

## *Commentary: Bahrain: The rule of law shines brightly in the Arabian gulf*

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### **Body**

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The Arabic word "Bahrain" means the two seas. It refers to two bodies of water: one is its wealth of fresh water springs, which have been its most important assets, and the other the salty sea that surrounds its archipelago. While decades of ecological change and rapid development have caused this island nation to lose much of its sweet water, it has adapted and used new technology to replace its fading natural resource.

Likewise, its people stand as an example of how citizens of a nation can remain true to their traditions while becoming a model for sensible and necessary institutional change in a part of the world where change does not come easily, if at all.

At the center of the revolution for legal and judicial reform in Bahrain is Jawad Al-Arayed, a graduate of the United Kingdom's prestigious Leeds University School of Law, and a member of the British Gray's Inns of Court. Since the late 1960s, Al-Arayed has been busy serving in a variety of ministerial posts having little to do with the legal profession, while somehow managing to keep his legal skills sharp as a knife. When his country called upon him to be in charge of a border dispute before the International Court of Justice ("ICJ"), Al-Arayed heeded the call and provided the representation of his life. He utilized world-renowned experts and advanced arguments that would make any trial lawyer proud.

Some say that Al-Arayed's work at the ICJ resulted in his being summoned to serve as Bahrain's Minister of Justice, where, as part of a broad set of initiatives instituted by the king and prime minister, he began to assess the status of his department.

Bahrain had a functioning adjudicatory system, but like so many other judicial regimes in the region, the system failed to keep pace with an ever-evolving world. To revolutionize that, the

minister summoned some of Bahrain's finest legal minds and called on the country's allies and friends, including Egypt, France and the United States, to provide technical collaboration.

As a representative of the American Bar Association Central European and Eurasian Law Initiative ("ABA/CEELI"), I had the distinct honor to observe some of the reforms undertaken by the minister. The reforms touched upon such diverse areas as the prosecutorial function and judicial selection.

#### The prosecutorial function

Prior to accepting his post as a Minister of Justice, Al-Arayed and others in Bahrain's legal profession recognized the problems inherent in a system where the prosecutorial function rested in the hands of the police within the Ministry of the Interior. Under Al-Arayed, the job of prosecution today rests with the newly formed Public Prosecutor's Office, where professional prosecutors act as investigating magistrates exercising independent judgment.

But that was just the beginning. The prosecutorial system in Bahrain today closely resembles that of France and Napoleonic Code jurisdictions of the Middle East, particularly Egypt. Thus, in devising a plan to train the newly appointed prosecutors -- who under the Bahraini system hold the rank of judges -- France's National School of the Judiciary (L'Ecole Nationale de la Magistrature, or ENM) was a natural training venue.

#### Bahraini, French and American cooperation

The training at ENM and the courts was held in Paris, Bordeaux and Fontainebleau last January, with programmatic changes tailored to the needs of the Bahraini judges. The modified program focused on practical areas rather than theory, to ensure that court proceedings emulated what prosecutors were likely to encounter in Bahrain.

The French seminar's timing could not have been better. While the training was in progress, the French legal community was debating the impact of adopting a significant number of changes to the criminal procedural code. Among the changes was the use of *plaider coupable*, or plea bargaining, to assist in addressing case backlogs. The Bahraini prosecutors heard arguments for and against plea bargaining made by prosecutors and court presidents. It is expected that *plaider coupable* will be implemented in France in September.

Some Arab countries, particularly Egypt, also use a form of plea bargaining, which Bahrain Ministry of Justice personnel were able to review first-hand during a recent study visit to Egypt. Ultimately, it will be up to Bahrainis to determine whether this tool will work in their country.

#### Judicial announcements and training

In an effort to make judicial selection more transparent and to encourage diversity among the applicants for bench positions, Al-Arayed launched the first judicial vacancy announcement in the Arab World. The announcement was a major topic of discussion for the bar and the bench of

Bahrain, and a large number of applicants came forward to be considered for the positions of judges and prosecutors, including some qualified women applicants.

While planning for a permanent judicial institute, the ministry commenced general training for sitting judges in banking, torts, criminal law, insurance, as well as modern areas such as money-laundering and internet crimes. Today, this training is reviewed and analyzed to ensure that the legal content, lecture material and speakers are sufficient to make the training seminars as productive and educational as possible.

#### Other changes

In addition to training the judges, the ministry is drafting judicial ethical codes to augment the ethics laws it has in place and studying the prospect of procedural laws to ensure a defendant's right to a speedy trial, among other changes. Also under consideration is the adoption of a uniform commercial code, which would serve to enhance the spirit and the letter of Bahrain's Free Trade Agreement with the United States.

Civil alternative dispute resolution ("ADR") also has come to the fore in an attempt to reduce court backlogs and improve flow through the judicial system. The minister intends to open the kingdom's first mandatory mediation office next spring. Civil cases falling within a specific jurisdictional amount will be mediated and domestic relations cases will be addressed and added later.

#### Challenges ahead

While the changes already effected in Bahrain's judicial system are clear and visible, challenges lie ahead for maintaining the pace of change, and in setting in place the necessary mechanisms for continued success. Like other nations in the Middle East, Bahrain must find ways to modernize its Sharia courts to handle today's complex family issues, while adhering to Islamic traditions. It must differentiate between the standards of proof in civil and criminal cases. Bahrain must continue to strive to provide the best training possible in automated systems and in technology in general. It must transform its method of transcription from the old practice of dictation to stenography, or its equivalent. Bahrain should also encourage the creation of a bar association after the comprehensive attorney ethical rules have been adopted.

Bahrain should be applauded for its efforts to meet international standards for its judges and its courts, to catch up and then to set the pace in the Arab world for efficient and effective judicial administration, while at the same time it holds true to the spirit of the traditions which define its uniqueness as a country between two bodies of water.

John Hermina is vice chairman of the Maryland Commission on Human Relations and a partner at the Washington firm of the Hermina Law Group, which handles international law and civil rights litigation, among other areas. He has participated in several rule-of-law programs and most recently served as an American Bar Association/CEELI Liaison in the Kingdom of Bahrain.

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