
HMIP	Her Majesty's Inspectorate of Prisons in the UK
OPCAT	Optional Protocol to the Convention against Torture
NPM	National Preventive Mechanism
SPT	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
IOI	International Ombudsman Institute
IRCT	International Rehabilitation Council for Torture Victims
NHRIs	National Human Rights Institutions
GANHRI	Global Alliance of National Human Rights Institutions
SCA	GANHRI Sub-Committee on Accreditation
BCHR	Bahrain Center for Human Rights

Introduction

Bahrain has witnessed grave human rights violations during the 2011 Uprising. In response to the international outcry and as an attempt to pacify the domestic agitation, the King of Bahrain ordered the establishment of the Bahrain Independent Commission of Inquiry (BICI), issuing the Royal Order No. 28 of 2011. The BICI was created to “investigate and report on the events occurring in Bahrain in February/March 2011, and any subsequent consequences arising out of the aforementioned events, and to make such recommendations as it may deem appropriate.” The BICI report concluded that the Bahraini Public Security Forces used “unnecessary and excessive force” against protesters, practiced systematic torture and mistreatment against individuals in their custody, and subjected them to coercion in signing confessions, which were subsequently used in criminal proceedings, among other due process violations. It also concluded that “the lack of accountability of officials within the security system in Bahrain has led to a culture of impunity.”

The King’s acceptance of the BICI findings and recommendations was followed by legal and institutional reforms. These recommendations have led to the establishment of several governmental human rights bodies and amending the mandates of others, including the Special Investigation Unit (SIU), the Prisoners and Detainees Rights Commission (PDRC), the Office of the Ombudsman at the Ministry of the Interior (MOI Ombudsman), and the National Institution for Human Rights (NIHR). Although the establishment of these bodies was notable progress in addressing human rights violations and impunity, the overall human rights situation has not improved, especially with regard to torture and ill-treatment in detention centers. Human rights violations related to freedom of expression and assembly have increased in recent years, and harassment of activists and human rights defenders continues. Most importantly, the “culture of impunity” that these bodies were supposed to address is still pervasive.

The SIU was established in 2012 specifically to hold government officials accountable for crimes of torture and ill-treatment. However, it has failed to practice independence and effectiveness, particularly in determining “superior responsibility.” The average rate for case referrals to criminal courts was 7.72 percent of the total complaints received by the SIU during the last five years, most of which ended with acquittals and light sentences, besides most prosecutions have been of low-ranking officers. The majority of the SIU staff are seconded from the Public Prosecution Office (PPO), under which it functions. The SIU association with the PPO adversely affects its integrity and public trust in it with the latter disregard of torture allegations and

prosecution of prisoners of conscience. Moreover, the SIU does not comply with many of the Istanbul Protocol provisions, with which it is supposed to be in line.

The PDRC was established in 2013 to monitor places of incarceration. It functions as a National Preventive Mechanism (NPM) and is empowered to verify the conditions of inmates and the treatment they receive. The PDRC's independence and effectiveness have been called into question with a lack of transparency in appointing its members, its financial dependency on the MOI Ombudsman, and lack of clear judgement in its reports. It failed to demonstrate rigor, seriousness, and persistence in addressing pressing issues in detention facilities, especially the ill-treatment of political prisoners.

In July 2013, the MOI Ombudsman became operational. It was created to ensure that the Ministry of Interior (MOI) personnel abide by the legal procedures and hold violators accountable. It is also mandated to receive, review, and examine complaints against members of the Public Security Forces. The MOI Ombudsman's independence is also questionable, where it works under the supervision of the MOI, and its employees are appointed upon the approval of the Minister of Interior. As for its effectiveness, the MOI Ombudsman practiced reluctance and disregard for the well-documented violations committed by the MOI personnel, which is demonstrated by the number of cases referred by the MOI Ombudsman for possible criminal prosecution and the fact that only one investigation was launched on its initiative in the last five years.

The NIHR mandate was amended in 2012 and 2013 to bring it in line with the Paris Principles. It has a broad mandate to protect and promote human rights in Bahrain. Nonetheless, over the past five years, the NIHR has failed to comment or act upon serious human rights violations, including allegations of torture, the executions that followed unfair trials, prosecution of human rights defenders, and the general criminalization of dissent. On more than one occasion, the NIHR has advocated for the government by justifying its abuses. It has been selective in addressing human rights violations. Overall, the NIHR has demonstrated a lack of independence and effectiveness in addressing the most pressing human rights issues in Bahrain.

This report examines the efficacy, independence, and transparency of the four mentioned institutions, focusing on their work over the last five years. It has mainly relied on statistics, information, and statements issued by these same institutions, besides extensive literature review. Their structure and functioning have been judged against agreed-upon international standards.

The Special Investigation Unit

The Attorney General issued Resolution No. 8 of 2012, creating the Special Investigation Unit (SIU) within the Public Prosecution Office (PPO). The establishment of the SIU was in response to the Bahrain Independent Commission of Inquiry's (BICI) recommendations No. 1716 and 1722 (a) and (b), which stated the creation of an independent and impartial mechanism to hold government officials accountable for unlawful acts, resulting in the deaths, torture, and mistreatment of civilians by conducting effective investigations into these acts. The SIU is responsible for "the determination of criminal accountability of those in government who have committed crimes of killing or torture or mistreatment of civilians, including those in the chain of command under the principle of superior responsibility."^{1,2} The SIU is supposed to carry its mandate in accordance with international standards, particularly the Istanbul Principles on investigating and reporting torture.³ In 2013, the Attorney General issued another Resolution No. 26 explicitly outlining the SIU jurisdiction, authorities, responsibilities, formation, and the code of conduct of its staff and experts.

A Head Prosecutor leads the SIU. It comprises seven full-time Public Prosecution Investigators, experts in forensic medicine and psychiatry, specialists in communications, media, and computers, in addition to judicial police and administrative staff.⁴ According to Resolution No. 26 of 2013, it is an independent entity at Public Prosecution, where the Attorney General administratively supervises its activities. The SIU staff should be impartial, independent, and familiar with international human rights principles.⁵

As for how it functions, the SIU receives reports of torture and abuse through the media, individuals, and civil society organizations and conducts the required investigations to determine the parties involved.⁶ The Attorney General may refer any case to the SIU for investigation.⁷ The Office of the Ombudsman at the Ministry of the Interior (MOI Ombudsman) may also refer to the SIU "any complaint it receives and that proves, upon checking, that it constitutes or could constitute a crime that lies within the jurisdiction of the

1 - The superior responsibility could be defined as follows: "A superior, whether de jure or de facto, may be held criminally responsible in relation to crimes committed by subordinates where, at the time relevant to the charges, he/she was in a relationship of superior-subordinate with the perpetrators, knew or had reason to know that these crimes had been committed or were about to be committed and, with and despite that knowledge, willfully and culpably failed to prevent or punish these crimes."

For more about the doctrine of superior responsibility, see <https://www.peaceandjusticeinitiative.org/implementation-resources/command-responsibility#:~:text=In%20sum%2C%20the%20doctrine%20of,in%20a%20relationship%20of%20superior%2D>

2 - The Attorney General's Resolution No. 8 of 2012, Article 4, available at <http://www.biciunit.bh/en/decision-of-creating-SIU.html>

3 - Ibid., Article 3.

4 - The Attorney General's Resolution No. 26 of 2013, Article 15, available at <http://www.biciunit.bh/en/pdf/Resolution-26-2.pdf>

5 - Ibid., Article 24.

6 - Ibid., Articles 6 and 7.

7 - The Attorney General's Resolution No. 8 of 2012, Article 5.

Unit,” according to a memorandum of understanding between the two, signed on 1 July 2013.⁸ The SIU is mandated to summon any executive branch officer for interrogation during the course of an investigation and take legal action against any person who fails to appear before it.⁹ It is also authorized to conduct periodic or sudden unannounced inspections of prisons and detention centers, examine victims in incidents under investigation, and precautionary transfer them to any other detention center.¹⁰ The SIU collects evidence in crimes under investigation and prepares cases for referral to the relevant criminal court of jurisdiction, where it represents the prosecution or writes to authorities concerned for disciplinary action.¹¹

Although creating the SIU within the PPO was a step forward in addressing impunity in Bahrain, the SIU’s independence and effectiveness has been called into question since its inception.

The Special Investigation Unit, in its current form, does not have the aspired independence and impartiality to ensure effective investigations. The assignment of investigation into allegations of torture and other forms of ill-treatment to the public prosecution may not be consistent. The public prosecution initiates investigation with an individual who is accused of committing acts of criminal law, while being at the same time a victim subjected to torture or other forms of ill-treatment.¹²

The SIU’s structure and formation have not changed since the National Institution for Human Rights (NIHR) above-mentioned comment on its independence in 2013. It is still a part of the PPO hierarchy, and its work statistics appear in the annual report of the Public Prosecution. The SIU had been even located in the PPO’s premises until March 2020, when it was relocated to the Ministry of Justice and Islamic Affairs.¹³ Many of the SIU staff are former PPO officials or seconded from the Ministry of Interior (MOI). The SIU functions under the supervision of the Attorney General, pursuant to its regulating resolution. It produces monthly reports to him and may make them public unless they contain any details that would compromise an investigation.¹⁴ Most importantly, the SIU was not established by law but by a resolution of the Attorney General, meaning that the latter can make any amendment to its jurisdiction, formation, and powers without the need to refer to any competent judicial or legislative authority, thus making it closely associated with the PPO, and its independence is rightly questionable.

