

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Prince Khalifa bin Salman al-Khalifa
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RE: Arbitrary detention of Zainab Al-Khawaja and violation of her right to protest

Your Majesty the King Shaikh Hamad bin 'Issa Al Khalifa, Prime Minister Khalifa bin Salman al-Khalifa and Attorney General Al-Buainain,

We write on behalf of Lawyers Rights Watch Canada (LRWC), a committee of lawyers who promote human rights and the rule of law internationally by protecting advocacy rights, and Canadian Journalists for Free Expression, a non-profit, non-governmental organization that works to promote and protect press freedom and freedom of expression around the world.

LRWC and CJFE remain concerned by the wrongful conviction, arbitrary detention and ill treatment of human rights defenders in Bahrain used to punish the peaceful exercise of rights to expression, association and assembly. In spite of recommendations by the Bahrain Independent Commission of Inquiry and the Universal Periodic Review Working Group, Bahrain continues to criminalize the peaceful exercise of internationally protected rights to expression and assembly when those rights are used to criticize or expose wrongdoing by the state.

LRWC and CJFE are alarmed to learn about the imprisonment of Zainab Al-Khawaja, a well-known human rights defender and blogger.

Ms Al-Khawaja came to prominence protesting human rights abuses, including the arrest and torture of her father Abdulhadi Al-Khawaja, former head of the Bahrain Centre for Human Rights. She has been arrested several times for protesting human rights abuses against her father and others through tweeting and peaceful sit-ins.

Most recently she was arrested February 27, 2013, and charged with 'obstructing traffic', 'damaging public property' and 'inciting hatred of the regime'. On the same day the High Court upheld a one-month sentence

for ‘participating in an illegal gathering’ and ‘entering a restricted zone’, as well as a two-month sentence for ‘damaging Ministry of Interior property’ by allegedly ripping a photograph of the King. On February 28, the Court of Appeal overturned her acquittal on charges of ‘insulting a police officer’. She remains detained and started a hunger strike on March 17.

In summary, we understand that Zainab Al-Khawaja was sentenced on 27 and 28 February 2013 to imprisonment in three different trials, totaling six months of detention, for:

- Participating in an illegal gathering and entering a restricted zone (pearl roundabout area) – one month ; and,
- Damaging Ministry of Interior property – which consisted of tearing a photograph of the King of Bahrain, - two months (sentence already served),
- Insulting a Police officer – three months (previously acquitted).

As a result of exercising her rights to freedom of expression and peaceful assembly, Ms Al-Khawaja has already spent four months in prison and she is currently facing four different prosecutions. She has been sentenced twice for the same conviction (two months' imprisonment). While in jail, she is denied the right to receive visits from relatives, for which she recently began a hunger strike in protest.

Freedom of expression, peaceful assembly and liberty and security of the person are protected by the *International Convention on Civil and Political Rights* (ICCPR), articles 19, 21 and 9 and recognized by the *Universal Declaration of Human Rights* (UDHR), articles 19, 20 and 9. Freedom from arbitrary detention is also a protected right. As a member of the United Nations (UN) and as a party to the ICCPR Bahrain has legal obligations to ensure and protect these rights and to prevent, punish and remedy violations.

The arrest, prosecution and conviction of Ms Al-Khawaja violate Bahrain’s legal obligations to protect and ensure the rights of Ms Al-Khawaja to expression, peaceful assembly and freedom from arbitrary detention.

The UN Working Group on Arbitrary Detention (WGAD) has defined arbitrary detention as any detention contrary to the human rights provisions of the major international human rights instruments. Specific categories of arbitrary detention include:

2. When a person is deprived of their liberty because they have exercised the rights and freedoms guaranteed in the UDHR and the ICCPR.
3. When a person has been deprived of their liberty after a trial which did not comply with the standards for a fair trial set out in the UDHR and other relevant international instruments.

We conclude that the detention of Ms Al-Khawaja is arbitrary and therefore illegal.

The alleged acts of insulting a police officer and ripping up a photograph of the King are a lawful exercise of freedom of expression, protected by the ICCPR. As observed by the UN Human Rights Committee (Committee), the ICCPR protects expression that is offensive in content or delivery.¹ The attempt to convert lawful expression to an unlawful act through criminal sanctions, as was done in this case, is itself a violation of the ICCPR. The Committee has determined,

[freedom of expression] is a right to which the Covenant permits no exception or restriction....No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1 [of the ICCPR].²

¹ CCPR General Comment No. 34: Freedom of opinion and expression (Art. 19), CCPR/C/GC/34, 102nd session, 12 September 2011, para. 11, online at : <http://www2.ohchr.org/english/bodies/hrc/comments.htm>

² CCPR General Comment No. 34: Freedom of opinion and expression (Art. 19), CCPR/C/GC/34, 102nd session, 12 September 2011, para. 9, online at : <http://www2.ohchr.org/english/bodies/hrc/comments.htm>

The Bahrain Independent Commission of Inquiry has also repudiated the legitimacy of criminal sanctions for political expression and recommended that,

...all persons charged with offences involving political expression, not consisting of advocacy of violence, [should] have their convictions reviewed and sentences commuted or, as the case may be, outstanding charges against them dropped.³

Similarly the prosecution of Ms Al-Khawaja for attending an illegal assembly, contravene Bahrain's duty to ensure and protect Ms Al-Khawaja's right to enjoy freedom of assembly and therefore constitutes a violation of the ICCPR.

