

# **The Criminal Aspect of The Protection System of Refugees in The Kingdom of Bahrain<sup>(\*)</sup>**

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## **Abstract**

Bahrain is not a signatory to the 1951 Refugee Convention and 1967 Protocol, nor does it have a national law on refugees or asylum seekers. Regardless of the absence of a specific law solely dedicated to protecting refugees, there is a type of protection found in the constitution and several articles in various laws. Moreover, the protection can be seen through the well-established policies taken by the government. But the question remains, is this protection sufficient to protect refugees? Consequently, does the absence of a local law on refugees have a significant impact on the Kingdom of Bahrain?

To answer these questions, this study adopts the analytical approach which depends on studying the Bahraini efforts and initiatives in-depth not limited to legislative attempting to understand the reality of refugee protection from criminal law perspective in Bahrain in light of its international, constitutional, and legal obligations. The study aims to show that the impact of strengthening the legal and humanitarian protection for refugees does not affect the national security of the host country as much as it enhances it.

This study will inspect the nature of the protection provided to the refugees under the Bahraini policy and system based on the human security concept, thus explaining the obligations imposed on the Kingdom as part of the international community in protecting refugees and asylum seekers, and then the national legal framework followed in this regard in Bahrain.

The author will explain and analyse the protection system of refugees and asylum seekers provided for in Bahrain, focusing on criminal liability in case of violating refugees' rights, and explain the efforts that the Kingdom has taken in this field, and try to address the obstacles.

Thus, this study is considered a pioneer as it is the first in jurisprudence that evaluated the Kingdom of Bahrain in the field of refugees; It is a starting point

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for in-depth studies in this field for subsequent studies in the region. This study concluded by identifying the shortcomings and a set of recommendations, most prominently: There is partial protection for refugees, yet, it is insufficient and uncomprehensive. Consequently, the study suggests that Bahrain accede to the Refugees Convention and promulgate a law that guarantees protection for refugees; principally from criminal accountability, by first considering the state's interest in line with its role in the international system.

This study will be divided into two parts: the first one is dedicated to discussing the refugees' legal status in Bahrain, and the second part is devoted to discussing refugees in Bahrain in relation to legal regulation and reality from criminal law.

**Keywords:** refugee, criminal Law, human rights, xenophobia, and hate crime.

## Introduction

The Kingdom of Bahrain - hereinafter Bahrain - constitutes an archipelago of natural and artificial islands located in the ROPME Sea Area close to the Arabian Peninsula. Bahrain has limited natural resources, driving the country to expand its economy by developing the tourism and banking sectors and extending its petroleum processing and refining industries<sup>(1)</sup>.

In 2018, Bahrain ranked as the best destination for an expat for the second year in a row according to the InterNations Expat Survey<sup>(2)</sup>. Although Bahrain's ranking declined slightly in 2019, it remains in the top destinations around the world. Likewise, the HSBC Expat Explorer Survey for 2018 ranked Bahrain one of the top countries among the MENA region in terms of expat satisfaction based on the best places to live, work and raise a family<sup>(3)</sup>.

The above survey results show, whether directly or indirectly, the reasons behind the excellent position for Bahrain compared to the other countries around the world when it comes to an expatriate's perspective. These reasons may be attributed to political and economic stability<sup>(4)</sup>.

However, Bahrain's peaceful social atmosphere is one of the most important reasons that attract expats worldwide. That is, the multicultural, multi-ethnic, multi-religious, and sectarian plurality in Bahrain is witnessed by having in the same area Islamic mosques, Christian churches, Buddhist and Jewish temples next to each other in the heart of the capital, where all rituals have been practiced freely and peacefully for many years.

Nevertheless, the most crucial question is how Bahrain has achieved such peaceful coexistence? Moreover, how does this relate to the refugee topic?

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(1) United Nations Environment Program, Arab Region: Atlas of Our Changing Environment, UNEP, 2013, p. 113.

(2) Global: Expat Insider Survey Reveals the Best and Worst Countries for Expats in 2019, InterNations, September 5, 2019, <<https://www.internations.org/press/press-release/expat-insider-2019-survey-reveals-the-best-and-worst-destinations-to-live-and-work-in-2019-39881>> accessed May 30, 2022.

(3) Expat Explorer Survey - Compare: Jersey, Bahrain: HSBC Expat (September 3, 2020) <<https://expatexplorer.hsbc.com/survey/country/jersey/bahrain/chart:table>> accessed May 30, 2022.

(4) Economic stability is seen in Bahrain via the vital role that Bahrain plays in trading with Western countries such as (BHFTA). Despite the pressure that Covid 19 has placed on trading, Bahrain's economy stood strong. Bahrain economy has recovered from Covid 19 effects and started to grow through benefiting from the Russia-Ukraine war as the other GCC, due to the increase of oil and gas prices. Bahrain Free Trade Agreement (BHFTA), U.S. Customs and Border Protection, May 24, 2022 <<https://www.cbp.gov/trade/free-trade-agreements/bahrain>> accessed July 23, 2022; Chandak A, "Oil to Fuel Growth in Gulf Economies This Year, but Will Not Sustain Pace in 2023" Reuters, July 21, 2022 <<https://www.reuters.com/business/energy/oil-fuel-growth-gulf-economies-this-year-will-not-sustain-pace-2023-2022-07-21/>> accessed July 23, 2022.

Answering the first question, Bahrain has achieved such peaceful coexistence because it does not suffer from xenophobia; xenophobia is views, bigotry, prejudices, or any practice to deny or exclude or defame toward others based on the fact that they are outsiders or foreigners<sup>(5)</sup>. This has made Bahrain an international model for rooting the values of tolerance, coexistence, and acceptance.

Due to the friendly and welcoming nature of the people of Bahrain, which is not a result of contemporary factors, it extends to even before modern Bahrain's existence as an independent state. The geographical nature of Bahrain made it a place to meet various cultures, ethnicities, and sect's consequent to its commercial and maritime location; this explains the diversity of languages and dialects in Bahrain. Despite its small geographical area, the population consists of expatriates from different countries. In fact, islanders worldwide generally do not have xenophobia since they are used to the commuting process<sup>(6)</sup>.

Addressing the second question of how xenophobia relates to the refugee topic is through examining the situation in several countries worldwide. It is realized that xenophobia could endanger refugees' lives<sup>(7)</sup>. Not only does it motivate and feed individual hate crimes, but it affects public attitude and government policies.

In some countries, politicians embrace xenophobia as part of their agenda to achieve political gains, as in the case in the presidency of Donald Trump in the USA<sup>(8)</sup>. Hungary is a notable case too. The Hungarian government encouraged fear and promoted anti-migrant information in the last political campaigns by creating negative sentiment against asylum seekers and migrants and making life as challenging as possible for those attempting to enter Hungary.

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(5) SD Miller, *Xenophobia toward Refugees and Other Forced Migrants*, 2018, p. 12. <[reliefweb.int/sites/reliefweb.int/files/resources/WRC%20Research%20Paper%20no.5.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/WRC%20Research%20Paper%20no.5.pdf)> accessed May 30, 2022.

(6) Research and literature confirm that islanders are extremely friendly and welcoming to foreigners. Notwithstanding, researchers found that islanders are superficially friendly and welcoming for economic reasons such as reviving the tourism industry. If the foreigners (the visitors) decided to extend their stay or decide to extend their stay or possibly settle on the island, the treatment would change. Though, this not the case for all islanders worldwide; G. Baldacchino, "Come Visit, but Don't Overstay: Critiquing a Welcoming Society", *International Journal of Culture, Vol. 6, Tourism and Hospitality Research*, 2012, p. 145.

(7) KM Roche and B. Streitwieser and SJ Schwartz, *A Call for Research on Immigrant and Refugee Youth amidst the Global Rise in Xenophobia and Nationalism*, *International Journal of Intercultural Relations*, 2021; SA. Olofinbiyi, *Anti-Immigrant Violence and Xenophobia in South Africa: Untreated Malady and Potential Snag for National Development*, *Insight on Africa*, 2022.

(8) Miller (N. 4) 1.

Xenophobia has also been witnessed in the sequence of events and political decisions of September 2015, where hundreds of migrants were left stranded at a Budapest train station trying to reach other European countries<sup>(9)</sup>.

Thus, embracing policies and promoting xenophobia stand as an obstruction to helping refugees and welcoming migrants on the grounds of suspicion and distrust of foreigners. Some reached the extreme of proposing that most asylum seekers' claims are counterfeit, and there are no safety concerns or notions to grant asylum, thus leading governments and the people to call for non-response to refugee crises worldwide.

Returning to Bahrain's situation, it is discerned as contrary to the situation in the countries mentioned above, as its policies assure freedom of conscience<sup>(10)</sup> and acceptance of diversity.

A recent case of individual hate crime could fall under the term xenophobia, where a woman has been charged with intentional damage and publicly insulting a religious symbol of the Hindu deity Lord Ganesha<sup>(11)</sup>. This incident does not contradict the notion that Bahrain does not have xenophobia. On the contrary, it embraces the policies of welcoming foreigners. It is evidenced by the rapid and effective trial of the woman for this hate crime, which is a departure from what is in Bahrain's deep-rooted traditions and customs. Besides, the public social media reacted, condemning this woman's act.

Moreover, in the same month of the crime and the trial, His Majesty the King's Representative for Humanitarian Work and Youth Affairs, His Highness Shaikh Nasser bin Hamad Al Khalifa hosted the Onam Celebration<sup>(12)</sup>. It

(9) *ibid*.

(10) The United Nations, on April 5, celebrates the International Day of Conscience annually in response to the initiative originated by His Royal Highness Prime Minister Prince Khalifa bin Salman Al Khalifa of the Kingdom of Bahrain.

- International Day of Conscience a Global Recognition of HRH Premier's Peace, Sustainable Development Initiatives, Efforts, International Day of Conscience a global recognition of HRH Premier's Peace, Sustainable Development Initiatives, efforts, April 4, 2020 <<http://m.oannews.org/news.php?id=561536>> accessed May 30, 2022.

- The United Nations Declares April 5 as International Day of Conscience, (FOWPAL August 2019) <<http://www.fowpal.org/news/united-nations-declares-april-5-international-day-conscience>> accessed May 30, 2022.

(11) Bahrain Woman Charged with Insulting Hindu Religious Symbol, The Times of India, August 2020 <[timesofindia.indiatimes.com/world/middle-east/bahrain-woman-charged-with-insulting-hindu-religious-symbol/articleshow/77588948.cms](http://timesofindia.indiatimes.com/world/middle-east/bahrain-woman-charged-with-insulting-hindu-religious-symbol/articleshow/77588948.cms)> accessed May 30, 2022.

(12) HH Shaikh Nasser Expresses Keenness to Promote HM the King's Inter-Religious Coexistence Approach, Bahrain News Agency, August 31, 2020 <<http://www.bna.bh/en/HHShaikhNasserexpresseskeennesstopromoteHMtheKingsinterreligiouscoexistenceapproach.aspx?cms=q8FmFJgiscL2fwIzON1%2BDrfc6EoZGJn7utYCUrtSvNU%3D>> accessed May 30, 2022.

symbolizes the nature of the people and the policies that are being followed and respected in Bahrain. This distinguishes Bahrain and its people from other islanders where welcoming foreigners is not based on economic reasons or the length of the staying period.