8 - Memorandum of Understanding Between the MOI Ombudsman and the Special Investigation Unit, Article 2, available at <http://www.biciunit.bh/en/pdf/MoU%20Ombudsman%20Investigation%201.pdf>

9 - The Attorney General’s Resolution No. 26 of 2013, Article 6.

10 - Ibid.

11 - Ibid., Articles 10, 11, and 12.

12 - Annual Report of Bahrain National Institution for Human Rights 2013, p. 42, available at [http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/1st%20Annual%20Report%20of%20the%20NIHR%20-%20\(2013\).pdf](http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/1st%20Annual%20Report%20of%20the%20NIHR%20-%20(2013).pdf)

13 - The SIU official Instagram account https://www.instagram.com/p/B-RohYJg99c/?utm_source=ig_web_copy_link

14 - The Attorney General’s Resolution No. 8 of 2012, Article 6.

In 2013, Irish Lawyers for Human Rights called for the expulsion of Bahrain's Attorney General from the International Association of Prosecutors (AIP) for his role in human rights violations in Bahrain. The report concluded that the PPO is not "capable of investigating matters of torture, nor is it in a position to investigate impartially. In addition, the office has shown patterns of failure in the use of its statutory powers to supervise and investigate state detention facilities, which in turn has fostered a culture of impunity towards torture."¹⁵ In September 2015, several international organizations reported and supported a complaint to Bahrain's Public Prosecutor against Bahrain's Attorney General while attending the annual conference of the AIP in Zurich. The complaint was filed by Jaafar al-Hasabi, who had been tortured into false confessions during an investigation by the PPO, where allegedly the Attorney General "had personally given the order to have the victim detained incommunicado."¹⁶

The SIU association with the PPO, which tolerates torture at the very least, adversely affects the former's integrity and the public trust in it. The PPO, besides its prosecution of prisoners of conscience, has condoned allegations of torture and ill-treatment over the years. It has also accepted coerced confessions through torture. Bahrain Center for Human Rights (BCHR) has documented numerous cases of torture survivors reporting their torture to the PPO to which no measures have been taken. For example, Mohammad Ramadan, a current death row inmate in Jau prison, was arrested on 18 February 2014 and tortured at the Criminal Investigation Directorate (CID) to extract confessions before he was taken to the PPO on 21 February 2014. At the PPO, Mohammad reported his torture to a Public Prosecutor and showed them signs of torture on his body, yet the PPO failed to take any action. He was later convicted and sentenced to death on 29 December 2014.

The cases of Mohammad Ramadan and Hussain Moosa, who were convicted and sentenced to death based on confessions extracted through torture for alleged involvement in al-Dair bombing in 2014, were investigated by the SIU. Mohammad submitted complaints regarding torture and ill-treatment to the MOI Ombudsman on 13 June 2016 and the SIU on 1 September 2016. Hussain submitted his complaints on 14 June 2014 to the former and on 4 October 2016 to the latter. On 8 January 2020, the death sentences of Mohammad and Hussain were upheld, in which "the Court of Appeal relied heavily on the SIU's investigation records." Both men now face imminent execution having exhausted all legal remedies. The result of the SIU's investigation was inconclusive, which the International Rehabilitation Council for Torture Victims (IRCT) re-

15 - Report of CEARTAS (Irish Lawyers for Human Right) on Bahrain's Attorney General, April 2013, available at https://www.lrwc.org/ws/wp-content/uploads/2013/05/CEARTAS-Report-April_2013.pdf

16 - For more about this complaint, see <https://trialinternational.org/latest-post/ali-bin-fadhul-al-buainain/>

viewed in July 2020. The IRCT concluded that the SIU's investigation of Mohammad Ramadan and Hussain Moosa's allegations of torture "fails to meet the minimum professional standards and minimum international legal standards to which the Kingdom of Bahrain is subject." It is "insufficient and thereby ineffective under law. Additionally, serious concerns are raised regarding the institutional independence and impartiality of the Special Investigation Unit and its investigation."¹⁷

Since the SIU became operational in July 2013, it has managed to bring many perpetrators of torture and ill-treatment to competent courts. However, there were numerous drawbacks to its effectiveness and ability to fulfill its mandate. First, the SIU has failed to uphold the principle of "superior responsibility" although the BICI found that the Bahraini security forces "followed a systematic practice of physical and psychological mistreatment, which in many cases amounted to torture, with respect to a large number of detainees in their custody."¹⁸ According to Istanbul protocol, to which the SIU is supposed to adhere, "the apparent existence of a pattern of abuse" is one of the factors that "support a belief that the state was involved in the torture."¹⁹ Yet, no high-ranking official has been held accountable, where most prosecutions have been of low-ranking officers. Second, the number of cases referred to criminal courts by the SIU is low compared to the total number of complaints, where the rate was as low as 2.9% in 2018, and no cases were referred to courts in 2020. The rates of prosecution were 4.8%, 14.7%, 2.9%, and 16.2% in the years 2016, 2017, 2018, and 2019, respectively, most of which ended with acquittals or lenient sentences.²⁰

17 - Independent expert review of the Special Investigation Unit's investigation into torture allegations of Hussain Moosa and Mohammed Ramadhan, the International Rehabilitation Council of Torture Victims, 1 July 2020, available at

https://irct.org/uploads/media/2020_07_01_PUB_IRCT_Statement_MRamadhan_HMoosa_FINAL.pdf

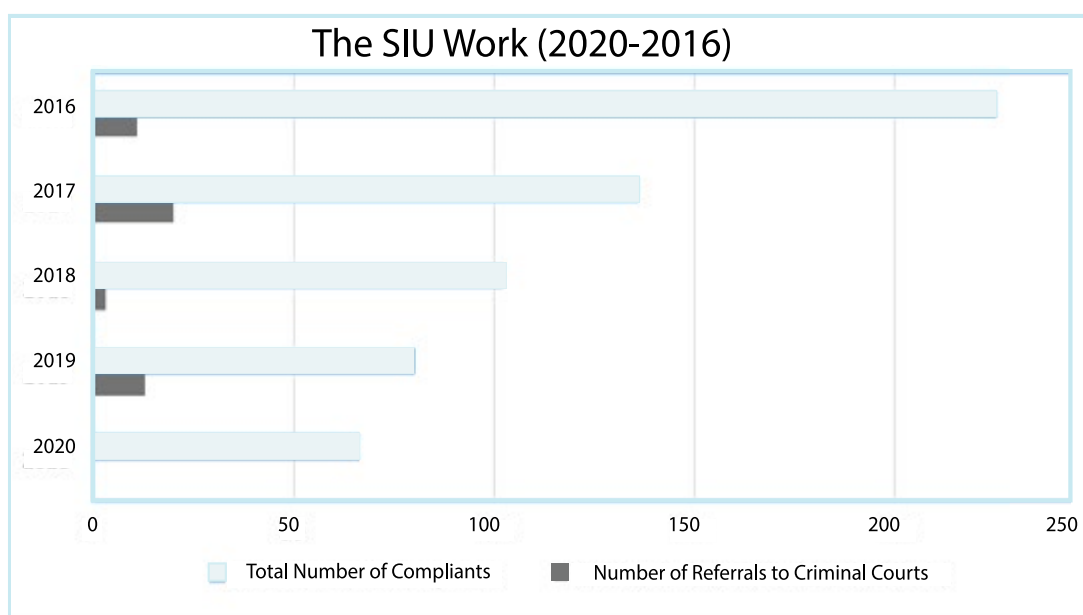
18 - Report of Bahrain Independent Commission of Inquiry (BICI) 2011, para. 1238, available at

<http://www.bici.org.bh/BICReportEN.pdf>

19 - Istanbul Protocol of 1999 (Procedures of a Torture Investigation), para. 86, available at

<https://www.ohchr.org/documents/publications/training8rev1en.pdf>

20 - These statistics were based on the official numbers published by the SIU on its official Instagram account [@siu.bah](https://www.instagram.com/siu.bah). For more on the work of the SIU in numbers during the last five years, see Appendix 1.



21

A gradual decline in the total number of torture and ill-treatment complaints to the SIU is evident over the last five years. However, it is unclear if this decline is due to improved performance of the security forces or the significant decrease in demonstrations and overall anti-government activities in Bahrain.

The SIU is supposed to function in conformity with Istanbul Protocol of 1999, which sets out internationally agreed-upon principles of effective investigation and documentation of torture and other cruel, inhumane, or degrading treatment or punishment; nevertheless, the SIU has failed to comply with many of its provisions. Although the BICI concluded the existence of a pattern of abuse in detention, the SIU has yet to establish the state responsibility in this regard and measures to prevent recurrence.²² Istanbul Protocol stipulates that complaints and reports of torture or ill-treatment should be promptly and effectively investigated and victims or their legal representatives must be informed of the course of the investigation.²³ In 2016, Amnesty International reported many cases in which the SIU failed to comply with these principles. For example, the case of Ahmad Hassan Ali Mushaima, where it took the SIU two years to investigate his complaint of torture, in addition to many incidents in which the SIU closed its investigation without a detailed report explaining its decision nor a proper notification to those concerned, as in the case of Hussain Jawad and others.²⁴

21 - These figures are based on the official periodic statements of the SIU on Instagram.

