

Constitutional Options for Bahrain

III. Background Papers

3. The Judiciary¹

A. Intro

The effective and independent functioning of the judiciary is integral to the separation of powers, the right to a fair trial, and the supremacy of the constitution.² The current Bahraini Constitution³ provides a powerful framework for establishing the independence of the judiciary and a meaningful process of constitutional review of government action. In its current form however, it does not provide sufficient protections against undue influence by other branches, particularly the King. It also does not provide clear enough language explicitly guaranteeing the right of private individuals to challenge the constitutionality of any government action. The recommendations that follow are options designed to address those problems.

B. Judicial Independence

Judicial independence and impartiality are widely acknowledged to be key to separation of powers, the supremacy of constitutional rights, and the guarantee of a fair trial. The United Nations endorsed this view when it adopted *The Basic Principles on the Independence of the Judiciary* in which it calls for all governmental actors and institutions to “respect and observe the independence of the judiciary,” for the judiciary to have jurisdiction over all issues of a “judicial nature,” and for decisions to be made free from “improper influence” or the possibility of revision by other branches.⁴ Judicial independence and impartiality are also endorsed in Bahrain’s 2001 National Action Charter, which declares that, “The independence and immunity of the judiciary are two key guarantees for protecting rights and freedom”⁵ Indeed, as will be discussed in greater depth below, the current Constitution contains substantial guarantees for an independent and impartial judiciary but unfortunately the relevant provisions have weaknesses contributing to a reality in which judicial independence is compromised.⁶

An overarching issue in the current regime is the degree of control and influence that is (or could be) exerted by the King over the judicial process. Yet, this problem is not limited to monarchical or even executive control, but could arguably extend to the legislature as well. In the case of the legislature, however, countervailing considerations of accountability and legislative supremacy come into play. The analysis in this section will focus on mechanisms of increasing judicial

¹ Prepared by Anjali Mohan and Courtney Walsh.

² See *The Basic Principles on the Independence of the Judiciary*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985).

³ The judiciary is primarily covered in Articles 104-106. CONSTITUTION OF THE KINGDOM OF BAHRAIN, 14 Feb. 2002 (official English translation) [hereinafter BAHRAIN CONSTITUTION], art. 104 – 06.

⁴ *The Basic Principles on the Independence of the Judiciary*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59, ¶ 1–4 (1985).

⁵ THE BAHRAIN NATIONAL ACTION CHARTER, 23 Dec. 2000 (official English translation) [hereinafter NATIONAL ACTION CHARTER], ch. II(6).

⁶ See Country Report on Human Rights Practices for Bahrain, U.S. State Department, 2003, *available at* <http://www.state.gov/g/drl/rls/hrrpt/2003/27925.htm>.

independence from both branches and decreasing political influence overall, but with due regard to the importance of popular accountability. The areas covered will include the selection, tenure, salary, and removal of judges along with other possible mechanisms to create immunity and impartiality. Within each of these areas will be an explanation of how the current constitution addresses the issue, commentary regarding its effectiveness, and then possible options for reform. This section will conclude with commentary on a few other structural considerations.

i. Selection of Judges

The current constitution addresses the issue of selection of judges in Articles 106(a) and 33(h). Article 106(a) provides that, “A Constitutional Court shall be established, and shall comprise a President and six members, all of whom are appointed by a Royal Order...”

For all other judges, Article 33(h) establishes that “The King appoints judges by Royal Orders, as proposed by the Higher Judicial Council” and that “The King chairs the Higher Judicial Council.” While this procedure minimizes the likelihood of interference from electoral and legislative politics, the large vesting of power of selection in the King creates the potential for the King to use his selection power to exert influence over judicial outcomes. While American news media recognized the King’s head of the Ministry of Justice for creating what it described as “the first judicial vacancy announcement in the Arab World” motivated by “an effort to make judicial selection more transparent and to encourage diversity among the applicants for bench positions,”⁷ such processes are not guaranteed in a system governed by royal decree.