Consequently, xenophobia is one of the main obstacles to granting refuge to and welcoming refugees, and it might be a reason for someone to seek refuge in another country. This leads to research on how Bahrain deals with the refugees and its policy if the main obstacle to welcome them is nonexistent. This is addressed in the following point dealing with the legal status of refugees in Bahrain.

### 1. Refugee Legal Status in The Kingdom of Bahrain

Bahrain is not a signatory to the 1951 Refugee Convention and 1967 Protocol, nor does it have a national law on refugees or asylum seekers. Regardless of the absence of a specific law solely dedicated to protecting refugees, the protection can be found in the constitution and several articles in different laws. Moreover, the protection can be seen through established policies taken by the government. This raises the question of how this protection came in this form? Furthermore, is the protection in this form enough?

For this purpose, the author will divide this section into two parts, the first one dedicated to viewing the legal refugee status historically in Bahraini, and the second part to discuss the legal framework for the protection of refugees or asylum seekers in the modern state of Bahrain<sup>(13)</sup>. This will demonstrate the inherent asylum right in Bahrain, and how it is reflected and crystallized in its current form.

#### 1.1 Status and Nature of Refugees in Bahrain Historically

To emphasize the preceding reasons in the background section on how Bahrain has received migrants and refugees over the centuries, the Islamic law principles and foundations have recognized and organized the right to refuge<sup>(14)</sup>.

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(13) The author specifies the modern state of Bahrain, the period following the Kingdom of Bahrain's independence in 1971.

(14) Islam adopts a broad concept for refugees, and in Islam, it associates to any reason that drives refuge. It is not required that the person flees to a Muslim country for fear of persecution. Islamic Law grants refuge to anyone, whether for conversion to the Islamic religion or his desire to be a dhimmi. There are established rules for the right to refuge in Islamic law, the most important of which is evidenced by the Qur'an, including what was laid down in verse 9 of Surah Al-Hashr, were five basic

In general, refuge is an old concept, especially in its political or religious form. Every prophet or messenger had to make an asylum journey. In Islam there are several. The first migration to Abyssinia and the second migration to Medina, from which the Islamic Hijri calendar began, came from the term migration in the Arabic language. The purpose of migrations was for Muslims to live in safety to practice their religion<sup>(15)</sup>.

When it comes to Bahrain, the migration movements have varied their purposes, including the economic factors, political conflicts, religious activities, and scientific exchange movements. The similarity of customs and traditions, and the shared history between countries, especially concerning countries with geographical proximity to Bahrain, facilitated such movements.

History cites many cases where Bahrain received immigrants and refugees. Perhaps the most prominent example of the pre-modern era was the incident between the Ajman tribe and the Kingdom of Saudi Arabia in 1277 AH, approximately 1860 and 1861 AD. A misunderstanding occurred at that time which led to fierce wars between the two sides. The duration of the conflict between the two parties was prolonged.

Consequently, Ibn Hathlin, the AlAjman tribe leader, sent a letter asking the Emir of Bahrain at the time, Shaikh Ahmed bin Khalifa, to allow AlAjman to move to Bahrain's borders. Thus, the ruler of Bahrain welcomed AlAjman to come, and he sent them ships to carry them with their livestock to cross to Bahrain. When they came to Bahrain, they were pleased with living in Bahrain due to the generosity, which enabled their stay to be peaceful<sup>(16)</sup>.

Moreover, the Saudi-Bahraini Relations during the reign of King Abdulaziz (1319 - 1373 AH / 1903 - 1953 AD, by Talal bin Khalid Al-Tarifi, indicated that there were migrations and movements of many families and individuals, from Al-Ahsa in the Kingdom of Saudi Arabia to Bahrain, and vice versa<sup>(17)</sup>. These migrations have played a significant role in changing the demographics in both

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rules regarding the right to the refuge, how to receive and how to treat refugees.

For more information, UN High Commissioner for Refugees (UNHCR), *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, June 2009, available at: <https://www.refworld.org/docid/4a549f9f2.html> [accessed 30 May 2022]

- (15) WK Al-Rabie, *The Right to Political Asylum in Islamic Jurisprudence and International Law: A Comparative Study*, Journal of Sharia and Islamic Studies, Academic Publishing Council, Kuwait University, Vol. 23, (2008) in Arabic.
- (16) A. A Al Dhaheri, *AlAjman and their Leader Rakan bin Hathleen*, 1st edn, Al-Yamamah House Publications for Research, KSA, 1983, p. 147/ in Arabic.
- (17) T. B. Al-Tarifi, *Saudi-Bahraini Relations during the Era of King Abdul Aziz 1319 - 1373 AH / 1903 - 1953 AD*, 1st edn, King Abdul Aziz House, 1430 AH, KSA, p. 176/ in Arabic.

regions. With the emergence of modern states, the immigration percentage between Bahrain and Saudi Arabia has decreased significantly<sup>(18)</sup>.

All kinds of movements, whether it was immigration or refuge, were not organized by laws. This historically applies to all movements to Bahrain, whether before or after demarcating borders between countries. The author was unable to find neither an official nor unofficial record showing individual cases of refuge or migration that came to Bahrain in the past. Moreover, the absence of a specific law indicating immigration or entry to Bahrain, and the lack of documentation for such movement, played a significant role.

Organizing foreigners' status and the legality of their entry to Bahrain began in the issuance of several laws by the Bahraini government regulating foreigners' issues. Sir Charles Dalrymple Belgrave, the advisor to Bahrain's government, mentioned in his memoirs that the oil market had opened the door for immigrant workers; and Arabs came from neighbouring countries. At that time, the government passed a law regulating the entrance and departure from Bahrain<sup>(19)</sup>.

Besides, Sheikh Hamad, the ruler of Bahrain, issued declaration No. 1356/1 including an amendment to the previous proclamations released by the government of Bahrain under 17/1927/1348 of Dhu al-Hijah 15 1348 AH corresponding to May 13, 1930 CE. The amendment stated that all people departing Bahrain to neighbouring ports through local ships must have their passports marked with the departure. If a person is found on a ship who does not have the departure mark, the Nukhida (shipmaster) shall be punished before the court.

The Bahrain government also issued proclamation No. 703/1347 of Rajab 2, 1347 AH, where some articles were added and amended according to Proclamation No. 8/1352 of Safar 22, 1352 AH corresponding to 1933 CE. Still, having an accurate number for all the entrants to Bahrain at that time remains difficult in light of the difficulty in controlling the illegal infiltration of migrants to Bahrain<sup>(20)</sup>.

These are the most prominent cases and causes of migrate and refuge to Bahrain historically before its independence. With Bahrain's independence, the legal basis and situations of individuals resorting to Bahrain differed

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(18) *ibid.*

(19) A. Al-Siddiqi, *History of the Legal System in Bahrain*, 1st edn, Isa Cultural Center, Bahrain, 2019, pp. 60-74 /in Arabic.

(20) *ibid.*



somewhat, especially with the emergence of laws regulating the status of citizens and foreigners.

## 1.2 Status and Nature of Refugees in Bahrain in The Modern Era

### 1.2.1 Status and nature of refugees in the domestic law

Bahrain did not join the Refugee Covenant of 1951, nor its Protocol as the other Gulf Cooperation Countries (GCC) or earmark a particular law for refugees.<sup>(21)</sup> Still, it can be inferred that Bahrain heeds for refugees through the provisions contained in its constitution and some laws. Nevertheless, the question remains, is such treatment adequate to protect and ensure refugees' rights? To address this question, it is essential to discover who a refugee is according to the Bahraini Law and discuss the situation of refugees within the laws.

#### a. The Constitution

The Bahraini constitution in Article (21) stipulates that: ((The extradition of political refugees is prohibited.)). This shows the constitutional tendency to implicitly recognize the essential protection provided to the political refugee not to be sent back to the country where he fears for his safety and life.

It is worth mentioning that most Arab countries' constitutions include protecting such refugees and prohibit their extradition. The GCC constitutions explicitly forbid the extradition of political refugees. The other Arab countries' constitutions stipulate the same ban: Algeria, Iraq, Syria, Yemen, Morocco, Egypt, Jordan, Libya, and Tunisia. However, dealing with the refugees and political asylum and regulating it varies among the Arab countries. There are differences between the right to refugee status, political asylum, and the non-extradition of political refugees<sup>(22)</sup>.

What does the ban on the extradition of political refugees in the Bahraini

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(21) So far, only three Arab countries have issued refugees' laws: Iraq, Sudan, and Qatar.

(22) This matter will be of great importance when discussing the extent of protection available to refugees in Bahrain as the reasons differ between the two. The most critical difference is that extradition prohibition applies to the perpetrators or accused of political crimes. Political asylum is granted upon an accusation of committing a political crime, or because of the person opposing to government, or because the asylum seeker is exposed to danger due to his opinions, beliefs, race, religion, or any other reason. Thus, political asylum is broader than the prohibition of extradition. Some Arab countries explicitly stipulate for asylum rights, such as KSA and Somalia. Some constitution has referred to the law regulating the asylum, such as Iraq and Qatar. The third category stipulated for the prohibition of extradition, such as Bahrain, UAE, and Jordan. AY. Al-Shukry, *The Constitutional Organization of the Right to Political Asylum- A Comparative Study in the Arab Constitutions*, Journal of Kufa Studies Center, Vol. 18, Iraq, 2010, p. 191/ in Arabic.

Constitution propose? Does this mean the right to the refuge is granted to those who seek it?

There is no legislative interpretation issued regarding Article (21) dealing with the prohibition of extraditing political refugees, nor is there a straightforward judicial interpretation or jurisprudence concerning this article in Bahrain. Thus, to clarify the interpretation, the only mean is comparative law and jurisprudence.

It appears from the linguistic meaning that this prohibition of extradition includes only political refugees. However, even if this constitutes protection from persecution and achieving justice, the meaning of political crime and thereby, the political refugee is one of the most controversial types of crimes in setting its elements. This is due to the nature of the political crime and its close association with the society of the territory of the society where it is committed.

A political crime committed against the state may be considered a crime committed against its fundamental interests. The state's fundamental interests are a flexible phrase that varies between countries and the interests that they protect. Especially when it comes to the multiplicity of dangerous acts that fall within the scope of crimes in the penal law code, it is difficult to separate them from political crimes, such as terrorist crimes. Hence, it is challenging to implement the protection inherent in the non-extradition of political refugees due to the ambiguity of the term political crime.

Consequently, in the countries that adopt the same text to prohibit the extradition of political refugees in their Constitution, the judiciary has the discretionary power to classify each case separately<sup>(23)</sup>.

Accordingly, there is only one type of refugee covered explicitly by the Constitution: the political refugee, but is it possible for a person to obtain asylum based on this article?

The Constitution has no specific text to grant asylum, nor does it prohibit asylum. It does not contain anything that contradicts the right to asylum—extrapolating the provisions of the National Action Charter and the Constitution as a whole affirms that public rights and freedoms are for everyone, whether citizens or non-citizens.