22 - Istanbul Protocol of 1999 (Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment), para. 78 (a) and (b), available at <https://www.ohchr.org/documents/publications/training8rev1en.pdf>

23 - Ibid., para. 79 and 81.

24 - "Window- dressing or Pioneers of Change?" Amnesty International, 2016, pp. 33 – 35.

It should be pointed out that the SIU announced in January 2021 the establishment of a new division within its organigram called “Victims and Witnesses Affairs Division,” whose mission is to communicate with victims, their families, and witnesses.²⁵ The SIU stated that the purpose of this new division is to familiarize the victims, their families, and witnesses with the SIU legal procedures and receive requests for protection measures that ensure the safety of the aforementioned groups. It is supposed to keep those concerned informed of the investigation progress, as stipulated in Istanbul Protocol.

Finally, the torture investigators “shall be independent of the suspected perpetrators and the agency they serve,” according to Istanbul Protocol.²⁶ However, most of the SIU staff are former government officials, and many of them are seconded and paid by the MOI, as mentioned earlier. Overall, the SIU, as a part of the PPO, does not observe many international standards on investigating and reporting torture, and it lacks the required independence and impartiality to conduct effective investigations into allegations of torture and ill-treatment committed by the government apparatuses.

25 - Bahrain News Agency, 10 January 2021, available at <https://www.bna.bh/en/OmbudsmanpraisesAttorneyGeneralsdecisiontosetupVictimsandWitnessesAffairsDivision.aspx?cms=q8FmFJgiscL2fwlzON1%2BDggh9TnBmhBZJ1All%2FQMGqc%3D>

26 - Istanbul Protocol of 1999, para. 79.

The Prisoners and Detainees Rights Commission

The Prisoners and Detainees Rights Commission (PDRC) was established by the Royal Decree No. 61 of 2013. The MOI Ombudsman chairs the PDRC. It has eleven members, three of whom are nominated by the MOI Ombudsman, four by the NIHR, two by the Supreme Judicial Council, and two by the Public Prosecution; they should represent all sects and doctrines in Bahrain.²⁷ The PDRC has the jurisdiction to “monitor prisons, detention centers, juvenile welfare and detention centers, and other places wherein persons may be incarcerated.”²⁸ It is empowered to interview inmates in prisons and detention centers, determine these places’ compliance with international standards, and report cases of torture and ill-treatment to the relevant authorities. It is mandated to conduct announced and unannounced inspections to “verify the conditions of inmates and treatment they receive in order to ensure that they are not subjected to torture, inhumane treatment or indignity.”²⁹ The PDRC should compile and publish annual reports on its work in addition to a report after every visit it conducts, regarding its findings and recommendations, when appropriate, to the relevant authorities.³⁰

The PDRC was created as a National Preventive Mechanism (NPM) set out in the Optional Protocol to the Convention against Torture (OPCAT) although Bahrain is not a signatory. The OPCAT stipulates the creation of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), which is mandated to undertake visits to states parties’ places of incarceration and advise them on the establishment of NPM that work on prevention of torture at the domestic level.³¹ The PDRC is not formally an NPM within the meaning of the OPCAT and without the SPT oversight, but it functions as one. Bahrain announced that it took into consideration the principles of OPCAT in establishing the PDRC, as they are the international standards on torture prevention. However, the PDRC does not meet many of the basic OPCAT principles.

According to the SPT guidelines on national preventive mechanisms, the NPM should enjoy “complete financial and operational autonomy when carrying out its functions,” and it should be identified by an open, transparent, and inclusive process.³² The PDRC is financially dependent on the MOI Ombudsman

27 - Royal Decree No. 61 of 2013, Article 2, available at [file:///C:/Users/user/Downloads/Bahrain_OM_Decree%20of%20the%20Commission%20of%20the%20Rights%20of%20Detainees_20140828%20\(2\).pdf](file:///C:/Users/user/Downloads/Bahrain_OM_Decree%20of%20the%20Commission%20of%20the%20Rights%20of%20Detainees_20140828%20(2).pdf)

28 - Ibid., Article 1.

29 - Ibid., Article 3.

30 - Ibid., Article 10.

31 - For more about the SPT, see <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIntro.aspx>

32 - The SPT guidelines on national preventive mechanisms, Geneva 2010, items 12 and 16, available at <file:///C:/Users/user/Downloads/G1047140.pdf>

pursuant to Article 9 of the Royal Decree No. 61 of 2013, and it works under its chairmanship. The MOI Ombudsman is part of the MOI hierarchy, and its effectiveness in addressing the MOI violations has been in question, as we will discuss later, which makes the PDRC independence also questionable. Moreover, the appointment of PDRC members lacks transparency, since there are no clear guidelines on how these members are nominated by the concerned bodies nor their selection mechanism besides being appointed by a Royal Decree. The PDRC should enter into a follow-up process with the relevant authorities regarding the implementation of its recommendations.³³ However, there is no mechanism in place regarding the follow-up with relevant authorities, including the regulatory or legal procedures to be followed in case the concerned government agencies do not implement these recommendations.

The SPT guidelines also emphasize the protection of people who engage with the NPM³⁴, which the PDRC does not guarantee. Although Article 4 of the Royal Decree No. 61 stipulates this principle, there is no clear implementation mechanism to enforce it. Finally, the PDRC has not conducted enough follow-up visits to ensure its recommendations have been implemented and the condition of detention has been improved. While PDRC has carried out a total of twenty visits since 2014, including four follow-up visits, notorious places of deprivation of liberty, such as Jau prison and the CID, were visited once throughout the seven years since its inception. The PDRC was also inactive during 2017.³⁵ The PDRC failure to follow-up is inconsistent with the principles governing effective NPM, which stipulates that it should “ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention of torture and other cruel, inhuman or degrading treatment or punishment.”³⁶

The PDRC has published both annual and visit reports in line with the SPT guidelines on national preventive mechanisms.³⁷ However, these reports lacked clarity, precision, and depth. They failed to address significant concerns of torture and mistreatment at some places of deprivation of liberty. Her Majesty’s Inspectorate of Prisons in the UK (HMIP) advised on the structure, legislation, and working methods of the PDRC over three years (2013 - 2015). Dr. Hindpal Singh Bhui, inspection team leader at HMIP, stated at a Public lecture in 2017 that

The [PDRC] reports tended to be vague and were very brief. There was little sense of the conditions in detention, and descriptions lacked detail. There was often a lack of considered judgement to follow the descriptions. The reports also did not focus sufficiently on key issues

33 - Ibid., items 13 and 38.

34 - Ibid., items 14 and 27.

35 - For more on the PDRC’s visits to places of incarceration in Bahrain since it became operational in 2014, see Appendix 2.

36 - The SPT guidelines on national preventive mechanisms, item 34.

37 - Ibid., item 36.

that were already in the public domain and of concern, such as some allegations of abuse and hunger strikes. There was little attention to reporting prisoners' views. The currency and impact of the reports were also substantially reduced by the very long delays (up to a year) between the inspections and publication of the reports.³⁸

He also pointed to the long-awaited report of Jau prison visit of 2015 as reflecting "a tendency to accept the views of the authorities too readily."³⁹ The PDRC has not contested any of the government claims. Dozens of abuse cases have been reported in some places of detention by BCHR and other local and international organizations. Yet, the PDRC has not been able to address any of them adequately. Its reports do not render a clear judgment, which raises questions on its independence and integrity.

The PDRC, with its current funding, composition, and approach, is unable to hold the government accountable for human rights violations. Since 2014, it has not demonstrated seriousness and persistence in addressing pressing issues, especially the ill-treatment of political prisoners. It has failed to challenge the government narratives regarding systematic torture and ill-treatment in places of incarceration. It has not meaningfully engaged with the Bahraini civil society nor won the trust of many Bahraini citizens. The PDRC lacks the independence, rigor, and impartiality to function as an NPM. It has yet to prove its worth.

38 - Dr. Hindpal Singh Bhui, Supporting Human Rights Based Prison Monitoring in Bahrain, Public lecture delivered at the University of Oxford Centre for Criminology on 29 June 2017, p. 6, available at

<https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/01/Bahrain-talk-for-website-final.pdf>

39 - Ibid., p. 7.

The Office of the Ombudsman at the Ministry of the Interior

The office of the Ombudsman at the Ministry of Interior (MOI Ombudsman) was created by the Royal Decree No. 27 of 2012, amended by Royal Decree No. 35 of 2013. It became operational in July 2013. Its establishment was in response to the BICI recommendations No. 1717 and 1722 (d). The BICI recommended the creation of a “separate entity independent of the Ministry’s [MOI] hierarchical control, whose tasks should include those of an internal ombudsman’s office.”⁴⁰ It set clear guidelines for MOI Ombudsman work, in which the latter ensures that the MOI personnel abides by the legal procedures and holds violators accountable. It secures that those arrested and detained have the right to due process. It also asserted that the MOI Ombudsman’s work should be in line with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the Bahraini Criminal Code.