The simplest reform for the current Constitution would be to amend Article 33(h) by replacing the King in the role judicial selection with that of an elected Prime Minister and maintain the role of the Higher Judicial Council in proposing candidates. The downside to this reform, though, is that it would leave untouched the unilateral appointment process of Constitutional Court judges, merely replacing the King with a Prime Minister. However, appointment by the Prime Minister, an elected official, would insert an element of democratic accountability, even if only indirectly, into the judicial appointment process.

Additionally, Bahrain may also consider models used in other countries. The French Constitutional Court, for example, has nine members, and the President, the National Assembly, and the Senate each appoint three.⁸ Bahrain could consider adopting a system like this for the Constitutional Court because it would provide, from a separation of powers perspective, a guard against any one branch having disproportionate influence over the Court. Any of Bahrain’s governmental bodies could be granted appointment power over some portion of the seats—the Higher Judicial Council, other judges, or even the King. The Iraqi Constitution provides that the Higher Judicial Council will nominate the Chief Justice, Public Prosecutor, and other positions for approval by the legislature. Bahrain may want to implement such a model in order to take advantage of the Higher Judicial Council structure already provided for and to bypass the need to go through the King or Prime Minister at all. In another example, the South African Constitution requires a consultation process in which the President appoints the heads of the Constitutional

⁷ John Hermina, *Commentary: Bahrain: The rule of law shines brightly in the Arabian gulf*, The Daily Record (October 1, 2004).

⁸ CONSTITUTION OF THE FIFTH REPUBLIC, Oct. 4, 1958, art. 56 (France).

and Supreme Courts after consulting with the Judicial Service Commission and leaders of the parties represented in the National Assembly.⁹ Such a process may allow for a greater number of voices to be heard without undue influence by the more political branch.

A final option would be to reform and incorporate Articles 69-71 of *The Judicial Authority Law* into either Article 33(h) or 106(a) of the Constitution. Article 69 of the *Constitutional Court* law creates a Supreme Judicial Council (SJC) which is comprised of the head judges of each Bahraini court, other senior judges, and the Public Prosecutor. In accordance with the Constitution, the King chairs the Council. Article 70 delineates the powers of the SJC, including the power “to recommend” appointment. Finally, Article 71 describes the SJC’s voting procedures for adopting its recommendations. While the King, as chair, can only vote in the event of a split vote, this only pertains to the adoption of a recommendation. Ultimately, Article 33(h) apparently leaves the only meaningful vote with the King, acting through his unilateral power of appointment. As a potential reform, Article 33(h) could be amended to make the SJC’s nominations mandatory. In operation with the SJC’s procedures voting procedures, this reform would create a nomination and appointment process that enhances judicial independence, mitigates the King’s role in the process without eliminating it, and incorporates recognizable and pre-existing Bahraini law into the amendment.

The qualifications and selection criteria for judges may also be specified in the Constitution. The UN Basic Principles declare that “[p]ersons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law.” Currently in Bahrain, qualifications are provided for by legislative decree.¹⁰ This process may effectively monitor the quality of judges but if Bahrain is interested in making any of them less vulnerable to future alteration, it might consider writing either broad language such as that included in the UN Basic Principles or more specific requirements such as a required quantity of years in a given judicial position or as a member of the bar.¹¹

Another possible reform is to add a provision regarding the diversity of the bench in the Constitution in order to reflect Bahraini society and ensure high quality and impartial decisions. One possible model for a Constitutional provision is the South African Constitution, which states: “[t]he need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.”¹²

ii. Tenure

The current constitution provides for the tenure of judges in stating that the Constitutional

⁹ CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, art. 174(3). See also CONSTITUTION OF INDIA November 26, 1949, art. 124(2) (providing that the President will consult with the Judges of the Supreme Court in the nomination process).

¹⁰ Legislative Decree No. 42 of 2002 with respect to promulgating the Judicial Authority Law, art. 22 (2002).

¹¹ See, e.g., CONSTITUTION OF INDIA, 26 Nov. 1949, art. 124(3) (“A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and -(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or (c) is, in the opinion of the President, a distinguished jurist.”).

¹² CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, art. 174(2).