Under the ICCPR, Bahrain has positive legal obligations, not only to allow, but to actively facilitate and support peaceful assemblies.⁴ Bahrain's negative legal obligation not to interfere with peaceful assemblies includes the duty not to impose unreasonable restrictions regarding notification, time or location. With respect to location, the Special Rapporteur on the rights to freedom of peaceful assembly and association holds as best practice law as avoiding any location prohibitions.⁵

Freedom of assembly is an essential component of the public discourse upon which democracy depends. Properly recognized and protected, the right enables people to, "express their political opinions...and elect leaders to represent their interests and hold them accountable" (Council resolution 15/21, preamble). An individual does not lose this right because of the sporadic violence of others.⁶ As noted by many commentators,

"laws governing freedom of assembly [that] both avoid blanket time and location prohibitions, and provide for the possibility of other less intrusive restrictions ... Prohibition should be a measure of last resort and the authorities may prohibit a peaceful assembly only when a less restrictive response would not achieve the legitimate aim(s) pursued by the authorities."⁷

Similarly authorities have determined that the purpose of notification is to allow state officials to enable the assembly and that a failure to notify cannot legitimately result in criminal or civil sanctions for participants.⁸ In addition, participants cannot legitimately be held liable for the unlawful conduct of others at an assembly.⁹ The Committee has rejected legislation as a mean of legitimizing arbitrary arrests and detentions and concluded that states...

...should ensure that the right of persons to peacefully participate in social protests is respected, and ensure that only those committing criminal offences during demonstrations are arrested. [...]¹⁰

The legitimacy of the restrictions imposed on freedom of assembly in Bahrain was considered and rejected during the second Universal Periodic Review of Bahrain.¹¹ Recommendations included bringing Bahrain legislation, including the Penal Code, into compliance with ICCPR obligations.

³ *Report of the Bahrain Independent Commission of Inquiry*, 23 November 2011 (Final Revision of 10 December 2011), para. 1291, online at: <http://www.bici.org.bh/BICireportEN.pdf>

⁴ *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 20th session, A/HRC/20/27, 21 May 2012, para. 33, online at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.27_En.pdf.PDF

⁵ *Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, Maina Kiai*, 20th session, A/HRC/20/27, 21 May 2012, para. 39, online at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.27_En.pdf.PDF

⁶ *Ibid*, para. 25

⁷ *Ibid*, para. 39

⁸ *Ibid*, para. 29

⁹ *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 20th session, A/HRC/20/27, 21 May 2012, para. 31, online at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.27_En.pdf.PDF

¹⁰ *Concluding Observations of the Human Rights Committee: Canada*, CCPR/C/CAN/CO/5, 85th session, 20 April 2006, para. 20, online at: [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf)

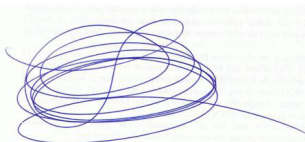
¹¹ Report of the Working Group on Universal Periodic Review – Bahrain, A/HRC/21/6, July 2012, paras. 115.24 (Slovakia), 115.27 (Ireland), 115.99 (Canada).

Proceedings against Ms Al-Khawaja also violate her right not to be tried or punished twice (*ne bis in idem*) guaranteed by the ICCPR Article 14(7). The conditions of her detention violate her right to be treated humanely guaranteed by Article 10 (1). We note in this regard that, “[a]llowing visits, in particular by family members, is normally also such a measure which is required for reasons of humanity.”¹²

LRWC and CJFE call on Bahrain to take measures to ensure:

- Recognition and enforcement of Zainab Al-Khawaja’s rights including her right to release and to be treated humanely;
- The review of her convictions and commuting of her sentences;
- The withdrawal of any outstanding charges;
- A judicial determination of the scope and legitimacy of the Bahrain law restricting the freedoms of assembly and expression carried out with proper reference to Bahrain’s international law obligations arising from the ICCPR and the UDHR as interpreted by international tribunals, monitoring bodies and experts;
- The amendment of “any article of [Bahrain’s] Penal Code that can be used to prosecute individuals for the exercise of the rights to freedom of expression, peaceful assembly or association, and bring its laws into line with international standards established by the International Covenant for Civil and Political Rights”;
- The investigation and remediation of the ill-treatment of Ms Al-Khawaja while in custody.

Sincerely,



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¹² CCPR General Comment No. 09: Humane treatment of persons deprived of liberty (Art. 10), 16th session, 7 July 1982, para. 3, online at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/a4f543b9dadd08a7c12563ed00487ed8?OpenDocument>