The head of the MOI Ombudsman, titled Secretary-General, and his/her deputy are appointed by Decree. The MOI Ombudsman consists of four directorates that report to the Secretary-General, which are the Complaints Directorate, the Monitoring of Prisons and Detention Facilities Directorate, the International Co-operation and Development Directorate, and the Human Resources and Finance Directorate.⁴¹ The MOI Ombudsman staff are appointed by the Secretary-General.⁴²

The MOI Ombudsman also has the “ultimate oversight” over the Directorate of Audit and Internal Investigations at the MOI concerning handling and allocation of complaints.⁴³ The latter is responsible for receiving, reviewing and examining complaints submitted to any party against members of the Public Security Forces within the scope of their responsibilities for committing wrongful acts, in addition to the superior responsibility. It is also responsible for preserving evidence with regard to its investigations.⁴⁴ The Directorate of Audit and Internal Investigations examines complaints lodged against members of the Public Security Forces “which may justify disciplinary proceedings,” and it is not obliged to refer them to the MOI Ombudsman except in the following cases: death or serious mistreatment, any police conduct that has a

40 - Report of Bahrain Independent Commission of Inquiry (BICI) 2011, para. 1717.

41 - Royal Decree No. 35 of 2013, amending Royal Decree No. 27 of 2012, Article 2, available at <https://www.legalaffairs.gov.bh/AdvancedSearchDetails.aspx?id=11323>

42 - Ibid.

43 - Royal Decree No. 27 of 2012, Article 3, available at [file:///C:/Users/user/Downloads/Decree%20Nr.%2027%20of%202012%20concerning%20the%20Office%20of%20the%20Independent%20Ombudsman%20at%20the%20Ministry%20of%20Interior%20\(2\).pdf](file:///C:/Users/user/Downloads/Decree%20Nr.%2027%20of%202012%20concerning%20the%20Office%20of%20the%20Independent%20Ombudsman%20at%20the%20Ministry%20of%20Interior%20(2).pdf)

44 - Royal Decree No. 35 of 2013, amending Royal Decree No. 27 of 2012, Article 4.

serious negative impact on public confidence in policing, and upon the request of the Secretary-General of the MOI Ombudsman.⁴⁵

The MOI Ombudsman is mandated to receive, review, and examine complaints against members of the Public Security Forces besides the complaints referred to it by the Directorate of Audit and Internal Investigations. It is empowered to review serious violations upon the request of the Secretary-General even if they fall within the competence of the Directorate of Audit and Internal Investigations. The MOI Ombudsman can also initiate an investigation without receiving a complaint in the event of a “wrongful act that leads to a negative impact on the public’s confidence in the employees of the Ministry of Interior.” Moreover, it is authorized to visit prisons and detention facilities to ensure compliance with the law and that the detainees are not subjected to torture or degrading treatment. Death in detention should be immediately reported to the MOI Ombudsman.⁴⁶ Any citizen, expatriate, or visitor can lodge a complaint to the MOI Ombudsman or the Directorate of Audit and Internal Investigations at the MOI. The complaint can be filed by the complainant personally, or their representatives, or by a member of the civil society on behalf of those affected.⁴⁷

After concluding its investigation, the MOI Ombudsman either directs the competent authority in the MOI to bring disciplinary proceedings against violators or refer the case to the SIU if it would justify a criminal prosecution.⁴⁸ In return, the SIU notifies the MOI Ombudsman of any case where an employee of the MOI is accused of committing a crime, also “in case of hindrance or inefficiency in the implementation of its decisions by the employees of the MOI.”⁴⁹ The memorandum of understanding between the MOI Ombudsman and the SIU provides for the exchange of information to determine the responsibility of the MOI employees or for the benefit of any ongoing investigation conducted by either of them.⁵⁰

According to the International Ombudsman Institute (IOI), of which Bahrain MOI Ombudsman is a voting member, the Venice Principles, adopted by the Venice Commission in March 2019, represent the international standards for the Ombudsman institution. “They are the equivalent of the Paris Principles, which set out the standards against which national human rights institutions are judged.”⁵¹ The Venice Principles set out 25 principles on the protection and promotion of the Ombudsman institution. By judging Bahrain MOI Ombudsman against these principles, it does not fully comply with a number of them.

45 - Royal Decree No. 35 of 2013, amending Royal Decree No. 27 of 2012, Article 9 & Royal Decree No. 27 of 2012, Article 11.

46 - Royal Decree No. 35 of 2013, amending Royal Decree No. 27 of 2012, Article 12.

47 - For more on the MOI Ombudsman complaint process, see <https://www.ombudsman.bh/en/about/>

48 - Royal Decree No. 27 of 2012, Article 10.

49 - Memorandum of Understanding Between the MOI Ombudsman and the Special Investigation Unit, Articles 3 and 4.

50 - Ibid., the Exchange of Information Articles 6 – 11.

51 - For more about the IOI, visit their website at <https://www.theioi.org/the-i-o-i>

The Venice Principles emphasize the impartiality and independence of the Ombudsman. To this end, “the Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.”⁵² Bahraini MOI Ombudsman head and staff are not only unelected but also appointed upon the approval of the Minister of Interior whom they are supposed to hold accountable. Under Article 2 of the MOI Ombudsman founding Royal Decree, the Secretary-General and his/her deputy are appointed upon the advice of the Minister of Interior, and the staff are appointed by the head of the MOI Ombudsman “in accordance with procedures set out by him/her and agreed upon by the Minister of the Interior.” Moreover, Public Security Forces personnel may be seconded to the MOI Ombudsman upon the request of its head, under the same Article. The fact that some of the MOI Ombudsman are members of the Public Security Forces raises concern. Even the Directorate of Audit and Internal Investigations work and functions are “determined by a decision of the Minister of Interior.”⁵³ The MOI Ombudsman submits its reports to the Minister of Interior, meaning that it practically functions under the MOI supervision,⁵⁴ whereas its reports should be submitted to the parliament according to the Venice Principles.⁵⁵ Its budget is also part of the overall budget of the MOI.⁵⁶

The Secretary-General of the MOI Ombudsman, his/her deputy, the directors of the four MOI Ombudsman Directorates, and all their staff are not appointed under a clear and transparent mechanism. Royal Decree No. 27 of 2012 does not set clear guidelines for transparent appointment of the MOI Ombudsman staff. These appointments require the approval of the Minister of Interior but do not involve any public or civil society participation. There are no provisions in the law that specify clear procedures to be followed in these appointments nor dismissals. This is contrary to the Venice Principles, which explicitly state “the procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law,”⁵⁷ and “the criteria for being appointed Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates.”⁵⁸ Furthermore, there are no clear and comprehensive self-regulatory codes of ethics for the MOI Ombudsman personnel as stipulated in Principle 9 of the Venice Principle. The Bahraini law provides for the independence, impartiality, and integrity of the MOI Ombudsman without elaboration.

52 - The Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles), adopted by the Venice Commission in March 2019, Principle No. 6, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)

53 - Royal Decree No. 27 of 2012, Article 4.

54 - Ibid., Article 15.

55 - The Venice Principles, Principle 20.

56 - Royal Decree No. 27 of 2012, Article 16.

57 - The Venice Principles, Principle 7.

58 - Ibid., Principle 8.

While Principle 10 of the Venice Principles limits the term of the Ombudsman to one term, with no option for re-election and renewable only once, Bahraini law limits the term of the Secretary-General of the MOI Ombudsman and his/her deputy to five years, indefinitely renewable.⁵⁹ The term limit is one of the fundamental principles governing democratic and effective institutions. Moreover, the Secretary-General or his/her deputy are removed by Royal Decree upon the proposal of the Minister of the Interior and the approval of the Prime Minister in case they failed to carry out their functions.⁶⁰ This provision is loose and does not adequately clarify the reasons that lead to removal from office, besides, it is carried out at the request of the Minister of Interior. On the other hand, the Venice Principles set a clear guideline for the Ombudsman removal, in which

The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of “incapacity” or “inability to perform the functions of office”, “misbehavior” or “misconduct”, which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament- shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law.⁶¹

The removal of the Secretary-General and his/her deputy at the request of the Minister of Interior with no stipulation of clear conditions seriously compromises the work and independence of the MOI Ombudsman and adversely affects its ability to carry out its mandate.

The effectiveness of the MOI Ombudsman has also been in question. The MOI Ombudsman has issued seven annual reports since it became operational in 2013, providing statistics on its work. Each report covers the period from May to April the following year, detailing sources of complaints, the directorates/institutions against which the complaints have been filed, and actions taken by the MOI Ombudsman to address these complaints, among other details. The reports distinguish between complaints and assistance requests received by the MOI Ombudsman. With regard to complaints, the number of complaints referred to relevant bodies for possible criminal prosecution is low compared to the total number of complaints.