Court's President and six members will serve for a period determined by law.¹³ Allowing the term of judges to be altered through regular legislation has the potential to create too much leverage over the Court by the states. Members of a legislature unhappy with a ruling may believe themselves constitutionally permitted to shorten the term of judges. Furthermore, even if the legislature would not inappropriately shorten terms of sitting judges, judicial independence may be better achieved by creating a constitutional provision with a longer term for judges so that they will be less likely to be concerned with keeping their post and to take a longer term view of the correct decision and act with greater impartiality. Options for doing this include a term of a period longer than those of the more political branches,¹⁴ through a provision of non-renewability, or through life tenure with or without a forced retirement age.¹⁵ Bahrain may apply its tenure rules uniformly to all judges or may consider providing for longer or life terms for the Constitutional and/or other higher courts, while allowing for a shorter term for judges of lower courts.

iii. Salary, Removal, and Other Controls

The only provision relevant to salary of the judiciary is a general provision that salaries will be provided by law as charge on the State Treasury. An amendment that provided for an adequate salary, which the legislature would not be at liberty to decrease¹⁶ may decrease the incentive for corruption or the possibility for lawmakers to punish judges for unpopular decisions.

One means of decreasing undue influence on judges from other actors is to limit removal and provide for immunity from civil or criminal liability for consequences of properly performing their job. The current constitution provides that "The law shall state the regulations that ensure that the members of the [Constitutional] Court are not liable to dismissal, and specifies the procedures that are followed before the Court."¹⁷ This provision is one means of decreasing undue influence and could be supplemented by specific prohibitions against removal except in cases of a crime or ethical violation. It could also be extended to a wider category of judges including higher court judges or all other members of other judiciary. Immunity from suit is one additional provision that could help guarantee that judges exercise their judgment honestly and freely.¹⁸ Furthermore, an explicit provision guaranteeing the Court's control over its own budget may diminish the risk of punitive and/or debilitating cuts in the budget for political motives.

Other possible amendments to increase impartiality could include a requirement that judges not have served, concurrently serve, or serve within a certain amount of time in any political office. Provisions promoting or requiring diversity may also contribute to greater impartiality because

¹³ BAHRAIN CONSTITUTION, art. 106(a).

¹⁴ CONSTITUTION OF THE FIFTH REPUBLIC, 4 Oct. 1958, art. 56 (France) (nine years with staggered terms). *See also* CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, art. 176(1) (twelve years or age of 70, whichever comes first with option for legislature to extend).

¹⁵ *Compare* U.S. CONST. art. III § 1 (providing that judges will serve in good behavior) *with* CONSTITUTION OF INDIA, 26 Nov. 1949, art. 124(2) (setting a mandatory retirement age of 65 for members of the Supreme Court).

¹⁶ *Cf.* CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, art. 176(3).

¹⁷ BAHRAIN CONSTITUTION, art. 106(b).

¹⁸ *See* The Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59, ¶ 16 (1985).

potential biases may be balanced out. Furthermore, Bahrain might consider making the right to a public hearing more absolute and then allow for certain aspects of trials to remain private when entirely necessary.

iv. Other Considerations

Other areas for potential reform are the role of the Higher Judicial Council; the Public Prosecutor; and the definitions of the power, jurisdiction, and composition of courts below the Constitutional Court. Other reforms may also be considered to cover important aspects of the judiciary's role as impartial and trusted institution. This section did not address the role of the Public Prosecutor but the independence, impartiality, and effectiveness of the role are certainly crucial for the effective administration of justice. Further consideration to the exact role of the Public Prosecutor should be given.

Reformers of the Constitution may also want to consider defining the power, jurisdiction, and composition of courts within the Constitution. In particular, at least defining the highest appellate courts may decrease the potential for arbitrary grants and removals of jurisdiction and allow for greater protections such as those of selection, tenure, and removal discussed above for judges in the special positions of highest appellate authority other than the judges of the Constitutional Court.

