

**House Foreign Affairs Committee
Tom Lantos Human Rights Commission**

**Briefing
on
Bahrain: 2018 Elections**

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I wish to thank the Tom Lantos Human Rights Commission for convening this briefing on Bahrain's 2018 elections and for inviting me to participate. I would also like to thank the Commission for consistently highlighting issues relating to democracy, governance and human rights in the Kingdom. Although my organization, NDI, no longer provides advice or training to political societies, election officials or non-governmental (domestic) election observation organizations in Bahrain, NDI did work with political activists, non-governmental organizations and elections and government officials prior to elections in 2002, 2006 and 2010. NDI provided analysis of the 2014 elections as well. I would like to offer a summary of previous elections through the prism of electoral fairness and integrity, and then offer some recommendations on improvements that could make the 2018 elections less discriminatory, more representative and ultimately, more successful.

Background and history of elections in Bahrain since 2002

Bahrain's self described transformation from an emirate to a "constitutional" monarchy in early 2002 was quickly followed by the first municipal and legislative elections in over a generation. In February 2002, the King of Bahrain, Hamad bin Isa Al-Khalifa, called for the country's first legislative elections in over 25 years. King Hamad introduced an amended constitution that created a National Assembly consisting of two chambers: an appointed Shura Council (upper house) and an elected Council of Representatives (lower house) each with 40 members and similar legislative powers. In **May 2002**, Bahrain conducted its first municipal elections in nearly five decades, which were followed in October 2002 by the country's first legislative elections in nearly three decades. In these elections, women, for the first time in the Gulf region, were allowed both to participate as voters and as candidates.

Despite this outwardly positive picture, many issues clouded Bahrain's transition to a form of limited democracy. The political scene in Bahrain was characterized by a lack of confidence and dialogue between the government and the opposition. In 2001, when the Emir Hamad bin Isa al Khalifa submitted the National Charter (a wide-ranging set of reforms) for approval by referendum, he assured Bahraini society that successive reforms would be subject to public consultation. Many Bahrainis assumed that a new constitution would be based on the framework of the 1973 constitution, which afforded the elected parliament considerable authority. Some political activists, therefore, were disappointed when the King released a new constitution in February 2002, called for municipal and parliamentary elections two years ahead of schedule, and declared Bahrain a kingdom without having consulted any of the main political societies.

There was also disappointment that under the new constitution there would be an appointed chamber with powers and numbers equal to the elected chamber, with the president of the appointed chamber presiding over joint sessions. Lack of action on constitutional issues in the period between the municipal and legislative elections, coupled with what many societies termed "arbitrary decrees" on issues ranging from housing allocations to trade union laws to electoral laws, led some to argue that the King was not serious about a consultative process. These concerns led four political societies (Al Wifaq National Islamic Society, Wa'ad the National Democratic Action Society, Amal the Islamic Action Society, and Al-Qawni the Gathering of the Nationalist Society) to boycott the October 2002 parliamentary elections. The refusal of the boycotting societies to participate in the political process had significant and lasting consequences. Not only did Bahrain's opposition position itself outside of the political infrastructure, but the Shia majority in Bahrain, largely represented by the boycotting parties, also became further alienated from the political process. Due in part to the Shiite opposition boycott, voter turnout in the legislative elections was around 50 percent and helped Sunnis win two-thirds of the 40 lower house seats.

In **November 2006**, Bahrainis went to the polls and voter turnout was approximately 73 percent of Bahrain's 295,000 eligible voters. The elections were held under a climate of more fairness than 2002 and the judges administering the elections went out of their way to reassure the public, candidates and political societies that they were willing and able to correct any complaints or irregularities. However, some political societies and opposition figures claimed there was a conspiracy to undermine the fairness and openness of the electoral process by manipulating the voter database. According to the allegations, the government directed a bloc of 8,000 voters, who were not registered to specific polling sites, to vote for pro-government candidates at 10 general polling stations. Following the election, political societies and civic groups continued to question the legitimacy of close races because of these allegations.

The four political societies that boycotted the 2002 legislative elections participated in the November 2006 elections. The largest two of these opposition societies, Al Wifaq National Islamic Society and Wa'ad the National Democratic Action Society, fielded 23 candidates and supported several others. Seventeen of Al Wifaq's 18 candidates won seats in the first round,

capturing between 55 and 90 percent of the votes in their constituencies – becoming the largest single block in the lower house, but still short of a majority. All five Wa’ad candidates failed to win election, although three did reach the second round of voting. Sunni Muslims won 23 seats (eight secular and 15 Islamists).