In the past five years, the MOI Ombudsman referred only two cases directly to the PPO, and the referral to the SIU was also low. The referral rates to the SIU were 3.22%, 8.98%, 3.11%, and 11.11%, according

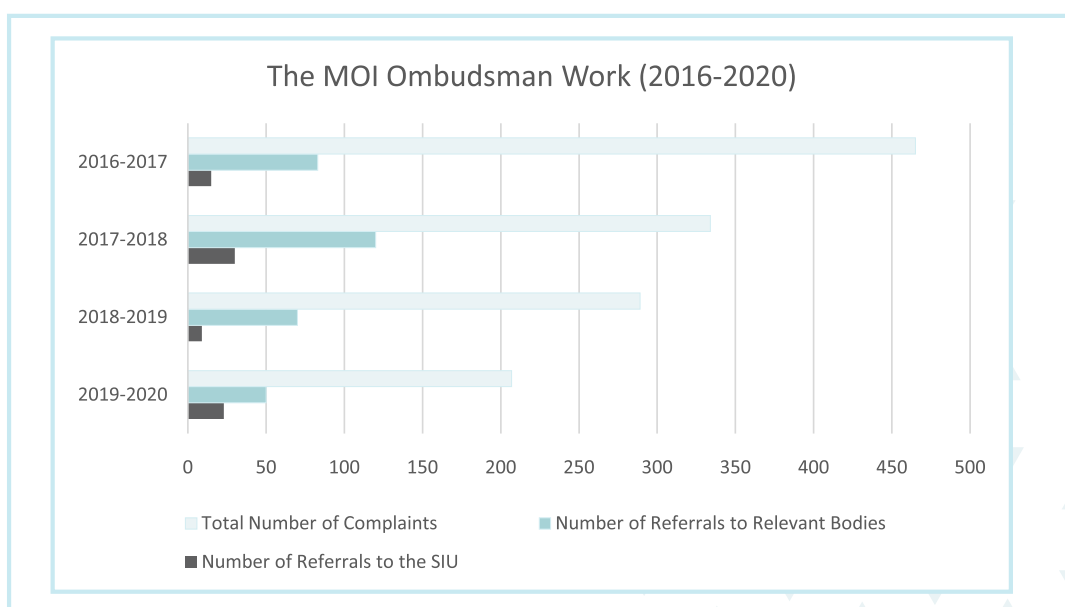
59 - Royal Decree No. 35 of 2013, amending Royal Decree No. 27 of 2012, Article 2.

60 - Royal Decree No. 27 of 2012, Article 7.

61 - The Venice Principles, Principle 11.

to the last four MOI Ombudsman reports (2016-2017 till 2019-2020), respectively.⁶² Moreover, the cases referred from the MOI Ombudsman to the SIU are not necessarily referred to criminal courts by the latter, as demonstrated earlier, meaning that the actual rate of criminal prosecution concerning the complaints submitted to the MOI Ombudsman is much lower. The other bodies to which the MOI Ombudsman refers cases are the Security Prosecution and the Disciplinary Committee, both are MOI's internal entities.

Although the MOI Ombudsman is authorized to initiate investigations in Public Security Personnel misconduct, only one investigation was launched on its initiative in the last five years. This raises questions of the MOI Ombudsman's willingness and ability to carry out its mandate in light of extensive documentation of human rights violations carried out by employees of the Ministry of Interior, especially in detention centers. Despite the fear of retaliation, the largest number of complaints submitted to the MOI Ombudsman were from Jau Prison during the past five years, followed by the CID.



63

As with the SIU, the decline in the total number of complaints filed with the MOI Ombudsman over the last five years does not necessarily indicate an improvement in the human rights situation in Bahrain.

Overall, The MOI Ombudsman formation and functioning indicate that it is under the MOI's control, which is not in line with the BICI recommendation No. 1717. The MOI Ombudsman in its current structure is either unable or unwilling to challenge the MOI, hold its staff accountable for their human rights violations, and uphold the principle of superior responsibility. The number of cases that ended in criminal prosecution reflects reluctance and disregard for the well-documented torture and ill-treatment carried out by the MOI personnel. Although the MOI Ombudsman has been operational for over seven years, it has not managed to

62 - These rates are based on the statistics provided by the MOI Ombudsman in its annual reports (2016-2017), (2017-2018), (2018-2019), (2019-2020), available at <https://www.ombudsman.bh/en/periodic-public-reports/>

63 - These figures are based on the statistics provided by the MOI Ombudsman in its annual reports (2016-2017), (2017-2018), (2018-2019), (2019-2020)

end or even improve the state of impunity prevalent in the country. The current state of its work renders its ability to end impunity improbable.

The National Institution for Human Rights

The National Institution for Human Rights (NIHR) was established in 2009 by the Royal Decree No. 46. Its mandate was amended by Law No. 26 of 2014 considering the Paris Principles of 1993. The work of the NIHR is regulated by Law No. 26 of 2014, amended by Decree-Law No. 20 of 2016, besides Royal Order No. 17 of 2017.

Bahrain's NIHR is headed by the Chairperson. It is composed of eleven members, including the Chairperson and the Vice-Chairperson, constituting the Council of Commissioners (the decision-making body). Members of the Council of Commissioners are selected from "advisory firms, academic organizations, civil society organizations, unions, social, economic and professional institutions, and human rights defenders." They may be selected from parliamentarians as well, who can participate in the discussion as non-voting members.⁶⁴ They are appointed by Royal Decree for four years, renewable for similar terms, after consultation with civil society.⁶⁵ The Council of commissioners' decisions are passed by the majority votes of members present.⁶⁶ The Membership in the Council of Commissioners may be terminated by Royal Decree upon the recommendation of the Council by the majority of two-thirds of its Members in cases stipulated in the law.⁶⁷ The NIHR has an administrative body, the NIHR Secretariat, headed by the Secretary-General, who is appointed by resolution of the Chairperson based on the approval of the majority of the Members.⁶⁸ The Secretariat staff are appointed by resolution of the Chairperson upon recommendation of the Secretary-General.⁶⁹ The NIHR has a separate item of the state budget, and it manages and controls its financial resources with independence.⁷⁰

The NIHR is mandated to promote and protect human rights in Bahrain by examining legislation and regulations related to human rights and recommend amendments in line with Bahrain's international obligations in this field, also by examining their conformity with regional and international human rights treaties,

64 - Decree-Law No. 20 of 2016, amending Law No. 26 of 2014, Article 3, available at http://www.nihr.org.bh/EN/MediaHandler/GenericHandler/documents/Download/LawDecree20-2016_amendingLaw26-2014.pdf

65 - Ibid., Article 5 (a).

66 - Ibid., Article 6 (b).

67 - Law No. 26 of 2014, Article 10, available at http://www.nihr.org.bh/EN/MediaHandler/GenericHandler/documents/Download/LawNo26-of2014_engl.pdf

68 - Ibid., Article 16.

69 - Ibid., Article 15.

70 - Ibid., Article 20.

and make recommendations in this regard, including recommendations to accession to regional and international human rights conventions and treaties.⁷¹ The NIHR is authorized to submit parallel reports to regional and international bodies concerning human rights.⁷² It is also empowered to monitor and investigate human rights violations and draw the attention of the competent authorities, receive and examine complaints related to human rights and refer them to relevant bodies, and conduct announced and unannounced field visits to public places in which it is suspected that human rights violations are committed, including detention centers.⁷³ The NIHR has a broad mandate that includes protection, promotion, raising awareness of human rights, and making recommendations related to them, besides, monitoring, investigating, reporting, and prevention of human rights violations.

The Paris Principles provide for the international standards for the formation and function of National Human Rights Institutions (NHRI). They require NHRIs to protect and promote human rights. They set out six main criteria for NHRIs to meet: “1- Mandate and competence: a broad mandate, based on universal human rights norms and standards. 2- Autonomy from the Government. 3- Independence guaranteed by statute or Constitution. 4- Pluralism. 5- Adequate resources. 6- Adequate powers of investigation.” These criteria are used by the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) to grant accreditation to NHRIs. The UN General Assembly and Human Rights Council encourage NHRIs to seek accreditation status through the GANHRI. There are currently two levels of accreditation: “A” Fully compliant with the Paris Principles. “B” Partially compliant with the Paris Principles.⁷⁴

In May 2016, the SCA recommended that Bahrain’s NIHR be accredited with “B” status, meaning that it may “participate as observer in the international and regional work and meetings of the NHRIs,” and it “cannot hold office with the GANHRI Bureau or sub-committees.”⁷⁵ The SCA justified its decision by commenting on several issues, most notably the selection and appointment of the NIHR Council of Commissioners. Although the law stipulates consultation with civil society for the appointments, it is not “sufficiently broad and transparent.” The law does not establish a clear mechanism for the screening, selection, and appointment process.⁷⁶ The SCA pointed to the political representatives in the NIHR, where four members of the Council of Commissioners were sitting parliamentarians at the time, which is not in line with the Paris Principles that “require an NHRI to be independent from government in its structure, composition, decision-making, and method of operation.”⁷⁷

71 - Ibid., Article 12 (a), (b), and (c).

72 - Ibid., item (d).

73 - Ibid., items (e), (f), and (g).