In particular, the Constitution stipulated in Chapter III concerning Public

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(23) MS. Boudouh, The Principle of Non-Extradition of Criminals in Political Crimes, *Alfikir Journal*, Vol. 12, Algeria, 2017, pp. 229-323/ in Arabic

Rights and Duties - where the prohibition of extradition political refugees<sup>(24)</sup> is found - for guaranteeing several rights and freedoms relating to protecting privacy, practicing public life, movement, and freedoms; these were guaranteed to all people without distinction on the basis of sex, origin, language, religion, or creed. Thus, all are equal in their human dignity.

Consequently, it is impossible to arrest or restrict any person's liberty or movement except by law and the judiciary<sup>(25)</sup>. Thus, torture is not permitted<sup>(26)</sup>, and dwellings possess secrecy that must be maintained<sup>(27)</sup>. Likewise, confidentiality is guaranteed to all means of communication<sup>(28)</sup>. *Nulla poena sine lege* is a must, and all penalties are personal to meet all the requirements to ensure a fair trial<sup>(29)</sup>.

That chapter of the Constitution also deals with the freedom of belief and its appurtenances. The freedom of conscience is absolute and complete, and inviolability of worship and performing religious rites, and holding religious parades and meetings are guaranteed<sup>(30)</sup>.

Furthermore, freedom of opinion and scientific research, and what is related to it<sup>(31)</sup> and the press's freedom, printing, and publishing are guaranteed<sup>(32)</sup>.

Lastly, the freedom to form associations and unions, right to assemble privately or publicly, are guaranteed<sup>(33)</sup>. All of these rights and liberties are regulated in a manner following the law.

There are also pillars of the validity of legislation, including the formal terms under which the element of jurisdiction falls. Therefore, it is prohibited for the ordinary legislature (the parliament) to approach or organize a specific topic related to rights and freedoms that has been stipulated by the constitutional legislature. An example of such is the prohibition of the general confiscation

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(24) Constitution of The Kingdom of Bahrain (Issued in 2002) and its Amendments (Issued in 2012), Article (18), available at: <http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/1-%20Constitution%20of%20the%20Kingdom%20of%20Bahrain.pdf> [accessed 30 May 2022].

(25) *ibid.*, Art. (19).

(26) *ibid.*

(27) *ibid.*, Art. (25).

(28) *ibid.*, Art. (26).

(29) *ibid.*, Art. (20).

(30) *ibid.*, Art. (22).

(31) *ibid.*, Art. (23).

(32) *ibid.*, Art. (24).

(33) *ibid.*, Art. (27).

of funds and the prohibition of the extradition of political refugees. Parliament may not intervene in this matter; otherwise, the legislation is invalid<sup>(34)</sup>.

Based on the preceding, it is true that the constitutional legislature has explicitly guaranteed the right to political asylum in particular. Still, it could be concluded implicitly, and generally, the Constitution has secured all kinds of refugees. The author believes that the Constitution guarantees rights and liberties that are being sought by refugees and protects them from violation for all individuals, both citizens and non-citizens. This confirms compatibility between the Constitution and the 1951 Convention in spirit and tendency, without bearing Bahrain any obligations from the Convention - Bahrain is bound by its laws only.

It is true, there is no legal regulation announced in Bahrain regarding granting asylum, but it is vital to study the texts regulating the status of foreigners in Bahrain to evaluate refugees' status. However, it must emphasize there is nothing constitutionally prohibiting the granting of such a right in Bahrain. Yet there is a need for legislation that organizes the issue in detail; to have up-to-date legislation that meets international norms on refugees and provides criminal protection.

### **b. The Aliens (Immigration and Residence) Act of 1965**

Concerning some countries that do not stipulate for the asylum right in their constitutions and have not designated a special law for asylum, they mostly regulate the refugees' issues in the law devoted to dealing with foreigners' status, since the refugee falls under the category of foreigner. The Bahraini legislature mainly regulates foreigners' status in the Aliens (Immigration and Residence) Act of 1965 while regulation of Bahraini nationality matters are contained in the Bahraini Citizenship Act of 1963.

The Bahraini legislature defines a foreigner as every person who is not Bahraini<sup>(35)</sup>. Refugees indeed differ from other types of foreigners such as migrants because they do not enjoy the same legal status when it comes to rights and obligations; however, as stated above, it is possible to consider what is stipulated for immigrants to be applied to refugees too in the absence of special legal regulation for refugees.

The legal structure provided by the Bahraini legislature presents the conditions for a foreigner's right to enter, reside and exit from Bahrain, a

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(34) SM. Al-Senussi, *The Legislation Validity Pillars (the Jurisdiction Requirement)*, 2, AlQanoniya, Bahrain, 2014, p. 64 /in Arabic.

(35) Citizenship Act of 1963, Art. (2).

foreigner's rights and obligations on the Bahraini soil, and how to acquire Bahraini nationality.

Article (5)<sup>(36)</sup> of the Aliens Act states the conditions that must be met for a foreigner to enter Bahrain, which are three conditions:

- 1- The foreigner has a passport or travel document that entitles him to enter Bahrain. Accordingly, the passport must be issued by the competent authorities in the foreigner's country and must fulfil in form and data all the conditions that make it valid. This requirement applies to international documents granted by the United Nations to its employees and international documents given by a state to stateless persons or political refugees, provided that these documents include a visa enabling the bearer to return to the country that has issued the documents. Perhaps the wisdom of such a condition is not to embarrass the Bahraini government in receiving a foreigner who is considered later for deportation if his documents do not allow him to return to the country from which he came<sup>(37)</sup>.

It is noteworthy that the Interior Ministry in Bahrain issues such documents to foreigners through the Nationality, Passports and Residence Affairs that entitle foreigners to enter Bahrain. In the third Article of Law No. 11 of 1950 regarding passports, provisions are laid down for travel documents issued for some categories of foreigners. These documents are issued to people who are stateless or who do not have a fixed nationality, or for people who have a fixed nationality, but they cannot obtain travel documents from their country due to the loss of their passports or expiration, and their government does not have a representative in Bahrain, or for any other reasons estimated by the Ministry of Interior<sup>(38)</sup>. These documents granted by the Bahraini Ministry of Interior are valid for two years from the date of their issuance, and non-renewable and do not exempt a foreigner from the requirement to obtain a visa<sup>(39)</sup>.

- 2- The passport - or the documents - must be marked with an entry visa from the Bahraini authorities. The entry visa may be given by the Nationality, Passports and Residence Affairs, or the political authorities or consulate or any other entity that is designated according to the

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(36) Alien Act 1965, Article (5).

(37) AS Al-Sayed, Private International Law in the Kingdom of Bahrain: Comparative Study, Nationality-Status of Foreigners, 1<sup>st</sup> edn, University of Bahrain, 2004, pp. 237-238/ in Arabic.

(38) Law No. 11 of 1975 Regarding Passports, Art. (3).

(39) *ibid*, Art. (4).

type of visa. The entry visas vary between regular visas, diplomatic visas, student visas, work visas, tourist visas, and temporary visas for 72 hours to 7 days.

However, the legislature in Article (5) Paragraph (a) of the Alien Act 1965, made an exception from the entry visa requirement, provided the exception decision is ordered by the Director of the Nationality, Passports and Residence Affairs after the approval of the country's ruler<sup>(40)</sup>.

- 3- In addition to the two conditions above, permission to enter the Bahraini territory must be obtained<sup>(41)</sup>. The law sets categories that may not be granted entry permits including: health reasons, if the foreigner is convicted in Bahrain or abroad of a crime that makes the foreigner undesirable to enter, information or advice provided about the foreigner that makes it undesirable for him to be granted the permission to enter the country provided in the case that an order by the Director of the Nationality, Passports and Residence Affairs is issued, after the approval of the country's ruler.

The legal framework in Bahrain has designated ports from which the entry to the country is permissible. In the event of force majeure and a foreigner entered from other than these places, the foreigner must immediately present himself to the nearest police station or coast guard since entry from other than the designated sites leads to an imposition penalty on the criminal in the form of a misdemeanour<sup>(42)</sup>.

Entry into Bahrain does not entitle a foreigner to a permanent right to reside in Bahrain; whenever the foreigner is sixteen years old, he must obtain a permit to live in the country from the Nationality, Passports and Residence Affairs. The Nationality, Passports and Residence Affairs determines the period for which a foreigner is licensed in line with the public interest requirements and the relationship that the foreigner has with the Bahraini society. The foreigner must leave Bahrain upon the end of his permit unless it is renewed. The

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(40) the Alien Act 1965, Art. (5) Para. (a).

(41) *ibid*, Art. (3).

- Law No 11 of 1975 concerning Passports, Art. (5).
- Ministerial Decision of the Minister of Interior No. 46 of 1986 regarding specifying places designated for entry and exit from the State of Bahrain.
- Ministerial Decision of the Minister of Interior No. 62 of 2016 amending some provisions of Ministerial Decision No. 46 of 1986 regarding determining places designated for entry and exit from the State of Bahrain.

(42) Decree-Law No 21 for 1980 Amending Art. (29) of Aliens Immigration and Residence Act - 1965

foreigner must not deviate from the purpose he was granted the permit; if he violated this purpose, he would be punished under the law<sup>(43)</sup>.

The law specifies the procedures for obtaining, renewing, revoking a residence permit, and even grievance and appeal of the administration's decision<sup>(44)</sup>.

In the absence of publicly announced official statistics, and the author's inability to obtain the number of refugee cases in Bahrain, if there are any<sup>(45)</sup>, in order to know the legal provisions that are applied regarding their status, it can be said that as long as the refugee meets the conditions that exist in the legal regulations of immigration and residency, the refugee can enter and reside in Bahrain. Still, the foreigner will not take the description of a refugee, as in international law.

In addition, it is concluded that the text of the constitution on political asylum can be activated through the same provisions dealing with foreigners. Here, the importance of Art. (27) of the Aliens Act appears, as it can be applied to what may be described as refugees. Article (27)<sup>(46)</sup>, gives the ruler the power to exempt any particular persons from all or any provisions of the Aliens Law. The exemption is either an absolute exemption or with conditions. Thus, to find out the refugee's rights and duties, it is necessary to resort to the same laws that regulated foreigners' affairs and their stay as previously discussed.

Foreigners' rights in Bahrain are multifarious, as explained in the above discussion of the Bahraini constitution and the general rights granted to both citizens and non-citizens, such as respecting human dignity and the access to justice. Regulations have detailed these rights in their diversity; for example, non-citizens have the right to work in the public and private sectors<sup>(47)</sup>, but according to conditions and requirements set by the legislature, whether these are related to the work's nature, the worker, or the employer.

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(43) the Alien Act 1965, Art. (15).

(44) *ibid.* Art. 16, 17, 23, and 24.

(45) In 2002, in a local newspaper in Bahrain, there was an allegation by an Iraqi person residing in Bahrain 12 years ago as a political refugee. He complained that he was unemployed and living with some of the relatives' help; besides, he questioned his refugee rights. He described himself as a victim of an incomplete asylum. However, as reviewing the complaint in the local newspaper, it has appeared he was granted residency renewable annually, because he was married to a Bahraini citizen. This means granting him the right to residency was based on his marriage to a citizen, not because he is a political refugee.