The summer prior to the 2010 elections saw increased pressure against opposition societies from the regime, including the arrest of 23 Shiite leaders and the blocking of funding associated with the opposition societies. In addition, the Shiite opposition accused the government of drawing electoral boundaries to favor Sunni candidates. Despite these tensions, in **October 2010**, an electorate of about 300,000 persons would vote in 40 districts spread throughout five governorates for the third time since the adoption of the trappings of a constitutional monarchy. Super voting centers were established for the election in order to allow voters to cast their ballots from one central location rather requiring them to vote from their own district. This gave rise however, to allegations of potential fraud as the centers were unfairly distributed amongst areas without a large Shiite population. Even with this disadvantage, Al Wifaq managed to win 18 seats in the lower house, although still not enough to capture the majority. Sunni Islamists won five seats, down from 15; and Sunni independents won 17 seats, up from nine seats in the lower house. Voter participation was estimated at 67%, which is less than the estimated 73% of the 2006 elections.

Starting in February 2011, following a wave of pro-democracy protests across the Arab world, tens of thousands of Bahraini citizens took to the streets to protest the slow pace of reform.

In response, authorities used the judicial branch to silence opposition. In early April 2011, the government suspended Wa’ad (although two months later the government reinstated Wa’ad) and filed a lawsuit to dissolve Shiite opposition societies Islamic Action Association and Al Wifaq; though plans to ban the Shiite groups were later postponed after heavy international pressure. In response to the crackdown on demonstrators and members of the political opposition, Al Wifaq pulled its block of 18 members out of parliament. By-elections were held in October 2011 to fill the seats vacated by Al Wifaq, producing a lower house with 32 Sunnis and eight Shiite.

Despite the increasingly politically turbulent environment post 2011, Bahrain returned to the polls for its fourth parliamentary and municipal elections on **November 22, 2014**. Following a resolution by the Prime Minister that set the date for the election, King Hamad bin Isa Al Khalifa issued a royal decree demarcating new parliamentary electoral districts and dissolved the Central Governorate, reducing the number of governorates from five to four and redistributing the seats from the Central Governorate to the remaining four governorates. It is important to note that in July 2014 parliament voted to replace the Manama Municipal Council located in the Capital Governorate with an appointed Capital Trustee body; therefore, only three of the four governorates participated in the municipal elections. While the dissolution of the Central Governorate did not change the number seats in the lower house, keeping it at 40, the decree also called for the Prime Minister to set the new electoral boundaries in the four governorates.

The government anticipated that redistricting would encourage opposition parties to reverse their decision to boycott elections.¹ However, shortly after the announcement of the new districts, the five main opposition groups who referred to themselves collectively as the National Democratic Opposition Parties – Al Wifaq, Wa’ad, Al-Minbar Democratic Progressive Tribune, Al Ekha National Society and the National Democratic Assembly – formally declared their intent to boycott, adding that the new voting districts still favored the minority Sunnis and that any elected parliament would lack sufficient power.

According to a report on the 2014 elections from the Project on Middle East Democracy (POMED), “only six candidates obtained an outright majority, forcing a second round vote to be held in 34 of the 40 districts. This runoff was won primarily by Sunni independents, and ultimately 37 of the 40² seats went to independents. According to Justice Minister Sheikh Khaled al-Khalifa, initial estimates showed 51.5 percent of registered voters had turned out to vote, with 16 percent of registered voters boycotting. However, al-Wefaq called the official turnout figure “amusing, ridiculous, and hardly credible,” citing its own turnout figure estimate at “around 30 percent” instead.”

Key Features of Bahrain’s Electoral Framework

Political Societies

While political parties are not formally outlawed in Bahrain, there is no legal framework for them, thus political societies act as *de facto* parties in Bahrain. In practice, political societies take on the institutional functions of a political party – fielding candidates, mobilizing electoral support, organizing campaigns.³ There have been as many as 20 licensed political societies operating in the country, including Islamist and secular, pro-government, and opposition groups.⁴

Under the law, the Ministry of Justice can withhold licenses or dissolve organizations if the group does not abide by all provisions laid out in the law;⁵ and the minister of justice can seek a court order to shut down a political society for up to three months if a group “violates provisions of the constitution, the [political societies] law, or any other law,”⁶ as it did in October 2014 when it ordered the suspension of Al Wifaq. And in June 2014, the Minister of Justice, Islamic Affairs and Endowments announced an amendment to the Political Societies Law to require societies to seek advanced approval from the Ministry of Foreign Affairs before communicating and meeting with foreign diplomatic or consular missions, or representatives of

¹ Katzman, *Bahrain: Reform, Security, and U.S. Policy*.