74 - For more on the NHRI accreditation by the SCA, see <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>

75 - Ibid.

76 - GANHRI Sub-Committee on Accreditation Report, May 2016, p. 8, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>

77 - Ibid., p. 9.

The SCA commented on the NIHR's "responsiveness to complaints and its willingness to support and protect human rights defenders." It encouraged the NIHR to "interpret its mandate in a broad and purposive manner, and to promote and protect human rights of all." The SCA also encouraged the NIHR to carry out unannounced visits to public places and to "effectively monitor, investigate, and report on the human rights situation in a timely manner, and to undertake systematic follow-up activities and advocate for the consideration and implementation of its finding and recommendations in order to ensure the protection of those detained."⁷⁸

The Bahraini government implemented some of the SCA recommendations by amending law No. 26 of 2014 on Establishing the NIHR and issuing Royal Decree No. 17 of 2017 on Determining the Controls governing the Appointment of Members of the Council of Commissioners at the NIHR. However, the amendments have not substantially improved the work and effectiveness of the NIHR.

In addressing the selection and appointment of the NIHR Council of Commissioners' shortcomings, the Bahraini government set additional requirements to be met by members, such as not belonging to any political society, having higher academic qualification, and having a clear and concrete contribution to the area of human rights, among others.⁷⁹ Besides, the law stipulates that the selection of the NIHR members to be inclusive, representing all spectrums of society and women and minorities to be properly represented.⁸⁰ The government also addressed the issue of political representatives in the NIHR By adopting a provision that prevents parliamentarians from forming a majority in the NIHR Council of Commissioners and makes their participation limited to discussions, not voting.⁸¹ Nonetheless, these amendments have not made the selection and appointment process more transparent nor equitable. Although the criteria for the appointments are clearer, the vacancies have not been publicized, and It is unclear how the candidates are nominated and screened, how the consultations are held, and who is involved in this process.

Appointment mechanism is one of the most important guarantees of any NHRI's independence. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), appointment of NHRI by the executive branch of government is undesirable. Appropriate models of appointment include: nomination by civil society organizations, appointment by parliament, and appointment by another autonomous institution⁸²

78 - Ibid., p. 10.

79 - Royal Order No. 17 of 2017, Article 1, available at [http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/PDF/Royal%20Order%20No%20%20\(17\)%20of%202017%20English.pdf](http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/PDF/Royal%20Order%20No%20%20(17)%20of%202017%20English.pdf)

80 - Ibid., Article 2.

81 - Decree-Law No. 20 of 2016, amending Law No. 26 of 2014, Article 3.

82 - Assessing the Effectiveness of National Human Rights Institutions, the International Council on Human Rights Policy and the Office of the United Nations High Commissioner for Human Rights, 2005, available at <https://www.ohchr.org/Documents/Publications/NHRlen.pdf>

Bahrain's NIHR has not practiced much independence in carrying out its mandate, and this corresponds to the SCA's other comment on the NIHR's responsiveness. Since it became operational, the NIHR has remained silent on many of the government's human rights violations, and even at times it has justified government abuses. For example, the NIHR annual report of 2016 praised the positive steps taken by the government, while did not make any remarks on many violations committed regarding freedom of expression and assembly, among others, during the period covered by the report.⁸³ It did not comment on a Bahraini court order to dissolve al-Wefaq National Islamic Society on 14 June 2016. The dissolution steered local and international condemnation as an escalation campaign against dissent, even the UN Secretary-General at the time called the decision "the latest in a series of restrictions of the rights to peaceful assembly, freedom of association, and freedom of expression in Bahrain."⁸⁴ Yet, the NIHR failed to comment, as it failed to comment on the arrest of the prominent human rights defender Nabeel Rajab on 12 June 2016 on charges related to freedom of expression, arbitrarily stripping Sheikh Isa Qasim, the most prominent Shia cleric in the country, of his citizenship in the same month for allegedly inciting sectarianism, and many other violations.⁸⁵

The deficiencies in the NIHR's responsiveness, independence, and ability to perform its mandate, are more evident in its 2017 annual report. While the year 2017 witnessed a notable escalation in human rights violations, the NIHR turned a blind eye to most of them. The NIHR did not comment on Royal Decree No. 1 of 2017, by which the National Security Agency (NSA), currently the National Intelligence Agency (NIA), re-stored its law enforcement powers contrary to the BICI recommendation No. 1718 nor on April constitutional amendment paving the way for military trials of civilians, which was described by Amnesty International as "a disaster for the future of fair trials and justice in Bahrain."⁸⁶ Moreover, The closure of the country's only independent newspaper, al-Wasat, in June 2017 did not even induce a statement from the NIHR nor the dissolution of the National Democratic Action Society (Waad), on 31 May 2017, accusing it of "advocating violence, supporting terrorism and incitement to encourage crimes."

The NIHR's annual report of 2017 commented on Nabeel Rajab's trial as consistent with "the basic principles of human rights and the legal rules and parameters."⁸⁷ This trial was condemned by the UN and international human rights organizations around the world. The UN Working Group on Arbitrary Detention rendered Nabeel Rajab's deprivation of liberty arbitrary, "as it resulted from his exercise of the rights or free-

83 - Fourth Annual Report – 2016, National Institution for Human Rights – Kingdom of Bahrain, available at http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/NIHR_2016_En.pdf

84 - Bahrain: UN chief condemns the dissolution of al-Wefaq political party, available at <https://news.un.org/en/story/2016/07/534722-bahrain-un-chief-condemns-dissolution-al-wefaq-political-party>

85 - Bahrain Events of 2016, Human Rights Watch, available at <https://www.hrw.org/world-report/2017/country-chapters/bahrain>

86 - Bahrain: Disastrous move towards patently unfair military trials of civilians, Amnesty International, 3 April 2017, available at <https://www.amnesty.org/en/latest/news/2017/04/bahrain-disastrous-move-towards-patently-unfair-military-trials-of-civilians/>

87 - Fifth Annual Report of the National Institution for Human Rights on the Progress Achieved in the Human Rights Situation in the Kingdom of Bahrain 2017, p. 53, para 10, available at http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/NIHR_2017_En.pdf

doms,” and that “no such trial of Mr. Rajab should have taken place or take place in the future.”⁸⁸ Paradoxically, the same report discusses the role of human rights defenders and the responsibility of the state to “ensure respecting and not tampering with or restricting [their rights] in a manner affecting their substance.”⁸⁹

The report also failed to address the use of excessive force by Public Security Forces to disperse the peaceful sit-in in Diraz on 23 May 2017. The raid resulted in five deaths and the arrest of 286 persons, many of whom were later convicted for terrorism charges. The NIHR issued a statement commending “the security efforts in spreading out security and safety, through the arrest of 286 people who are security-wanted and convicted in terrorism cases that pose a security threat to the Kingdom of Bahrain,” and calling “for the urgent need to investigate the death of a number of fugitives.”⁹⁰ On the other hand, the UN human rights chief at the time called on the Bahraini government to “promptly launch an independent, effective investigation into the deaths of five protestors during a security operation,” and to “to release any individuals being detained for peacefully exercising their rights to freedom of expression and assembly,” expressing concern that “the violence and arrests occurred as part of a wider crackdown on dissent in the country.”⁹¹ In effect, the NIHR adopted the government’s narrative, even with the terminology used. It described the demonstrators killed as “fugitives” and those who were arrested as “security-wanted (...) that pose a security threat to the Kingdom of Bahrain,” besides depicting the use of excessive violence to disperse the peaceful sit-in as a security operation “aiming at removing a number of legal violations.”

Most importantly, the NIHR failed to comment on the execution of three young men, Abbas al-Samea, Ali al-Singace, and Sami Mushaima, for the alleged killing of a police officer, ending a seven-year moratorium on the death penalty. The executions were condemned by the UN’s special rapporteur on extrajudicial killings and many international organizations. Their trials lacked due process, and their convictions marred by torture allegations. Yet, the NIHR chose to remain silent about resuming the death penalty as well as the execution of persons following unfair trials that did not conform to international standards.

The UN Human Rights Committee,⁹² on its Concluding observations on the initial report of Bahrain on 15 November 2018, expressed concern that the NIHR “lacks the independence to perform its functions.” Also, it pointed out “the lack of information on the complaints it has received and the investigations it has

88 - Opinion No. 13/2018 adopted by the UN Working Group on Arbitrary Detention concerning Nabeel Ahmed Abdulrasool Rajab at its eighty-first session, 17–26 April 2018, available at https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_13.pdf

89 - Fifth Annual Report of the NIHR, Role of Human Rights Advocates in the Field of Promoting and Protecting Human Rights, pp. 64-68.

90 - Statement by the NIHR on Injury of a Number of Security Personnel and Death of a Number of Fugitives, 24 May 2017, available at <http://www.nihr.org.bh/EN/Administrator/MediaHandler/GenericHandler/documents/Statements/24May2017.pdf>

91 - Zeid calls for investigation of protestors deaths in Bahrain, June 2017, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21684&LangID=E>

92 - The Human Rights Committee is the body of independent experts that monitors the implementation of the International Covenant on Civil and Political Rights by its State parties.

carried out in response to those complaints.”⁹³ The two mentioned NIHR reports (2016 and 2017) contained the number of complaints received by the NIHR with no further elaboration. In 2016, the number of complaints received by the NIHR regarding civil and political rights reached 116, and those related to economic, social, and cultural rights were 21,⁹⁴ while these numbers amounted to 50 and 91 in 2017, respectively.⁹⁵ However, the two reports did not provide any information on the outcomes of these complaints or the steps taken to resolve them if any. The failure to include this information negatively affects the NIHR’s transparency and the ability to accurately assess its effectiveness.