B. Constitutional Review in the Judicial Sphere

Judicial review of government laws and action provides an important check on governmental power and mechanism for ensuring the supremacy of the Constitution. The reality as to whether constitutional review fulfills that imagined purpose depends on the mechanics of access. While Article 106 explicitly grants the King and upper echelon Government officials the right to refer questions to the Constitutional Court for review, the Constitution's "guarantees" for "others" to seek constitutional review is on its face unclear.¹⁹ This section will explore the procedural dynamics of Bahrain's constitutional review process, focusing on questions of access for private litigants by examining the 1973 and 2002 Constitutions, the 2001 National Actions Charter, and supporting legislative enactments, which all provide the building blocks for some form of judicial review. The task then is to make certain that this normative ideal is expressed in appropriate legal authority. In furtherance of this goal, the analysis here will review and suggest constitutional reforms that enhance private litigant access to constitutional review through changes to the jurisdictional requirements of "referral," as well as the constitutional and statutory right to litigate in lower courts.

The Constitution of 2002, in part, responds to the National Action Charter's call for realization of constitutional review.²⁰ Article 106 of the amended Constitution creates the Constitutional Court, assigning it the duty, as the uniquely competent branch of government, to "watch over the

¹⁹ *Id.* at art 106.

²⁰ In 2001, the National Action Charter explicitly called on the government to fulfill the 1973 mandate, requiring that "[t]he state shall complete the judicial system as prescribed in the [1973] constitution." NATIONAL ACTION CHARTER, ch. II(6).

constitutionality of law and statutes.”²¹ In order to fulfill this obligation, the Constitution grants the Court the power to hear and adjudicate challenges to the constitutionality of the Government’s laws.²² A ruling of unconstitutionality by the Court carries controlling weight, as Article 106 binds “all State authorities” to comply with the Court’s determinations of constitutionality.²³ That same year, Bahrain officially constituted the Court through enabling law with its decree of the *Establishment of the Constitutional Court*.²⁴ The Constitutional Court law, in accordance with Article 106, sets out the standing and other procedural rules for the Court.

i. Post-enactment Review—Standing

Despite the specific improvements made in the amended Constitutional Court article, its 1973 predecessor had one significant advantage – explicit standing for private litigants to raise constitutional matters for review.²⁵ Article 106(2) “guarantees the right of the Government...and *notable individuals and others* to challenge before the Court the constitutionality of laws and statutes.”²⁶ Compared to the standing guaranteed to “interested parties” in the 1973 Constitution,²⁷ this new standing provision is remarkably vague. Standing for private litigants would likely require express language in any subsequent enabling law to define that space.

The lack of procedural detail in Article 106 is addressed in the *Constitutional Court* law. Articles 17 and 18(a) create standing for the King, the Prime Minister, the Speaker of the Consultative Council, and the Speaker of the House of Representatives to refer questions of constitutionality to the Court.²⁸ While Article 17 limits the King to seeking constitutional review of proposed laws prior to promulgation, the other government officials listed in Article 18(a) have no temporal limits as to when they may seek review.²⁹ As for the question of “others” who may have the right to seek constitutional review, Article 18(b)-(c) expressly carves out standing for private litigants in Bahraini courts.³⁰

While many states successfully employ the top-down standing model, it is a model that can be perceived as favoring special interests to the detriment of average citizens. Allowing bottom-up standing to seek constitutional review mitigates the perception of special interest capture, because private litigants can have the constitutionality of the Government’s laws adjudged if those laws have in some way injured them. Apart from the hypothetical, actual instances of

²¹ BAHRAIN CONSTITUTION, art. 106(1).

²² *Id.* at art. 106(2).

²³ *Id.* at art. 106(3).

²⁴ *Establishment of Constitutional Court*, Legislative Decree No. 27 [hereinafter *Constitutional Court Decree*] (2002)(Bahrain).

²⁵ Article 103 of the 1973 Constitution provided that “[t]he law shall specify the judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations....” CONSTITUTION OF THE STATE OF BAHRAIN [hereinafter 1973 CONSTITUTION], 26 May 1973, art. 103. Additionally, Article 103 “ensure[d] the right of both the Government and the interested parties to challenge the constitutionality of laws and regulations before the said body.” *Id.* This language constitutionally codified the right of both Government actors and private litigants to have standing to raise issues for constitutional review.

²⁶ BAHRAIN CONSTITUTION, art. 106(2).

²⁷ 1973 CONSTITUTION, art. 103.