(46) *ibid.*, Art. (27).

(47) Bahrain Constitution (N. 23) Art. (16).

-Law no. 36 of 2012 Promulgating the Labour Law for the Private Sector, and its amendments.

The foreigner has the right to ownership, whether it is real estate, movables, or intellectual rights, according to the laws' conditions and requirements. However, concerning rights connected to citizenship, such as exercising political rights of candidacy and election<sup>(48)</sup>, foreigners cannot practice it. Due to the nature of these rights that requires spiritual loyalty and preserving the state's interests, such cannot be imagined by default with non-Bahraini nationals. Nevertheless, the foreigner can participate in social life by joining societies and clubs in Bahrain. On the other hand, concerning obligations, there are general obligations that both Bahrainis and non-Bahrainis share, such as respecting the law and paying taxes.

Furthermore, several laws contain a range of rights and freedoms that a refugee in Bahrain can enjoy. These laws cover everyone, whether they are citizens or noncitizens. Such as the Law No. 37 of 2012 Promulgating the Child Law, and the Bahraini Law on Combating Trafficking in Persons No. 1 of 2008.

In Art. (2), the Child Law stipulates that the state guarantees, without discrimination on sex, origin, color, disability, language, religion, or belief, the enjoyment of the rights stipulated for in this law<sup>(49)</sup>. Likewise, the child's protection and interests are a priority, as the article's text immediately following provide<sup>(50)</sup>. The law protects children from all forms of abuse and protects their rights and education. Additionally, the legal system as a whole in Bahrain refuses to allow these rights to be enjoyed by a Bahraini child. This law will apply to a Bahraini and non-Bahraini child<sup>(51)</sup> who may be a refugee.

Alongside setting refugees' status through rights and freedoms within domestic laws, a mechanism to enjoy these rights and freedom is found. The Bahraini Law on Combating Trafficking in Persons No. 1 of 2008 is a vital mechanism. Not all victims of trafficking are refugees, but some victims of trafficking live in conditions that qualify them to obtain refugee status.

The national referral mechanism for victims of trafficking in persons was endorsed and adopted by the National Committee for Combat Trafficking in Persons in 2016, and reflects the international protection formula available for

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(48) Bahrain Constitution (n 23) Art. (1) para. (e).

(49) Law No. 37 for the year 2012 promulgating the Child Act, Art. (2).

(50) *ibid*, Art. 3.

(51) For more information: HH. Almasarweh, *The Development of Legal Mechanisms Relating to The Rights of Children of Unknow Parents «The Case Study of the Kingdom of Bahrain»*, The 10th Sheikh Khalifa Bin Salman Scientific Award, Bahrain, 2019, p. 20/ in Arabic.



victims of such a crime. The referral mechanism includes five stages<sup>(52)</sup>. The last three stages include offering assistance: shelter, medical, legal assistance, rehabilitation, providing documentation, psychological, and social assistance. There is also the reintegration or voluntary return choice, where the victim decides either to stay in Bahrain by continuing to work or voluntarily and willingly returning to the victim's country or another country.

Concerning the disabled and their rights, several legislations have been issued in Bahrain regardless of disabilities' type; such as the Law on the welfare, rehabilitation, and employment of persons with disabilities<sup>(53)</sup>, the resolution to form the Supreme Committee for the Disabled Affairs<sup>(54)</sup>, and the decisions from the authorized minister to implement the law. These legislations set many rights, including allocating a monthly disability pension<sup>(55)</sup> and granting an employee who is disabled or cares for a disabled person in first kin two hours daily paid to take care of the disabled, provided the law's conditions are met<sup>(56)</sup>. The Minister of Labor and Social Development has the authority to authorize societies concerned with the disabled matters<sup>(57)</sup>.

However, the refugees' benefit from these laws is limited. The benefit is mainly concentrated in civil societies and centers because the provisions of the 2006 law apply to Bahraini citizens with disabilities and persons with disabilities who are children of Bahraini women married to foreigners living permanently in Bahrain<sup>(58)</sup>.

Lastly, refugees are often classified as a vulnerable group; thus, establishing criminal liability for violating refugee rights is essential.

Having no particular law in Bahrain for refugees does not affect their well-being. The protection exists in the Penal Code's general provisions and the provisions of the specialized laws.

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(52) The National Referral Mechanism for Victims of Trafficking in Persons (Handbook), Version 1.0, The National Committee for Combating Trafficking in Persons, Labour Market Regulatory Authority, Bahrain, 2017.

(53) Law No. 74 of 2006 on the Welfare, Rehabilitation and Employment of Persons with Disabilities. and Employment of Persons with Disabilities.

(54) Resolution No. 62 of 2007 to form the Supreme Committee for Disabled Affairs.

(55) Welfare, Rehabilitation and Employment of Persons with Disabilities (n52), Art. (7).

(56) Law No. 59 of 2014 to Amend Art. (5) of Law No. 74 of 2006 Concerning the Care, Rehabilitation and Employment of Persons with Disabilities.

(57) Resolution No. 58 of 2018 Concerning the Licensing of The Bahrain Child Safety Society.

(58) Welfare, Rehabilitation and Employment of Persons with Disabilities (n52) Art. (2).

The Criminal Procedures Law stipulated in Art. (61), “No person may be arrested or imprisoned without an order from the respective authorities according to the law.” It continues, “he/she must be treated in a manner that preserves human dignity. It is not permissible to harm him/her physically or mentally,” and adds, “prohibiting arbitrary arrest and detention where the arrested should be confronted with the arrest’s reasons and thereby has the right to contact whomever he/she decides to inform and seek a lawyer’s assistance”<sup>(59)</sup>.

These articles ensure following the judicial control over places of deprivation of liberty, the possibility of submitting complaints by inmates and enabling reporting the presence of illegally imprisoned persons<sup>(60)</sup>. This law also prescribes the specific circumstances to restrict freedom and renewal of period extensions, all of which are not restricted only to citizens.

The same is applied concerning the Penal Code<sup>(61)</sup> and specialized laws. On the one hand, foreigners are bound by the Penal Code as long as they commit a crime. On the other hand, concerning the Penal Code’s protection, it will cover every person regardless of nationality, even if they are stateless. The protection covers all crimes, whether they affect their lives, physical well-being, dignity, liberty, religion, or those involving people trafficking<sup>(62)</sup>.

The Bahraini legislature has taken an excellent approach by adopting flexibility by not listing a strict form of criminalizing exploitation, which results in the fact that criminal protection would cover any new form of exploitation that may emerge to commit the crime.

All fundamental rights within the Bahraini legal system are granted to all without any discrimination.

On the other hand, stipulating for criminal sentence in the form of imprisonment for a period of no less than six months in the occasion of illegal entry into the country<sup>(63)</sup>, might be a barrier. A barrier for foreigners’ rights, that may be characterize as refugees. The provision’s text came with general phrases that applies to everyone who enters Bahrain illegally without taking into account the reasons for entry or its conditions. Hence, the same procedures and punishment would be imposed. The liability is a strict liability.

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(59) Decree-Law No. 46 of 2002 Issuing the Criminal Procedure Law, Art. (61).

(60) *ibid.* Art. (62), and Art. (64).

(61) Bahrain Penal Code of 1976.

(62) The Bahraini Law on Combating Trafficking in Persons No. 1 of 2008.

(63) Immigration and Residence Act (N. 41) Art. 29.

## 2. Refugees in Bahrain Between Legal Regulation and Reality

The above reviewed the nature and status of refugees in domestic laws. It covered the aspects of protection scattered in more than one domestic law directly or indirectly. Still, Bahrain's situation concerning the nature and status of refugees remains incomplete, where the tools of international law play a crucial role in Bahrain; the entities and initiatives taken in Bahrain play a significant role. This will be clarified in this part to reach refugees' full status and thus assess refugees' situation.

### 2.1 Status and Nature of Refugees in the International Instruments

The international instruments that Bahrain has signed and ratified have a great place within the Bahraini legal system. It should be affirmed according to the Bahraini constitution, Article (37) "...A treaty shall have the force of law once it has been concluded and ratified and published in the Official Gazette"<sup>(64)</sup>. This means The Bahraini Constitution recognizes the international treaties with a rank equal to the ordinary national legislations.

Therefore, the international instruments that partially regulate a subject related to refugees acceded to by Bahrain, will be applied in Bahrain because it has the ordinary force of law. Thus, constitutional monitoring has an essential role in controlling the enforcement of international agreements. For instance, there is a conflict between the national legislation and the international instrument, since the constitution remains higher than both the constitution determines the application.

As a result, the Constitutional Court has jurisdiction over international instruments, unless these instruments are related to sovereignty acts. The constitutional court will also monitor the validity of the international instrument's ratification and publication procedures and track any deficiency. Then the court will remedy such deficiency in proportion to principles to be compatible with the constitution.

Essentially, in this section, the impact of the core human rights international tools and Bahrain's obligations towards them will be addressed. Bahrain has signed and ratified seven of the core human rights international tools, which are:

1. International Covenant on Civil and Political Rights (ICCPR)<sup>(65)</sup>

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(64) Bahrain Constitution (n 23) Art. (37).

(65) Law No. 56 of 2006 by Approving the accession of the Kingdom of Bahrain to the international covenant of civil and political rights.

2. International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>(66)</sup>
3. UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>(67)</sup>
4. International Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>(68)</sup>
5. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>(69)</sup>
6. Convention on the Rights of Persons with Disabilities (CRPD)<sup>(70)</sup>
7. UN Convention on the Rights of the Child (UNCRC)<sup>(71)</sup>

However, Bahrain did not sign the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the Convention for the Protection of All Persons from Enforced Disappearance. Nor, has it signed the following optional protocols:

- 1- Optional Protocol to the International Covenant on Civil and Political Rights:1976
- 2- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty:1991
- 3- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights:2013
- 4- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women:2000
- 5- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:2006

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(66) Law No. 10 of 2007 by approving the accession of the government of the Kingdom of Bahrain to the international covenant on economic, social and cultural rights.

(67) Decree-Law No. 34 of 1999 Amending Some Provisions of Law No. 4 of 1998 By Accessing to the Convention Against Torture and Other Forms of Treatment or the Cruel, Inhuman or Degrading Punishment Adopted by the General Assembly to the United Nations on December 10, 1984

(68) Decree No. 8 for the year 1990 Regarding Joining the International Convention on the Elimination of All Forms of Racial Discrimination for the year 1965 and the International Convention for the Suppression and Punishment of the Crime of Apartheid for the year 1973.

(69) Decree-Law No. 5 of 2002 by Agreeing to Join the Convention on the Elimination of All Forms of Discrimination Against Women.

(70) Law No. 22 of 2011 to Ratify the Convention on the Rights of Persons with Disabilities.

(71) Decree-Law No. 16 of 1991 Regarding the Accession of the State of Bahrain to the United Nations Convention on the Rights of the Child adopted by the General Assembly.