On more than one occasion, the NIHR seems to even advocate for the government and justify its human rights violations. In December 2017, a military court sentenced six men to death and revoked their citizenship on charges of forming a “terrorist cell;” the death penalty of four of them was later commuted to life imprisonment by the King of Bahrain. Seven other people linked to the case were sentenced to seven years in prison with their citizenship revoked. There were serious allegations of enforced disappearance, torture, and coerced confessions. In response to the breach of due process allegations, the NIHR released a fact-finding report in 2018, refuting these allegations.

First, the NIHR considered that “the referral of the case to the Military Justice is in accordance with the law.”⁹⁶ It also initiated an investigation into the torture claims, relying entirely on documents, reports, and forensic reports received by the Public Prosecution, the Military Prosecution, and the Military Court, concluding lack of evidence of torture. In other words, the NIHR only endorsed the official narrative of the government, using documents issued by its apparatuses. Furthermore, the NIHR relied on delayed forensic reports. For example, it cited a forensic report of 28 December 2016 in refuting the torture allegations of Al Sayed Alawi Hussain Alawi Hussain, more than two months after his arrest on 24 October 2016, and a forensic report of 30 October 2016 concerning Fadhel Al Sayed Abbas Hassan Radhi after one month of his arrest on 29 September 2016.⁹⁷ The delay in a forensic examination risks the disappearance of torture signs and consequently adversely affects the accuracy of the forensic report, especially that the majority of detainees in Bahrain have been reporting severe torture particularly in the first days of arrest.

93 - Concluding observations on the initial report of Bahrain, the Human Rights Committee, 2018, para. 9, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsiMkkhmRBkQVnCbDFYxdTy6GQja8djUQQUivDIkVKQlmvIZ%2BgwjT2jYggAyZn1IEZ2xZ7Toz4WtpBozj3jO9IHJ-FL35H4amdve496VljbPAP>

94 - Fourth Annual Report – 2016, National Institution for Human Rights – Kingdom of Bahrain, pp. 48 – 50.

95 - Fifth Annual Report of the National Institution for Human Rights on the Progress Achieved in the Human Rights Situation in the Kingdom of Bahrain 2017, pp. 55 – 57.

96 - Fact-Finding Report of the National Institution for Human Rights on the Allegations of Torture and Enforced Disappearance Crimes against a number of Convicts in the case known as (1/Terrorism/2017), 2018, available at http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/nihr1r_en.pdf

97 - Ibid., p. 29.

The NIHR also listed dates for submitting a visit request to substantiate that applicants were aware of the detainees' whereabouts. Despite these dates were provided by the Public Prosecution, and despite submitting a visit request to the Public Prosecution does not prove that the applicants were aware of the detainees' exact location or their well-being, the dates of some applications and the first visit log of their families were months after the date of the concerned person's arrest. For example, in the case of Al Sayed Alawi Hussain Alawi Hussain, who was arrested on 24 October 2016, the first application to visit was on 23 November 2016 to the Public Prosecution, 24 July 2017 to the Military Prosecution, and the first log of visit was on 2 November 2017. The first date of application to visit Fadhel Al Sayed Abbas Hassan Radhi was on 26 October 2016 to the Public Prosecution, 21 May 2017 to the Military Prosecution, and the first log of visit was on 2 November 2017, while he was arrested on 29 September 2016. Yet, the NIHR fact-finding report concluded that no enforced disappearances had taken place.⁹⁸

Regarding this case, UN human rights experts have called for the retrial of the four men sentenced to death and considered their collective trial a breach of fair trial and due process guarantees as their confessions obtained under torture. They stated that "they should have never been convicted on the basis of flawed trials, let alone sentenced to death, and they still face life sentences."⁹⁹ Contrastingly, the NIHR has accepted the reports of the Public and Military Prosecution too readily, and it has not even tried to challenge and independently investigate the government narrative, which is the NIHR duty as a National Human Rights Institute within the meaning of the Paris Principles. Furthermore, nothing in the report indicates that the NIHR has conducted interviews with the victims or listened to their testimonies.

On 27 July 2017, the NIHR issued a statement commenting on the UK Foreign and Commonwealth Office (FCO) Human Rights and Democracy Report - 2016 about Bahrain. Twenty days later, the NIHR commented on the US Department of State 2016 International Religious Freedom Report on Bahrain. While the NIHR welcomed the former because it praised Bahrain "as the most progressive country in the region in relation to human rights reforms,"¹⁰⁰ it accused the latter of relying on "unreliable sources" and including "unsubstantiated allegations," as it raised issues of religious discrimination and violations in the country.¹⁰¹ Moreover, the NIHR provided observations on some issues raised by the UK report, justifying violations by listing the legal provisions that had been invoked by the government to dissolve political societies and prosecute people on charges related to freedom of expression. The NIHR focused on the ostensible adherence

98 - Ibid., pp. 32 – 37.

99 - Bahrain: UN rights experts condemn military court convictions, cite torture allegations, 30 April 2018, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23010&LangID=E>

100 - Statement by National Institution for Human Rights to the UK Foreign and Commonwealth Human Rights and Democracy Report – 2016, 27 July 2017, available at <http://www.nihr.org.bh/EN/Administrator/MediaHandler/GenericHandler/documents/Statements/27%20July%202017.pdf>

101 - See the full statement of the NIHR on 16 August 2017 at <http://www.nihr.org.bh/EN/Administrator/MediaHandler/GenericHandler/documents/Statements/16August2017.pdf>

to Bahraini laws without looking more deeply into their consistency with international human rights standards and how these laws have been instrumentalized to eliminate opponents and criminalize dissent. The NIHR, as a National Human Rights Institution within the meaning of the Paris Principles, is in no position to advocate for the government nor justify its violations even though it is a governmental body. It should only advocate for human rights as an impartial body.

Amending the mandate and activating the role of the NIHR in 2014 was generally a step forward. The NIHR has been conducting workshops, roundtable discussions, training sessions, among others, to promote human rights in Bahrain. It has also provided many legal opinions opposing legal amendments that undermined acquired rights in the Kingdom regardless of whether or not the government adopted these opinions. For example, the NIHR provided a legal opinion on Draft Law on the amendment of some provisions of Decree-by-Law No. (18) of 1973 on Public Meetings, Processions, and Gatherings, objecting to some of the new restrictions contained therein to the right to peaceful assembly.¹⁰² The NIHR also disagreed with many amendments to the Citizenship law of 1963 proposed by the legislative authority in 2014, rejecting that the withdrawal of nationality to be dependent upon a resolution from the administrative authority and not a court ruling.¹⁰³ However, the NIHR has declined to comment and act upon the most pressing human rights issues in Bahrain, especially the prevalence of torture and impunity, admissibility of coerced confessions in the Bahraini judicial system, prosecuting individuals on charges related to freedom of expression and assembly, harassment of human rights defenders, and generally outlawing dissent. The NIHR's selectivity in addressing human rights violations and sidelining some of the serious ones committed by the government ruin its credibility and call into question its impartiality and independence.

102 - Opinions of National Institution for Human Rights On Draft Law on the amendment of some provisions of Decree-by-Law No. (18) of 1973 on public meetings, processions and gatherings, available at [http://www.nihr.org.bh/EN/Administrator/MediaHandler/GenericHandler/PDF/PDF2016/amendment%20of%20some%20provisions%20of%20Decree-by-Law%20No.%20\(18\)%20of%201973%20on%20public%20meetings.%20processions%20and%20gatherings%20\(1\)%20%20.pdf](http://www.nihr.org.bh/EN/Administrator/MediaHandler/GenericHandler/PDF/PDF2016/amendment%20of%20some%20provisions%20of%20Decree-by-Law%20No.%20(18)%20of%201973%20on%20public%20meetings.%20processions%20and%20gatherings%20(1)%20%20.pdf)

103 - Opinions of National Institution for Human Rights On Draft Law on Amendment of Some Provisions of the Bahraini Citizenship Law of 1963 accompanied to Decree No. (46) of 2014, available at [http://www.nihr.org.bh/EN/Administrator/MediaHandler/GenericHandler/PDF/PDF2016/Amendment%20of%20Some%20Provisions%20of%20the%20Bahraini%20Citizenship%20Law%20of%201963%20\(2\)%20%20.pdf](http://www.nihr.org.bh/EN/Administrator/MediaHandler/GenericHandler/PDF/PDF2016/Amendment%20of%20Some%20Provisions%20of%20the%20Bahraini%20Citizenship%20Law%20of%201963%20(2)%20%20.pdf)

Conclusion

The establishment of the SIU, the PDRC, and the MOI Ombudsman, besides amending the mandate of the NIHR, seemed propitious in improving the human rights scene in Bahrain; nonetheless, their work has not achieved tangible results so far. In addition to problems with the structure, formation mechanisms, and method of work, there is a lack of rigor, courage, and seriousness in addressing violations and holding those responsible accountable. The real problem is the independence of these bodies and their staff.