² International Foundation for Electoral Systems, Election Guide, <http://www.electionguide.org/elections/id/2483/>

³ Freedom House – Countries at a Crossroads 2012. Available at:

<https://freedomhouse.org/sites/default/files/Bahrain%20->

⁴ Interfere, Restrict, Control: Restraints on Freedom of Association in Bahrain, Human Rights Watch: 2013.

Available at <http://www.hrw.org/sites/default/files/reports/bahrain0613webwcover.pdf>

⁵ Bertelsmann Stiftung, BTI 2014 — Bahrain Country Report. Gütersloh: Bertelsmann Stiftung, 2014. Available at:

http://www.bti-project.de/uploads/tx_itao_download/BTI_2014_Bahrain.pdf

⁶ Interfere, Restrict, Control: Restraints on Freedom of Association in Bahrain.

foreign government, and done so in the presence of a representatives from the Ministry, or another trusted official.⁷

Bahrain's Law on the Exercise of Political Rights was amended in 2016 to specifically prohibit religious figures from political participation. Figures such as clerics or imams are not allowed to discuss politics in their speeches or gatherings, and while in theory the law applies equally to Sunni and Shii'a alike, in practice, it has been used to target primarily Shii'a figures. While Bahrainis are guaranteed freedom of religion and equality under Article 18 of the Constitution, the political societies law and the political rights law are often used to circumvent this and aid government prosecutors in their cases.

In May 2018, the Shura Council approved another amendment to the law which barred the following people from running for office:

"Felons and persons previously convicted to a prison sentence of six months or more;"
"Leaders and members of dissolved political organizations that were dissolved by a final sentence for committing a serious violation of the provisions of the Kingdom's Constitution or laws"; and
"Whoever destroys or disrupts the conduct of constitutional or parliamentary life by terminating or leaving the parliamentary work in the Council [of Representatives] or had their membership revoked for the same reason."

In effect, these new restrictions ban almost all major opposition political figures from political office.

Electoral Districts

Following the promulgation of the 2002 constitution, the Government of Bahrain redrew the electoral boundaries after an August 2002 decree, creating forty unequal districts cut along Sunni-Shiite lines. By the 2010 parliamentary elections, the average Shiite-majority district represented 9,533 eligible voters, while the average Sunni-majority district represented 6,196 voters.⁸ Such is the extent of the electoral gerrymandering that although Shia comprise an estimated 60-70% of the population, they find their votes accounting for fewer than 50% of parliamentary seats.⁹

The religiously-defined districts also hinder the prospects of non-religious political societies. Because Bahrain employs single-member districts won by simple majority, citizens in Sunni or Shia dominated districts have little incentive to vote for secular political societies as they

⁷ "Bahrain: Ministry of Justice Files Lawsuit to Suspend Al-Wefaq, the Largest Political Party in Bahrain," Bahrain Center for Human Rights, 31 July 2014. Available at <http://www.bahrainrights.org/en/node/6971>.

⁸ Countries at a Crossroads 2012.

⁹ Bertelsmann Stiftung, BTI 2012 — Bahrain Country.

Report. Gütersloh: Bertelsmann Stiftung, 2012. Available at: http://www.bti-project.org/uploads/tx_itao_download/BTI_2012_Bahrain.pdf

anticipate the results are unlikely to be affected by their participation. As a result, no secular political society has earned a seat in the lower house, limiting the range of political interests and substantive policy positions represented in parliament.¹⁰

In the lead up to the November 22, 2014 election the king issued a royal decree announcing the new demarcation of the parliamentary electoral districts. While the official methodology used to demarcate the new electoral districts remains unknown, the announced changes are supposedly reflective of consultations by the Crown Prince with community leaders and discussions during the National Dialogue. According to the justice minister, the new electoral districts now mean that over 90% of Bahrain's constituencies are approximately equal size.¹¹ A report from the Congressional Research Service also notes that while the previous district map limited the Shiite opposition to win only 18 seats (even though al-Wifaq won 67% of the vote in the 2010 election), some experts speculated that the redistricting might enable the Shiite opposition to win 50% of the 40 seats.¹²

Some countered this argument, claiming that that the districts are still drawn along sectarian boundaries, thus almost certainly creating a parliament not reflective of its political landscape. For example, the Central Governorate – which was centered around the demographically mixed Isa Town and arguably the most diverse governorate – had its districts redistributed to Sunni-dominated Southern Governorate (whose seats increased from 6 to 10), Shi'a-dominated Northern Governorate (9 to 12), and more mixed Capital Governorate (8 to 10).