- 6- Optional Protocol to the Convention on the Rights of the Child on a communications procedure:2014
- 7- Optional Protocol to the Convention on the Rights of Persons with Disabilities:2008

Discussing every international instrument is not the purpose of this study; therefore, the author will focus on the most critical aspects of these instruments concerning refugees and the impact of Bahrain's accession to these instruments on its laws thereby.

**a. The International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Bahrain acceded to the two international covenants and made several reservations, but these reservations did not affect the right to refuge nor refugees. The two covenants share their goals that preserve human dignity, and the means to achieve its equality and non-discrimination. The expressions and the language of the Covenants are general with imprecision or specificity in several cases. Consequently, the rights stipulated in them from right to life, mobility, justice, economic, social, cultural, health, education, and working conditions rights in their diversity are in the interest of protecting the refugee from exploitation<sup>(72)</sup>. By their generality, they protect citizens and residents, likewise refugees' rights without discrimination against them as refugees.

The covenants lay the principles and groundwork for what is within the refugee convention and the law that may be developed specifically for this matter. Refugees' protection requires primary guaranteeing their safety, namely physical safety. In most cases, safety concerns are the force behind the refugees fleeing their home country. Thus, refugees often arrive at the host countries broken and need to be reaffirmed to protect their fundamental rights. From the right to life and the related rights such as physical integrity, movement, and freedom of belief. Consequently, they need their economic, social, and cultural rights to be protected, and the enjoyment of an adequate standard of living, including adequate food, proper shelter, physical, psychological health, and medical treatment, to find a source of livelihood<sup>(73)</sup>. Therefore, their enjoyment and protection of these rights are essential to other rights and

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(72) A. Edwards, Human Rights, Refugees, And the Right <To Enjoy> Asylum, International Journal of Refugee Law, Vol. 17, (2005), pp. 293-330.

(73) K. Ogg, Protection from Refuge "From Refugee Rights to Migration Management", 1<sup>st</sup> edn, Cambridge University Press, 2022, p. 26.

mechanism protections within the specific domestic law for refugees because they protect the refugees' vulnerability to exploitation.

It should be stressed that the above discussion is not intended to devalue the Convention nor the domestic law on refugees, but to show that the first block in building and securing the refugees' rights is found in the two covenants' nine core human rights international tools.

Accordingly, Bahrain has a legal basis to protect refugees' rights if they are found to be in Bahrain. It protects Bahrainis from becoming refugees by guaranteeing all rights under the law, translating and affirming Bahrain of its international obligations. It is worth noting Article (12) paragraph (4) of the ICCPR concerning not allowing the country to arbitrarily deprive its citizens of entering the country. The Bahraini Constitution in Article (17), states that a Bahraini citizen could not be deprived of his nationality except in treason and cases as appointed by law. Besides, no citizen may be deported or prevented from returning to Bahrain<sup>(74)</sup>.

### **b. The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Bahrain acceded these conventions in the 1990s, although it had not yet joined the protocol of the Convention against Torture<sup>(75)</sup>. It has been repeatedly stated in the previous sections that Bahrain has guaranteed in its constitution the principles of non-discrimination and respect for human dignity, and the prohibition of enforced disappearance, which can be read through the various laws.

One of the convention's obligations is that of non-refoulement, stated in Art. (3) para. (1) of the convention. As a result, Bahrain may not expel, deport, extradite, or return any person to another country if there are genuine reasons for believing that he/she will be in danger of being subjected to torture.

Non-refoulement is broadly meant to include all persons, whether citizens or foreigners and thereby includes refugees. In Bahrain's response to its international obligations, joining the convention means applying non-refoulement would cover foreign with refugees' characteristics - since the law does not regulate the subject of refugees - if being expelled, returned, or extradited would put them at risk. Thus, Bahrain has discretionary powers in

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(74) Bahrain Constitution (N. 23) Art. (17).

(75) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: 2006

applying Article 3 to ensure the existence of danger or not, in the absence of a declared regulation in this regard.

Accordingly, the foreigner - the refugee - in Bahrain could prove that returning or extraditing him/her would place him/her in danger of being subjected to torture so that he/she could remain in Bahrain.

### **c. The Arab Charter on Human Rights (ACHR)**

As previously stated, the Bahraini constitution explicitly stipulates the prohibition of extradition of political refugees without explicitly granting the right for political asylum. However, Bahrain joined and ratified the Arab Charter for Human Rights (ACHR) in 2006<sup>(76)</sup>. ACHR was adopted by the Council of the League of Arab States on 22 May 2004. Article 28 of the ACHR stipulates that “Everyone has the right to seek political asylum in another country in order to escape persecution. This right may not be invoked by persons facing prosecution for an offence under ordinary law. Political refugees may not be extradited”.

Under any exceptional emergency circumstances, Bahrain cannot violate giving the right to political asylum and non-extradition, nor to suspended the judicial guarantees to protect this right<sup>(77)</sup>.

Henceforward, Bahrain grants the right to political asylum, since the ratification of agreements puts it at the same rank in Bahraini legislation as the ordinary law, despite the absence of a clear regulation or a published bylaw.

### **d. International Conventions Bahrain Acceded to, and Including Matters Relating to the Extradition of Criminals**

Bahrain has joined several general conventions and agreements that include issues related to the extradition of criminals to contribute to the international efforts to eradicate the criminal phenomenon, enhance regional and international cooperation to combat it, and ensure the effective implementation of international conventions and develop and disseminate national strategies and implement laws.

Most of these include that the state can refuse extradition if it believes that the investigation or punishment is carried out for discrimination, or because the person has political or other beliefs inconsistent with the state<sup>(78)</sup>. All these

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(76) Law No. 7 of 2006 ratifying the Arab Charter on Human Rights.

(77) *ibid.* Art. (4).

(78) J. Harrington, *Extradition of Transnational Criminals*, Routledge Handbook of Transnational

conventions and agreements include the prohibition of extradition in political crimes such as joining the United Nations Convention against Transnational Organized Crime and two Supplementary Protocols<sup>(79)</sup>, and the accession to Agreement on Extradition of Criminals Between the Countries of the Arab League<sup>(80)</sup>. As well as the extradition agreements concluded between Bahrain and other countries, such as the Russian Federation<sup>(81)</sup> and the Republic of India<sup>(82)</sup>. All of these guarantees directly affect the right to political asylum and indirectly asylum in general<sup>(83)</sup>.

### 2.2 Criminal Liability for Violating Refugee Rights

The refugees did not leave their home countries voluntarily but they were forced by circumstances to take refuge. Hence, they are at a lower position compared to the citizens of the country they fled to. This is the reason for passing domestic refugee laws to protect refugees cause they are classified among the vulnerable groups in society.

In the absence of a specific law in Bahrain for refugees, does this mean refugees and groups within similar refugees' status description do not enjoy criminal protection? To answer this question we have to navigate the general provisions in the Penal Code and related provisions of the special laws.

#### a. Bahrain Penal Code of 1976

Foreigners regardless of their status whether migrants or refugees are bowed by the penal code as long as they committed a crime stipulated for by the law within Bahrain's jurisdiction. It is considered within the jurisdiction if one the act constitutes the crime occurred in Bahrain or its results happened in Bahrain, or it could be deduced that they intend the result to be in Bahrain<sup>(84)</sup>. Hence, the law should apply to foreigners even if they participation in a crime

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Criminal Law, 1st edn, Routledge, Taylor & Francis Group, 2014.

(79) Law No. 4 of 2004 approving the Kingdom of Bahrain's accession to the United Nations Convention against Transnational Organized Crime and the two protocols supplementing it. (Art. 16 Para. 14)

(80) Emiri Decree No. 21 of 1973 Approving Joining the Extradition Agreement Between the Countries of the Arab League, Art. 4.

(81) Law No. 21 of 2018 Ratifying an Agreement Between the Kingdom of Bahrain and the Russian Federation Regarding the Extradition of Criminals, Art. 5, Para. C.

(82) Law No. 10 of 2005 ratifying the Extradition Agreement between the Government of the Kingdom of Bahrain and the Government of the Republic of India, Art. 5.

(83) Ogg (n 72) 23.

(84) Penal Code (N. 60), Art. 5. M. H. Merhej, Explanation of The Bahraini Penal Code-General Section, 1st edn., University of Bahrain, 2020, pp. 51-52/ in Arabic.



occurred abroad if it is within the Bahraini Law jurisdiction<sup>(85)</sup>. On the other hand, concerning the Penal code's protection, there is no question it will cover every person regardless of the nationality they hold, even if they are stateless.

Based upon the fact that refugees and similar in status groups are socially weaker groups, following addressed the most common crimes that they might be a target in and a victim. These will be the most common crimes against people and not crimes against monetary due to most refugees leave their homelands with a weak economic condition. They are most likely to be victims of crimes that affect the right to life, rape and sexual assault, and freedoms. As well as crimes that affect religion, immorality, and prostitution.

• **Affecting Human Lives and Physical Well-being**

This study focuses on intentional crimes only including murder and physical assault.

Murder as any intentional crime, firstly, the Actus reus must be presented in the form of a positive or negative act, the criminal outcome, and the existing of causation. Secondly, the *Mens rea* should be presented, too, by committing the crime with knowledge of the act, the illegal activity, and the knowledge that the act will attain the criminal consequences. The Article that criminalize murder in Bahrain sets aggravating circumstances that may accompany murder crime which are stalking, premeditation, conjugation, and association with another crime, the use of toxic materials or explosive materials<sup>(86)</sup>. The punishment thereby rises from temporary or life imprisonment to capital punishment.

The same applies to realize the crime's elements of intentionality affecting the Physical Well-being of a person that might be a refugee. The physical assault might be punishable as a misdemeanour or a felony depending on the circumstances provided for in the law<sup>(87)</sup>. The legislature considered aggravating circumstances the commission of this crime by using a firearm, stick, or other instruments by one or more of a gang consisting of no less than five<sup>(88)</sup>.

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(85) *ibid.*

(86) *ibid.*, Art. (333).

(87) *ibid.*, Art. (336-341).

(88) *ibid.*, Art. (340).

### • Rape, Sexual Assault, and Liberty

Regarding rape and sexual assault crimes, it is only conceivable that they are deliberate crimes due to their nature. In these crimes, the legislature has paid great attention to childhood and the woman's character, where the penalty has reached to a felony that may be punished for a capital punishment or a life imprisonment. Non-consent is presumed if the victim has not completed fourteen years of age<sup>(89)</sup>.

Likewise applies to crimes against liberty that might be in form of a misdemeanour or a felony. It will consider a felony in a number of cases, including if it was committed for the purpose of revenge, rape, or by more than two offenders<sup>(90)</sup>.

### • Offenses Affecting Religion and the Family

The refugees' religion may differ from most people's beliefs in the countries they take as a refuge. Thus, protection fundamental right to believe and practice religion is guaranteed in the Constitution. The details for these rights are set for in the Penal Code; it can be seen in Articles 309, 311, 312, and 315. These provisions include criminalizing any form of a deliberate act against religion, such as disturbing any practice of religion. These crimes affecting religion are deemed misdemeanours.