The lack of transparency in appointment mechanisms is shared between the four bodies, as none of them involves real and active participation by the civil society or even parliament, and if any, it is unclear. These bodies are formed by the government and report to it, which renders their ability to challenge the government security apparatuses unlikely. Moreover, none of them adopted clear follow-up procedures, whether for complaints or implementing their recommendations by concerned governmental bodies, negatively impacting their effectiveness.

The small number of individuals who have been brought to justice in the past five years, the failure to uphold the principle of superior responsibility, and the reluctance to address certain human rights violations indicate that these bodies, in their current state, are neither independent nor effective. They have not been designed to genuinely guarantee effectiveness and independence in addressing human rights violations. Three out of four of them are associated with the MOI.

The opinion presented by the UN Committee against Torture concerning these bodies reflects well their state:

The Committee is concerned that those bodies [Bahraini national human rights bodies] are not independent, that their mandates are unclear and overlap, and that they are not effective given that complaints ultimately pass through the Ministry of the Interior. It is also concerned that their activities have had little or no effect, and that the authorities provided negligible information regarding the outcome of their activities. The Committee is further concerned about the loopholes in the existing complaints mechanisms whereby prison inmates have to submit complaints regarding torture or ill-treatment through prison wardens, the prison Director or Deputy Director, which does not guarantee that the complaints will be submitted to the competent authorities.¹⁰⁴

104 - Committee against Torture (CAT), Concluding observations on the second and third periodic reports of Bahrain, 29 May 2017, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrCAqhKb7yhsqYPuFZC34VM6MoD0MvS%2BS%2BhcJl3TUrOvvF%2FGuWWUtDMNTj4IYASRqLw7n-bC8IcS25V04LGI8FMQtufqvlxyVSqBsgx3LVglkkCx%2BAgXg%2BL>

Recommendations

Based on the above, BCHR calls on the government of Bahrain to:

- Ensure redress for human rights violations victims and an end to the “culture of impunity.”
- Ensure the complete independence of the Special Investigation Unit (SIU) from the Public Prosecution Office by amending its statutory status and adopting a transparent mechanism for appointing impartial staff;
- Adopting greater transparency in clarifying the outcomes of complaints received by the SIU and the follow-up procedures taken, as well as justifying its decisions regarding complaints;
- Ratify the Optional Protocol to the Convention against Torture (OPCAT);
- Ensure the independence and effectiveness of the Prisoners and Detainees Rights Commission by modifying it into a National Preventive Mechanism within the meaning of the OPCAT and which functions under the Subcommittee on Prevention of Torture (SPT) oversight;
- Ensure the independence of the Office of the Ombudsman at the Ministry of the Interior (MOI Ombudsman) by ending the Ministry of Interior’s oversight of its work and the appointment and dismissal of its employees;
- Adopt a transparent and merit-based mechanism for the MOI Ombudsman staff appointment for limited terms that involves a public call;
- Ensure the MOI Ombudsman reports are more detailed and transparent in terms of the reasons for dismissing complaints and detailed results of its investigations;
- Establish a clear mechanism for the screening, selection, and appointment process of the National Institution for Human Rights (NIHR) Council of Commissioners;
- Ensure the NIHR independence and responsiveness in carrying out its mandate;
- Establish a transparent follow-up mechanism for the recommendations of these institutions, ensuring that responsibility for failure to address the violations committed is determined;
- Allow a periodic impartial review of their work by an autonomous body;
- Issue an invitation to the United Nations Special Rapporteur on torture to conduct a country visit;

Appendix 1

This table contains statistics on the SIU's work during the last five years (2016-2020), according to periodic statements published by the unit on its official Instagram account @siu.bah.

Time period	Number of complaints	Number of complainants interviewed	Number of witnesses interviewed	Number of suspects questioned	Number of forensic referrals	Number of psychiatry referrals	Sentences for convicted security forces' personnel / SIU accomplishments
January 2016	17	54		26	3	N/A	<ul style="list-style-type: none"> - Seven years' imprisonment for two members of the security forces for torturing a detainee to death. - Six months for another two for torturing a prisoner.
February 2016	35	44		16	2	N/A	<ul style="list-style-type: none"> - Referred five members of the security forces to criminal courts.

March 2016	27	57		34	3	1	<p>- Two years' imprisonment for three members of the security forces for torturing a detainee to death.</p> <p>- Three years' imprisonment for a member of the security forces for killing one person and injuring another during arrest.</p> <p>- Three months' imprisonment for another one for torturing a detainee.</p>
April 2016	17	22	25	38	4	1	- Referred a member of the security forces to a criminal court for beating two prisoners.
May 2016	13	40		58	3	2	- Referred a member of the security forces to a criminal court.
June 2016	24	14		10	N/A	N/A	N/A
July 2016	22	42		47	3	3	N/A
August 2016	26	89		60	5	3	- Referred three members of the security forces to criminal courts.
September 2016	7	31		29	1	1	- Referred a member of the security forces to a criminal court.
October 2016	14	14	22	23	N/A	1	- Three months' imprisonment for a member of the security forces for beating a prisoner.
November 2016	23	19		27	6	N/A	N/A

December 2016	N/A						
First third of 2017	53	64	56	55	14	2	<ul style="list-style-type: none"> - Referred four members of the security forces to criminal courts. - Referred another two for disciplinary action.
Second third of 2017	52	54	52	35	14	2	<ul style="list-style-type: none"> - Referred three members of the security forces to criminal courts.
Last third of 2017	31	59	65	53	4	2	<ul style="list-style-type: none"> - Referred 13 members of the security forces to criminal courts, ten of whom later sentenced to six months in prison. - Referred two for disciplinary action. - Three months' imprisonment for another two for torturing a prisoner.
First third of 2018	43	50	113	37	10	5	<ul style="list-style-type: none"> - Referred two members of the security forces to criminal courts.
Second third of 2018	30	50	35	46	7	2	<ul style="list-style-type: none"> - Referred a member of the security forces to a criminal court. - Referred another two for disciplinary action. - Six months' imprisonment for a member of the security forces, and three months for another one.

Last third of 2018	29	52	56	66	11	N/A	<ul style="list-style-type: none"> - Referred three members of the security forces for disciplinary action. - Three months' imprisonment for another one for beating a person during arrest.
First third of 2019	29	63	41	67	9	2	<ul style="list-style-type: none"> - Referred 12 members of the security forces to criminal courts, five of whom were later sentenced to three months' imprisonment. - Referred one for disciplinary action. - Six months' imprisonment for another one for torturing a prisoner.
Second third of 2019	24	29	23	30	12	2	<ul style="list-style-type: none"> - Referred a member of the security forces for disciplinary action.
Last third of 2019	27	37	46	31	11	4	<ul style="list-style-type: none"> - Referred a member of the security forces to a criminal court, who was later sentenced to one years' imprisonment. - Referred another for disciplinary action.
First third of 2020	33	19	3	13	6	4	<ul style="list-style-type: none"> - Referred two members of the security forces for disciplinary action.

Second third of 2020	10	10	4	16	1	1	- Referred a member of the security forces for disciplinary action.
Last third of 2020	23	N/A	N/A	N/A	5		N/A

Appendix 2

This table contains the visits conducted by the PDRC since it became operational in 2014. The reports of these visits can be found on the PDRC website www.pdrc.bh

Location	Announced	Date of visit	Follow-up Visit Date
Dry Dock Pretrial Detention Center	No	21-24 April 2014	None
Police Department of the Capital Governorate	No	24-25 December 2014	None
Police Department of Muharraq Governorate	No	24-25 December 2014	None
Police Department of the Northern Governorate	No	24-25 December 2014	None
Police Department of the Southern Governorate	No	24-25 December 2014	None
General Directorate of Criminal Investigation and Forensic Evidence	No	24-25 December 2014	None
Juvenile Welfare Center	No	18-20 January 2015	February 2018
Reform and Rehabilitation Center for Female Inmates	No	18-20 January 2015	February 2018
Women's Custody and Pretrial Detention Center	No	18-20 January 2015	None
Jau Reform and Rehabilitation Center	No	15-22 November 2015	None
Deportation Center for Foreign Males	No	24-25 May 2016	November 2019
Shelter and Deportation Center for Foreign Females Detainees	No	24-25 May 2016	November 2019
Juvenile Welfare Center	Yes	18-19 February 2018	None
Reform and Rehabilitation Center for Female Inmates	Yes	18-19 February 2018	None
Dar al-Aman Abused Women Shelter	Yes	16 January 2019	None
Dar al-Karama Homeless and Beggars Shelter	Yes	16 January 2019	None
Children Welfare Home (Betelco Home)	Yes	16 January 2019	None
Shelter and Deportation Center for Foreign Females Detainees	Yes	20 November 2019	None
Deportation Center for Foreign Males	Yes	20 November 2019	None
Psychiatric Hospital	Yes	20 November 2019	None