²⁸ *Constitutional Court Decree*, art. 17–18.

²⁹ *Id.* at art. 17–18(a).

³⁰ *Id.* at art. 18(b)–(c).

private litigants reaching the Constitutional Court and succeeding on the merits exist, including one from as recently as January of this year.³¹

Despite these advantages of the current Bahraini model for access to constitutional review, a serious concern is that the right for private litigants to seek Constitutional Court review rests on the slender reed of lesser, enabling law. Without having this right firmly ensconced in the constitutional architecture, it becomes susceptible to capricious abrogation by the Government's political branches. Additionally, to have a mere statutory right securing judicial review for private litigants is inconsistent with Bahraini constitutional values. While the NAC expressed concern over the lack of enabling law to bring about constitutional review, the document did not call upon the Government to reconsider the right of private citizens to have access to such review. However, the right was lost in the promulgation of the amended Constitution of 2002. The Government should correct this oversight at the earliest opportunity in order to bring this provision into conformity with Bahrain's truest constitutional values. One possible way of doing this is to amend 106(a) by replacing "notable individuals and others" to interested parties.

ii. Post-enactment Review—Scope of Reviewable Government Action

The Constitution currently only provides for post-enactment challenge to review "laws and statutes." Such a grant of judicial review leaves out two very important areas of government action—executive action and judicial decisions. This omission is problematic for both separation of powers and constitutional supremacy. If the executive may circumvent review by not acting according to law or statute and the courts are not reviewable, then much of the advantages of constitutional judicial review are lost.

In the case of judicial action, however, there are some mechanisms currently mandated by statute, which allow for some review of constitutional issues within cases in front of lower courts. Article 18(b) of the *Constitutional Court* law allows a lower court *sua sponte* to stay proceedings in a case and "refer" an issue to the Court for its review.³² Similarly, Article 18(c) allows private litigants, through motions raised in lower courts, to have their constitutional claims referred to the Court.³³ So long as the litigant raises a "serious plea," the lower court judge "shall" stay the proceeding and allow the litigant to file his or her plea with the Constitutional Court.³⁴ This form of referral jurisdiction creates two concerns. First, though the private litigant has access to judicial review, it is not an automatic right of appeal but instead must pass through the lower court judge as gatekeeper. Contrast this with the self-referral power of the King and select Government officials who may unilaterally seek Court review. Second, referral jurisdiction, as structured by the *Constitutional Court* law, requires the suspension and, therefore, delay of lower court legal proceedings. The fear of lengthy delay in having actions addressed and resolved in lower courts may eliminate the perceived benefits of seeking Constitutional Court review. This would decrease the likelihood that private litigants would attempt to seek constitutional review, regardless of the strength of their constitutional claim.

³¹ *Trial Moved to Another Court after Controversy*, GULF NEWS (UNITED ARAB EMIRATES), January 21, 2011; Noor Toorani, *New Law on Assets Freeze Hailed*, GULF DAILY NEWS, January 10, 2011.

³² *Constitutional Court Decree*, art. 18(b).

³³ *Id.* at 18(c).

³⁴ *Id.*

In order to resolve these concerns, the Constitution should be amended so as to afford private litigants automatic appeal rights to the Constitutional Court. From a democratic perspective, this would make private litigant standing more consistent with the self-referral rights of the other litigant classes. Of course, direct appeal rights with some controls would greatly increase the volume of cases received by the Constitutional Court. In order to mitigate these effects, automatic appeal rights to the Constitutional Court should only be exercised upon the exhaustion of all intermediate appellate rights. As for implementation, it is not necessary for an automatic appeal process to replace the current referral process. Rather, it should be implemented along with the present interlocutory referral process, as this type of appeal gives lower courts the flexibility and discretion to have issues critical to the outcome of litigation resolved by the Constitutional Court at an early point in litigation. The combination of automatic review upon exhaustion of appeals and interlocutory referral will give greater incentive for private litigants to seek constitutional review, while still efficiently managing the allocation of finite judicial resources.