Within the clause of offences against family, the legislature stipulated for crimes of endangering a child's life under the age of seven, or committing an offence against a person unable to protect himself/herself due to health or mental condition, or forcing others to commit such an acts. Refugees are envisioned to fall victims to such offences due to their status. The minimum sentencing for these offences are no less than three months and it could goes up to no less than a year if it is committed in an secluded area. In these provisions, the legislature protected children and people with disabilities, given to their inability to defend themselves<sup>(91)</sup>.

### • Immorality and Prostitution

Repeatedly, it has been stated that refugees present a vulnerable group in societies; thus, they may be exploited in prostitution and immoral acts. The Penal Code protects in this regard, particularly children and coerced

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(89) *ibid*, Art. (344-349). H. A. Ahmed, *Explanation of The Bahraini Penal Code-Private Section*, 1<sup>st</sup> edn, University of Bahrain, 2007, pp. 426-441/ in Arabic.

(90) *ibid*, Art. (357-359).

(91) *ibid*, Art. (320).

persons. The law made assisting and enticing to commit acts of immorality or prostitution punishable and deemed enticing a person under the age of 18 to commit such acts as a victim<sup>(92)</sup>; this would affect the offender's sentence. Likewise, the treatment for the person who coerced<sup>(93)</sup>.

Amplify, the Bahraini legislature has set a general aggravating circumstance that applies to all crimes according to the judge's discretion. Among these aggravating circumstances are committing an offence for contemptible motives, and by seizing the opportunity of the victim's inability to resist and preventing others from defending the victim<sup>(94)</sup>. It could be inferred that if persons were a target of such a crime due to their status as refugees the judge could apply these aggravated circumstances; due to the malicious intent because there is no legislation standard define what is considered contemptible motives.

In general, the offences against refugees could be classified as hate crimes too; based on this the codification that criminalized hate crimes is considered among the instruments that protect the refugee on criminal aspect. Bahrain do not have a legislation deducted toward Anti-hatred as the United Arab Emirates<sup>(95)</sup>, yet the Penal Code did include incitement of hatred when such publication of hate or contempt toward a certain sect or group undermines the public peace<sup>(96)</sup>.

Nonetheless, the provision's phrases are unconstrained, indefinite, and did not address the criminalization of all other means of discrimination; It was limited to combating hatred in the context of disturbance of public peace only<sup>(97)</sup>. Despite Bahrain has signed and ratified (CERD)<sup>(98)</sup> still this do not satisfy the need of having a special legislation that deals with hatred and discrimination; thereby did not penalized all cases, which resulted in legislative shortcoming.

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(92) *ibid*, Art. (324).

(93) *ibid*, Art. (325).

(94) *ibid*, Art. (75). Merhej (n 83), pp. 424-428.

(95) Federal Decree Law No. 2 of 2015 Issued on 15/7/2015 Corresponding to 28 Ramadan 1436 On Combating Discrimination and Hatred / more info concerning UAE: MM Munjid, Hate Crimes: A Comparative Analytical Study, The University of Sharjah Journal of Law Sciences, Vol. 15, UAE, 2018, pp. 170- 199, available at: <https://www.sharjah.ac.ae/en/Research/spu/Journallaw/Documents/V15/issue%201/6.pdf> [accessed 30 May 2022]/ in Arabic.

(96) Penal Code (n 60) Article 172.

(97) M.S. Sabah, Crimes of Discrimination, Incitement to Hatred and Violence: Comparative Study, Journal of Legal and Economic Studies, Vol. 2, Egypt, 2016, pp. 65-66/ in Arabic.

(98) CERD (n 67).

### **b. The Bahraini Law on Combating Trafficking in Persons No. 1 of 2008**

This legislation has explained the meaning of trafficking in person crime. This crime requires the availability of *Mens rea* in the form of the existence of criminal intent, and the *Actus reus* in recruitment, transportation, transfer, harboring, or receiving persons for exploitation. The *Actus reus* is committed through threat or use of force or other forms of coercion, fraud, or any other direct or indirect unlawful means<sup>(99)</sup>.

The legislature has provided various examples of forms of exploitation, as follows<sup>(100)</sup>:

- The exploitation of persons in prostitution.
- Sexual assault.
- Forced labor or service.
- Slavery.
- Slavery-like practices.
- servitude.
- Organ removal.

The Bahraini legislature has taking an excellent approach by adopting flexibility by not listing a strict form of exploitation, which resulted that criminal protection would cover any new form of exploitation that may emerge to commit the crime. Based on the accession of Bahrain to the Convention on Slavery concluded on September 25, 1926, as amended by the Protocol drawn up in 1953, and to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery<sup>(101)</sup>; the *Actus reus* will include slavery-like practices within the convention, such as debt bondage, and serfdom<sup>(102)</sup>.

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(99) A. Basher, Procedural Guarantees for Victim of Human Trafficking in Bahraini Legislation, 2nd edn, Journal of Law University of Bahrain, Vol. 16, Bahrain, 2019, pp. 134-135/ in Arabic.

(100) Combating Trafficking in Persons (n 61), Art. (1) para (a).

(101) Decree No. 7 of 1990 Regarding Accession to The Convention on Slavery Concluded on September 25, 1926, as Amended by The Protocol Drawn in 1953, and to The Supplementary Convention on The Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery 1956.

(102) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956, Art. (1).

This law is meriting because it implicitly has provided the protection for refugees and children. That is, in constituting the offense, the legislature did not take into account the victim's consent if the victim is less than eighteen years of age. Also, if the victim in a condition or personal state that it could be deduced from the non-consent<sup>(103)</sup>. Hence, in this situation the person could be a refugee.

This law did not tolerate the trafficking in persons, as it was punished as a felony by imprisonment and a fine of not less than two thousand dinars and not exceeding ten thousand dinars (about 5300 to 2600 US Dollars). The law has also established the entities' liability for these crimes in a manner that does not violate natural persons' liability. This provision is one of the distinct texts; the Bahraini legislature has not provided a general text to establish legal entities' liability<sup>(104)</sup>. Instead, it has made its liability based on individual cases in which each legislation provided for explicitly.

### **2.3 Refugees' Situation between Law and Reality**

After reviewing the legal framework in Bahrain for refugees, can Bahrain receive refugees in the absence of particular legal legislation dedicated to refugees? Are refugees protected on criminal level? Moreover, in order to asset the penal protection how accurate are the international reports regarding evaluating the issue of refugees in Bahrain?

- **Can Bahrain receive refugees in the absence of particular legislation dedicated to refugees?**

One of the axes of answering this question is knowing the number of refugees. Previously mentioned, the author failed to obtain an officially announced number of refugees who have fled to Bahrain or the numbers taking refuge abroad from Bahrain.

However, if the requirements for entry or residence in Bahrain are met, then the person could acquire a visa to stay in Bahrain, and over time, this refugee could acquire the Bahraini nationality, if they want, as long as they meet the legal conditions and requirements, as explained above.

Extrapolating history and reality in Bahrain and all the Gulf Cooperation countries (GCC) regarding the Palestinian refugees, many refugees have moved to the GCC, including Bahrain<sup>(105)</sup>. Some of them have merged into

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(103) Combating Trafficking in Persons (n 61), Art. (1) para(b).

(104) *ibid*, Art. (3).

(105) "Bringing Palestinian teachers to work in Bahraini schools to solve the unemployment problem

Bahraini society over time and acquired Bahraini citizenship. For example, there are Bahraini families with Palestinian origins in Bahrain<sup>(106)</sup>.

Also, there are cases of the Bahraini government's policy as a matter of brotherhood and interdependence among the region's countries, which necessitates taking prompt measures in times of crisis; as happened in the Gulf War at the beginning of the 1990s. Bahrain opened its land to receive the Kuwaiti people, allocated many new housing projects to receive Kuwaiti families, and provided them with all services and needs<sup>(107)</sup>.

On the other hand, by referring to some external reports, including the World Bank data on refugee population by country or territory of asylum, it shows that the number of refugees from Bahrain is 255<sup>(108)</sup>. However, there is a question of credibility, primarily due to Bahrain's small population. Most of the individuals are acquaintances, so from where did the 225 persons come?

One explanation for this number could be that foreigners from politically troubled nations residing in Bahrain have submitted their asylum applications to foreign countries.

There is an individual case in which a person was named in some reports, such as the 2019 Country Reports on Human Rights Practices on Bahrain by The Bureau of Democracy, Human Rights, and Labor. In particular, this person is wanted for terrorist crimes and not political crimes or opinion crimes, as must be claimed to be listed as refugees<sup>(109)</sup>.

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among Palestinian teachers and level up Bahrain's education". Al-Bassam K, We all Fedak "Bahrain and the Palestinian cause 1917-1948", 1st edn, Arab Foundation for Studies and Publishing, Lebanon, 2005, p107/ in Arabic

- "There were about two thousand Palestinians in Bahrain before 1990. Recently estimates about 5,000". Y Kerbaj and H. Nofal, Palestinians in the World - A Demographic Study, Arab Center for Research and Policy Studies, 2020, p. 75/ in Arabic.

(106) In the House of Representatives news:

"The committee resumed its deliberations regarding the proposal with a desire not to oblige Bahrainis of Palestinian origin to implement Prime Minister Decision No. 6 for the year 1975 regarding the deduction of 5% of the salaries and wages of Palestinian workers or those of Palestinian origin in favor of the Palestinian National Fund.". "News Related to the House of Representatives", Issue 11315, Akhbar AlKhaleej Newspaper, Bahrain, March 16, 2009/ in Arabic.

(107) MA. Al-Mutawa, The Bloody Anniversary of the Invasion of Kuwait 'a Fatal and Unforgivable Historic Mistake', AlWatan newspaper, Bahrain, August 4, 2019, available at: <https://alwatannews.net/article/840160/Opinion/ذكري-غزو-الكويت-الدامية-خطأ-تاريخي-خارج-لا-يفتنر> [accessed 30 May 2022]/ in Arabic; Al-Babli A-S, Episodes from the Book 'Years in the Land of Eternity' and the End of Saddam Began on August 2, 1990, AlBilad newspaper, Bahrain, August 27, 2014, available at: <http://albiladpress.com/article256667-1.html> [accessed 30 May 2022]/ in Arabic.

(108) "Refugee Population by Country or Territory of Asylum" (Data) <<https://data.worldbank.org/indicator/SM.POP.REFG?contextual=region>> accessed June 3, 2022.

(109) "Bahrain - United States Department of State" (U.S. Department of State December 1, 2020)

• **Are refugees protected on criminal level?**

Revealed above is the legal framework presently available in Bahraini law for refugees. It became clear that there is general protection for foreigners in Bahrain, still, nothing is straightforward concerning refugees; especially the constitutional legislature explicitly declared the political refugee only without providing any details in the ordinary legislation.

Theoretically, this reflects a legislative ambiguity and deficiency on the procedural and substantive levels concerning the criminal sphere. On a procedural level, there are no specific conditions and procedures for refugees, although it is possible to receive refugees according to the discretion authority. Hence, it could determination on a case-by-case basis.