International Best Practices for Developing a Framework for Democratic Elections¹³

There are a number of elements that typically appear in legal framework for democratic elections. While it is very late in the process of preparing for 2018 elections in Bahrain, the following principles, if adhered to in even a partial fashion, could provide a framework and atmosphere which would encourage Bahrainis to participate in political decision-making. While it would require much more than a successful election to rebuild trust among communities in Bahrain, the 2018 election could still provide an opportunity for progress -- or at least a chance to reverse the repressive, authoritarian and short sighted actions taken since the relatively successful 2006 elections.

1) Recognition of Rights and Descriptions of Governmental Structure and the Electoral System: The constitution and electoral laws should recognize as fundamental right to

¹⁰ Countries at a Crossroads 2012.

¹¹ "Justice Minister: 90% of electorate equal in districts and amendments affecting 80%," Al Watan, 25 September 2014 . Available at: <http://www.alwatannews.net/NewsViewer.aspx?ID=7vnwxRxHYGgvProJEqhnjA933339933339>

¹² Kenneth Katzman, *Bahrain: Reform, Security, and U.S. Policy*. Congressional Research Service: 3 October 2014. Available at <http://fas.org/sgp/crs/mideast/95-1013.pdf>.

¹³ Promoting Legal Frameworks for Democratic Elections, National Democratic Institute, September 2008. Available at: <https://www.ndi.org/node/14905>.

genuine democratic elections and electoral related rights. They should define clearly and in detail the features of the country's governmental structure and electoral system.

- 2) Election Districts:** equal suffrage requires that the weight of each person's vote be essentially the same. This has particular significance when developing the legal framework for delimiting election districts. If there is a significant difference between election districts in the ratios of persons to representative, then the votes of persons in the districts are not equal. While there are some differences among long-established democracies concerning the acceptable variance between election districts in this ratio, the differences are very small.

Equal suffrage also requires that every citizen's vote should have equal weight irrespective of distinctions such as race, color, gender, language, religion, political or other opinion, national or social origin, property, birth or other status. Demarcation of election district boundaries therefore many not be drawn in ways that divide minority communities and thus reduce their voting power.

Defining criteria for demarcating electoral boundaries must be combined with developing mechanisms that ensure that boundaries are then properly drawn. This not only requires setting up a body to draw the boundaries that is likely to be impartial and competent, but also to provide a process that is transparent, inclusive and interested constituencies and accountable to the public.

- 3) Election Management Body (EMB) and Election Administration:** The EMB must be impartial and competent, and it must be perceived to be both the electoral contestants and the public. While there are several ways to define the process of appointment of EMB members and selection of the EMB chairperson, the most important elements are inclusiveness of electoral competitors and transparency in the process. One generally accepted indicator of an EMB's impartiality is its being insulated from partisan political pressure. Standing as an independent body, rather than being part of a government ministry, has proved to be a successful approach.

- 4) Monitoring by Parties, Candidates, Domestic Nonpartisan Election Monitors, News Media and International Election Observers:** The legal framework is key to ensuring that all elements of the elections process are open to monitoring by Parties, Candidates, Reference and Ballot Initiative Groups, Domestic Nonpartisan Election Monitors, News Media and International Election Observers. In turn providing this type of transparency is crucial for ensuring inclusiveness, accountability and the resulting sense of fairness among electoral contestants and public confidence.

- Political Parties and candidates have a vested interest in protecting their right to seek election. Traditionally, legal frameworks have allowed their representatives into election facilities, including polling sites and counting centers, to witness voting, ballot counting and vote tabulation processes.

- Across the globe, nonpartisan domestic election monitoring organizations have developed to protect and promote the right to genuine democratic elections. This activity is an expression of the right of association, the right of citizens to participate in government and public affairs and the right to seek and impart information.
- The media play as vital role in providing information to citizens so that they can understand the character of the election process and establish the warranted degree of public confidence in them.
- International election observers can play an important role in assessing the character of elections and making recommendations to promote democratic elections.

5) Voter Registration and Voter Lists: Voter registration serves to guarantee that all eligible voters can exercise the right to vote and that illegal voting is prevented. This ensures against disenfranchisement and against diluting the weight of each person's legitimate vote, thus supporting equal suffrage.

6) Legal Recognition and Status of Political Parties: the legal framework must provide, on a nondiscriminatory basis and without undue restriction, provisions concerning the legal recognition and continuation of the legal status of political parties and other political organizations. The recognition of political organizations as legal entities, with the right to seek elected office or to influence the citizen choices on referenda and other ballot initiatives, is fundamental to democratic elections.

7) Voting: The legal framework must address a myriad of issues to ensure genuine opportunity to exercise the right to vote on the basis of equal and universal suffrage. These issues concern conditions outside the polling sites, as well as inside it, before, during and after voting takes place.

Thanks again to the Lantos Commission for organizing this briefing.