Furthermore, in order to ensure that no judicial or executive actions may escape review, Article 106b should be amended so as to replace “law or statute” with “any government action” to ensure that all government actors are subject to meaningful review.

iii. Pre-enactment Review

Additionally, the Government could consider expanding Article 106(c) referral to allow for requests for pre-enactment review of legislation by government entities other than the King, namely the Prime Minister and the National Assembly. As a matter of democratic governance, this would indirectly allow the electorate, through their elected officials, the ability to seek constitutional review prior to a problematic law being promulgated.

iv. The Right to Litigate

In Article 20 (f) of the Constitution guarantees individuals the right to litigate in criminal trials.³⁵ Comparatively, this right to litigate has been interpreted to mean that a “litigant must enjoy unobstructed and practical access” the courts.³⁶ In the context of a referral-based constitutional review system, such as Bahrain’s,³⁷ the right to litigate is an important buttress supporting the meaningful access of private citizens’ right to seek constitutional review. This is an important supporting right, especially. If a litigant did not have a right to present their case and raise constitutional objections, referral and, therefore, constitutional review for the individual citizen would be a nullity.

³⁵ BAHRAIN CONSTITUTION, art. 20(f).

³⁶ HUMAN RIGHTS AND DEMOCRACY: THE ROLE OF THE SUPREME CONSTITUTIONAL COURT OF EGYPT, 257–58 (Kevin Boyle & Adel Omar Sheri eds., 1996). Though not controlling in Bahrain, the excerpted cases illustrate the leading interpretation of the “right to litigate” in a neighboring and influential jurisdiction.

³⁷ *Constitutional Court Decree*, art. 18(b)–(c).

The concern, though, is that the Article 20(f) right to litigate only pertains to criminal matters. This constitutional right should be expanded to include civil and commercial matters, as well.³⁸ Looking to both the 1973 and 2002 Constitutions, a critical provision that supports Bahraini standing is the right to litigate. Unlike the right to litigate in criminal matters, the right to litigate in commercial or other civil matters can be abridged at any time. If curtailed by law, it would result in substantial portions of civil and commercial law being lost to constitutional review. All of this would severely diminish the meaningful quality of the right to constitutional review. Creating a constitutional right to litigate in all court matters, including all non-criminal ones, would ensure that all private litigants with cognizable litigation interests have the ability to seek referral constitutional review.

In order to do this, the Government could amend Article 106(2) by including a right to litigate in all matters, including non-criminal ones, as part of the right of interested parties to seek constitutional review. This would be a more appropriate fit rather than amending Article 20, which solely yet comprehensively deals with the full spectrum of criminal rights.

v. Other Considerations

An additional possible reform would be to more explicitly guarantee the constitutional supremacy that is implied by the Constitution's provisions providing for the binding nature of the Constitutional Court's decisions³⁹ and that the King "safeguards...the supremacy of the Constitution."⁴⁰ While the provisions about the Constitutional Court make clear that its decisions are binding "on everyone,"⁴¹ a broader statement that the Constitution is supreme and that everyone must abide by it, including members of each branch of government, may provide a powerful reinforcement of the supremacy of the Constitution's protections of rights, separation of powers, and rule of law.

Appendix: Key Suggested Constitutional Amendments⁴²

[See other options in Part II, under Art. 106]

Article 33

(h) ~~The King chairs the Higher Judicial Council.~~ The King [PRIME MINISTER or NATIONAL ASSEMBLY] appoints judges by ~~Royal Orders~~ [MAJORITY VOTE], as proposed by the Higher Judicial Council.

Article 106

(b) The law shall guarantee the right of the Government, Consultative Council, the Chamber of Deputies and ~~notable individuals~~ INTERESTED INDIVIDUALS and others to challenge before the Court the constitutionality of laws, statutes, AND ANY OTHER GOVERNMENT ACTION.

³⁸ See HUMAN RIGHTS AND DEMOCRACY, *supra* note 35, at 257–58.

³⁹ BAHRAIN CONSTITUTION, art. 106(a),(c).

⁴⁰ *Id.* at art. 33(b).

⁴¹ *Id.* at art. 106(c).

⁴² Formatting Methodology: Strikethroughs of text suggest language to be removed. Text in all-caps suggest language to be added. Italicized text in brackets provides explanatory notes.