On the substantive level, if the Penal legislature protects all persons, whether citizens or non with its general provisions, yet, it is not sufficient; especially in the absence of legislation dedicated to combatting anti-discrimination, and anti-hatred crimes law as in the UAE. The importance of having an anti-discrimination, and anti-hatred crimes law is that most of the crimes that refugees might be a target to these kinds of crimes<sup>(110)</sup>.

On my point of view, I see that there is a kind of general protection provided for refugees but it is deficient. Certainly, to deal with the deficiency a law should be passed in this regard. Issuing a law that deals with anti-discrimination and anti- hatred crimes, or a law solely attributed to refugees need a study with accurate data and info to measure the situation in Bahrain in order to create adequate penal protection<sup>(111)</sup>. This includes the number of victims from foreigners, its causes, and the number of refugees if exist<sup>(112)</sup>; to develop a proposal based on accurate foundations to protect refugees to fulfil the human security concept. This leads to exploring the third question.

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<<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/bahrain/>>  
accessed June 3, 2022 .

(110) MS Sabah (n 96); Ogg (n 72) 166; ED Santo and ED Angelo, Relationship of Online Hate, Radicalization, and Terrorism, Indoctrination to hate: Recruitment techniques of hate groups and how to stop them, Praeger, an imprint of ABC-CLIO, LLC, USA, 2022, pp. 164-165.

(111) ER Babbie and MG Maxfield, Research Methods for Criminal Justice and Criminology, 7th edn, Wadsworth, USA, 2015, p. 91; LW Sherman, The Influence of Criminology on Criminal Law: Evaluating Arrests for Misdemeanour Domestic Violence, The Journal of Criminal Law and Criminology, Vol. 83, USA, 1992, p. 35.

(112) N. Alshamlan, Adopting Criminology and Penology in Confronting Criminal Behavior-Traffic Control as a Model, The Journal of Legal Studies, Assiut University, Egypt, 2021/ in Arabic.

- **How accurate are the international reports regarding evaluating the issue of refugees in Bahrain?**

Determining the reports' reliability and accuracy depends on the entity issuing the information in the first place. The example that concluded answering the first question confirms that. Thus, the author is convinced it is necessary to suggest that the authorities and entities that monitor human rights in Bahrain should conduct a study to know the situation accurately so that the refugee situation under Bahraini law is assessed neutrally to reflect the reality and needs. It is not to suggest that international reports lack credibility or irrelevance. On the contrary, these reports would be impartial and credible if viewed analytically and comparatively, based on accurate numbers. Thereby, these reports results would fulfil their goal. The goal is to remedy errors and develop the laws, including introducing new laws and amendments to realize its purpose.

One of the most critical reports is issued by the United Nations High Commissioner for Refugees, especially for 2011 and 2016<sup>(113)</sup>. The mentioned reports were carried out consistently with the reality in Bahrain's and are compatible with the annual reports issued by the National Institute for Human Rights (NIHR) in Bahrain<sup>(114)</sup>. For example, both addressed amending the *1963 Citizenship Act* to enable a Bahraini woman married to a foreigner to confer her nationality to her children.

Nonetheless, Bahrain's' reality in dealing with the refugee situation could be seen through the strategies and initiatives, not only through legislation. Strategies and initiatives, the most important of which is the Royal Humanitarian Foundation's work and the ambition of the Arab Court for Human Rights.

The Royal Humanitarian Foundation assists many refugees and countries suffering from political and economic problems such as giving financial and relief aid to the Palestinian People, Pakistan, Somalia, Yemen, Nepal, and Turkey. It has also established projects and initiatives worldwide to help refugees, such as establishing the Bahrain National Committee for supporting the Palestinian People in Gaza, opening a school in the Gaza Strip, and

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(113) UN High Commissioner for Refugees (UNHCR), Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 27th Session - Indonesia, September 2016, available at: <https://www.refworld.org/docid/59158ed24.html> [accessed 3 September 2020]

(114) NIHR is an independent monitoring body in Bahrain. Annual Report (Rep.). (2013). Bahrain: NIHR. doi: [http://www.nihr.org.bh/Media/pdf/NIHR\\_ANNUAL\\_REPORT\\_2013\\_\(ENG\).pdf](http://www.nihr.org.bh/Media/pdf/NIHR_ANNUAL_REPORT_2013_(ENG).pdf).



opening the Bahrain Scientific Complex at Zaatari Refugee Camp in Jordan for the Syrian refugees<sup>(115)</sup>.

#### 2.4. Challenges and Results

The mechanism for overseeing human rights in the Kingdom of Bahrain is distinguished by its inclusion of independent bodies that undertake oversight. Undoubtedly, the United Nations High Commissioner for Refugees (UNHCR) Office in the GCC region affects communication and cooperation between it and the government in spreading awareness and intellectual exchange<sup>(116)</sup>. The presence of the UN Migration Agency (IOM)<sup>(117)</sup> office in Bahrain is considered an excellent and commendable step in caring for foreigners in Bahrain. From this, it must be noted that Bahrain has expatriate workers and does not have migrant workers.

However, to enhance this prominent role of Bahrain in extending aid to the whole world and refugees, in particular, the author considers here adopting the following recommendations to be a roadmap for strengthening international commitment to confront refugee issues by providing criminal protection. Thus, reaching a new level of social security concept in Bahrain; Thereby, acquire the human security concept.

- a. In Bahrain, immigration and residency laws are clear regarding their requirements; thus, there are no refugees in Bahrain in the strict legal sense. Still, there are individuals in the actual situation within the international law of refugees that could enter and reside legally in Bahrain. Here the importance of passing a specialized law for refugees is encouraged. The refugee status must be different from the other ordinary foreign residents in Bahrain. Accordingly, the author suggests that Bahrain accede to the 1951 Refugee Convention.

(115) Leading Organization in Humanitarian and Charity Work. (n.d.). Retrieved September 03, 2020, from [https://www.rhf.gov.bh/projectDetails/33/المشاريع\\_الإنسانية\\_والإغاثية](https://www.rhf.gov.bh/projectDetails/33/المشاريع_الإنسانية_والإغاثية)

(116) UNHCR holds awareness raising event on UN Day. (2019, October 24). Retrieved September 03, 2020, from [;Under Secretary of State for International Affairs receives the Regional Representative and Chief Protection Officer of the United Nations High Commissioner for Refugees. \(2017, January 19\). Retrieved September 3, 2020, from https://www.mofa.gov.bh/Default.aspx?tabid=7824&Itemid=6961&language=en-US](https://www.bna.bh/en/news?cms=q8FmFJgiscL2fwIzON1+Dug2Fkca9ne2i3cikiv3DV8=)

(117) Bahrain Launches MENA Region's First Government Assistance Fund for Victims of Human Trafficking. IOM, 22 May 2018, [www.iom.int/news/bahrain-launches-mena-regions-first-government-assistance-fund-victims-human-trafficking](http://www.iom.int/news/bahrain-launches-mena-regions-first-government-assistance-fund-victims-human-trafficking).

- b. Human security concept concerns encourage passing a special refugee law. All countries around the world are interconnected, undoubtedly what happens in one country affects the other countries. This is witnessed clearly in the current Russia-Ukraine war. The effects were not limited to the political aspects it included the economical and humanitarian aspects<sup>(118)</sup>. In order to achieve human security, the state must not function, even with its internal laws, as if it were isolated from the rest of the world. Therefore, whenever countries adopt a regulation that preserves the rights of individuals whether citizens or non-citizens because this ultimately leads to ensuring the rights of the citizens. Of course, such regulation shall not jeopardize the state's national security.

Assuming there are refugees who wanted to flee and entered the Bahraini borders illegally, the Penal Code will be applied in this instance<sup>(119)</sup>. Bahrain assists and facilitates the crossing of refugees, but the absence of the law creates a legislative void that may lead in the future to difficulties, significantly in criminal law matters. Even though Bahrain currently does not have problems in terms of refugees, the successful legal regulation should be prior to the occurrence of the issue.

- c. The problems or shortcomings of related legislation on nationality and residence must be addressed; Due to their indirect effect on the presence of refugees status of any classification. Amendments must be added to the Bahraini Nationality Act in line with Bahrain's international obligations in light of the glorious Islamic Sharia by setting the conditions to control passing the Bahraini citizenship from the Bahraini mother married to a foreigner to her children. Adopting such amendments should avoid having children with a stateless status or a harmful status by not acquiring the Bahraini nationality.
- d. The author agrees with the NIHR's opinion that the State has a legitimate right to drop the nationality. It is a must to maintain the security, safety, and interests of the country. However, this must not lead to the emergence of the statelessness phenomenon and contribute negatively

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(118) H. Fujibayashi, Why Do States Contribute to the Global Refugee Governance? Fiscal Burden-Sharing in the Post-2011 Syrian Refugee Crisis, 48, *International Interactions*, 2022.

(119) E. Guild, Criminalisation of migration in Europe: Human rights implications, Commissioner for Human Rights, Council of Europe, 2010.

to the situation of refugees worldwide. Thus, legal guarantees should be present when and after the State forfeits citizenship.<sup>(120)</sup>

- e. It is suggested that Bahrain accede to the *1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*, also to promote international cooperation in developing strategies for refugees in particular and encouraging member states of the Arab League to sign and ratify the Statute of the Arab Court for Human Rights. Signing and ratifying the Statute will be one of the future guarantees of human rights for citizens of Arab countries in general and foreigners, including refugees in particular.
- f. The importance of statistics is crucial, that is it necessary to have accurate, official data considering the number of refugees in Bahrain; it is essential for any science to evaluate the situation in order to deal with it efficiently as Peter Drucker said, “If you can’t measure it, you can’t improve it.”

### Conclusion

It is clear in Bahrain, that refugees are not currently a major issue. Nevertheless, the legislative shortcomings in this respect cannot be ignored; notably in light of the international developments, such as the repercussions of the COVID pandemic, starvation, Ukraine- Russia war, and political activism which increasingly raise the matter of migration and refugees worldwide.

Reforms to immigration and residency laws are achievable, particularly concerning the criminal liability of people fleeing, but that is not enough. It is hoped that Bahrain will accede to the Refugee Convention and major relating Conventions because it is a step to draft the reforms into a bill to address at least the key issues outlined in this research. The bill would be clear regarding the requirements to refuge and will preserve the state’s security and advantages.

Further, one of the axes of Bahrain’s economic vision 2030 is to achieve fairness. Fairness in a broad sense, not including merely fairness and justice in laws related to the economy, business, work, and monetary, but includes all legislations in Bahrain to achieve equality and protect human rights by being compatible with international standards; This would reflect in the state’s international status, and contributes directly to the economic development of Vision 2030<sup>(121)</sup>.

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(120) Annual Report (N. 113).

(121) “Bahrain Economic Vision 2030”, October 2008.

In Conclusion, all the suggestions within this research are realistic and necessary from human rights and criminal law perspectives. Hence, these suggestions do not benefit Bahrain only. Bahrain sets as a case study of incremental change and improvements for all neighbouring countries that have not allocated a law to address the status of refugees; Regardless, of their financial contribution to the refugees worldwide as part of their role in the international community.

## List of References

### 1- Books

- A. A. Al Dhaheri, *AlAjman and their Leader Rakan bin Hathleen*, 1st edn, Al-Yamamah House Publications for Research, KSA, 1983, in Arabic.
- A. Al-Siddiqi, *History of the Legal System in Bahrain*, 1st edn, Isa Cultural Center, Bahrain, 2019, in Arabic.
- AS. Al-Sayed, *Private International Law in the Kingdom of Bahrain: Comparative Study, Nationality- Status of Foreigners*, 1st edn, University of Bahrain, Bahrain, 2004, in Arabic.
- ED. Santo and ED Angelo, *Relationship of Online Hate, Redicalization, and Terrorism, Indoctrination to hate: Recruitment techniques of hate groups and how to stop them*, Praeger, an imprint of ABC-CLIO, LLC, USA, 2022.
- ER Babbie and MG Maxfield, *Research Methods for Criminal Justice and Criminology*, 7th edn, Wadsworth, USA, 2015.
- H. A. Ahmed, *Explanation of The Bahraini Penal Code-Private Section*, 1edn, University of Bahrain, Bahrain, 2007, in Arabic.
- K. Al-Bassam, *We all Fedak "Bahrain and the Palestinian cause 1917-1948"*, 1st edn, Arab Foundation for Studies and Publishing, Lebanon, 2005, in Arabic.
- K. Ogg, *Protection from Refuge "From Refugee Rights to Migration Management"*, 1<sup>st</sup> edn, Cambridge University Press, 2022.
- M. H. Merhej, *Explanation of The Bahraini Penal Code-General Section*, 1 edn, University of Bahrain, Bahrain, 2020, in Arabic.
- T. B. Al-Tarifi, *Saudi-Bahraini Relations during the Era of King Abdul Aziz 1319 - 1373 AH / 1903 - 1953 AD*, 1st edn, King Abdul Aziz House 1430 ah, KSA, in Arabic.
- Y Kerbaj and H. Nofal, *Palestinians in the world - A demographic study*, Arab Center for Research and Policy Studies, 2020, in Arabic.

### 2- Articles

- A. Basher, *Procedural Guarantees for Victim of Human Trafficking in Bahraini Legislation*, 2<sup>nd</sup> edn 16, *Journal of Law University of Bahrain*, 2019, in Arabic.

- A. Edwards, Human Rights, Refugees, And the Right ‘To Enjoy’ Asylum’, *International Journal of Refugee Law*, Vol. 17, (2005).
- A. Y. Al-Shukry, The Constitutional Organization of the Right to Political Asylum- a Comparative Study in the Arab Constitutions,18, *Journal of Kufa Studies Center, Iraq*, 2010, in Arabic.
- E. Guild, *Criminalisation of migration in Europe: Human rights implications*, Commissioner for Human Rights, Council of Europe, 2010.
- G. Baldacchino, “Come Visit, but Don’t Overstay: Critiquing a Welcoming Society”, *International Journal of Culture*, Vol. 6, *Tourism and Hospitality Research*, 2012.
- H. Fujibayashi, Why Do States Contribute to the Global Refugee Governance? Fiscal Burden-Sharing in the Post-2011 Syrian Refugee Crisis, 48, *International Interactions*, 2022.
- K. M. Roche and B. Streitwieser and S. J. Schwartz, “A Call for Research on Immigrant and Refugee Youth amidst the Global Rise in Xenophobia and Nationalism”, *International Journal of Intercultural Relations*, 2021.
- M. M. Munjid, Hate Crimes: A Comparative Analytical Study, 15, *The University of Sharjah Journal of Law Sciences*, UAE, 2018, 170- 199, available at: <https://www.sharjah.ac.ae/en/Research/spu/Journallaw/Documents/V15/issue%201/6.pdf> in Arabic.
- M. S. Boudouh, The Principle of Non-Extradition of Criminals in Political Crimes,12, *Alfikir Journal*, Algeria, 2017, in Arabic.
- M. S. Sabah MS, Crimes of Discrimination, Incitement to Hatred and Violence: Comparative Study, 2, *Journal of Legal and Economic Studies*, Egypt, 2016, in Arabic.
- N. Alshamlan, Adopting Criminology and Penology in Confronting Criminal Behavior-Traffic Control as a Model, *The Journal of Legal Studies*, Assiut University, Egypt, 2021, in Arabic
- S. A. Olofinbiyi, “Anti-Immigrant Violence and Xenophobia in South Africa: Untreated Malady and Potential Snag for National Development”, *Insight on Africa*, 2022.

- S. D. Miller, Xenophobia toward Refugees and Other Forced Migrants, 2018, <[reliefweb.int/sites/reliefweb.int/files/resources/WRC%20Research%20Paper%20no.5.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/WRC%20Research%20Paper%20no.5.pdf)>.
- S. M. Al-Senussi SM, The Legislation Validity Pillars (the Jurisdiction Requirement), 2, AlQanoniya, Bahrain, 2014, in Arabic.
- W. K. Al-Rabie, “The Right to Political Asylum in Islamic Jurisprudence and International Law: A Comparative Study”, 23, Journal of Sharia and Islamic Studies, Academic Publishing Council, Kuwait University, 2008, in Arabic.

### 3- Reports & Other Nonperiodic Materials

- A. Chandak, “Oil to Fuel Growth in Gulf Economies This Year, but Will Not Sustain Pace in 2023”, *Reuters*, July 21, 2022. <https://www.reuters.com/business/energy/oil-fuel-growth-gulf-economies-this-year-will-not-sustain-pace-2023-2022-07-21/>.
- A. S. Al-Babli, Episodes from the Book ‘Years in the Land of Eternity’ and the End of Saddam Began on August 2, 1990, *AlBilad newspaper*, Bahrain, August 27, 2014, available at: <http://albiladpress.com/article256667-1.html> / in Arabic.
- *Annual Report* (Rep.), (2013), Bahrain: NIHR. doi: [http://www.nihr.org.bh/Media/pdf/NIHR\\_ANNUAL\\_REPORT\\_2013\\_\(ENG\).pdf](http://www.nihr.org.bh/Media/pdf/NIHR_ANNUAL_REPORT_2013_(ENG).pdf)
- Bahrain - United States Department of State (*U.S. Department of State* December 1, 2020) <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/bahrain/>.
- Bahrain Free Trade Agreement (BHFTA) (*U.S. Customs and Border Protection* May 24, 2022) <<https://www.cbp.gov/trade/free-trade-agreements/bahrain>>.
- Bahrain Launches MENA Region’s First Government Assistance Fund for Victims of Human Trafficking”, *IOM*, 22 May 2018. [www.iom.int/news/bahrain-launches-mena-regions-first-government-assistance-fund-victims-human-trafficking](http://www.iom.int/news/bahrain-launches-mena-regions-first-government-assistance-fund-victims-human-trafficking).
- Bahrain Woman Charged with Insulting Hindu Religious Symbol” (The Times of India August 2020) <[timesofindia.indiatimes.com/world/middle-east/bahrain-woman-charged-with-insulting-hindu-religious-symbol/articleshow/77588948.cms](http://timesofindia.indiatimes.com/world/middle-east/bahrain-woman-charged-with-insulting-hindu-religious-symbol/articleshow/77588948.cms)>.

- Expat Explorer Survey - Compare: Jersey, Bahrain: HSBC Expat (September 3, 2020) <https://expatexplorer.hsbc.com/survey/country/jersey/bahrain/chart:table>.
- Global: Expat Insider Survey Reveals the Best and Worst Countries for Expats in 2019” (*InterNations* September 5, 2019), <https://www.internations.org/press/press-release/expat-insider-2019-survey-reveals-the-best-and-worst-destinations-to-live-and-work-in-2019-39881>.
- HH Shaikh Nasser Expresses Keeness to Promote HM the King’s Inter-Religious Coexistence Approach”, *Bahrain News Agency*, August 31, 2020 <http://www.bna.bh/en/HHShaikhNasserexpresseskeenesstopromoteHMtheKingsinterreligiouscoexistenceapproach.aspx?cms=q8FmFJgiscL2fwIzON1%2BDrfc6EoZGJn7utYCUrtSvNU%3D>.
- International Day of Conscience a Global Recognition of HRH Premier’s Peace, Sustainable Development Initiatives, Efforts”, *International Day of Conscience a global recognition of HRH Premier’s Peace, Sustainable Development Initiatives, efforts*, April 4, 2020, <http://m.oananews.org/news.php?id=561536>.
- J. Harrington, Extradition of Transnational Criminals, *Routledge Handbook of Transnational Criminal Law*, 1st edn, Routledge, Taylor & Francis Group, 2014.
- Leading Organization in Humanitarian and Charity Work. (n.d.). Retrieved September 03, 2020: <https://www.rhf.gov.bh/projectDetails/33>.
- MA. Al-Mutawa, The Bloody Anniversary of the Invasion of Kuwait ‘a Fatal and Unforgivable Historic Mistake’, *AlWatan newspaper*, Bahrain, August 4, 2019, available at: <https://alwatannews.net/article/840160/Opinion>.
- News Related to the House of Representatives”, Issue 11315, *Akhbar AlKhaleej Newspaper*, Bahrain, March 16, 2009/ in Arabic.
- Refugee Population by Country or Territory of Asylum” (*Data*) <https://data.worldbank.org/indicator/SM.POP.REFG?contextual=region>.



- The National Referral Mechanism for Victims of Trafficking in Persons (Handbook), Version 1.0, The National Committee for Combating Trafficking in Persons, Labour Market Regulatory Authority, Bahrain, 2017.
- The United Nations Declares April 5 as International Day of Conscience” (FOWPAL August 2019) <http://www.fowpal.org/news/united-nations-declares-april-5-international-day-conscience>.
- UN High Commissioner for Refugees (UNHCR), The Right to Asylum between Islamic Shari’ah and International Refugee Law: A Comparative Study, June 2009, available at: <https://www.refworld.org/docid/4a549f9f2.html>.
- UN High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: 3rd Cycle, 27th Session - Indonesia*, September 2016, available at: <https://www.refworld.org/docid/59158ed24.html>.
- Under Secretary of State for International Affairs receives the Regional Representative and Chief Protection Officer of the United Nations High Commissioner for Refugees. (2017, January 19). Retrieved September 3, 2020, from <https://www.mofa.gov.bh/Default.aspx?tabid=7824&ItemId=6961&language=en-US>.
- UNHCR holds awareness raising event on UN Day. (2019, October 24). Retrieved September 03, 2020, from <https://www.bna.bh/en/news?cms=q8FmFJgiscL2fwIzON1+Dug2Fkca9ne2i3cikiv3DV8=>

### Other periodicals

- H. H. Almasarweh HH, *The Development of Legal Mechanisms Relating to The Rights of Children of Unknow Parents “The Case Study of the Kingdom of Bahrain”*, The 10th Sheikh Khalifa Bin Salman Scientific Award, Bahrain, 2019, in Arabic.
- L. W. Sherman, The Influence of Criminology on Criminal Law: Evaluating Arrests for Misdemeanour Domestic Violence, 83, The Journal of Criminal Law and Criminology, USA, 1992.

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