

# 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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20 November 2012

Shaikh Hamad bin 'Issa Al Khalifa  
King of Bahrain  
Office of His Majesty the King  
P.O. Box 555  
Rifa'a Palace, al-Manama  
Kingdom of Bahrain

Prince Khalifa bin Salman al-Khalifa  
Prime Minister  
Kingdom of Bahrain  
Manama, Kingdom of Bahrain

Dear King Shaikh Hamad bin 'Issa Al Khalifa and Prime Minister Khalifa bin Salman al-Khalifa,

**RE: Ongoing detention of human rights defender Nabeel Rajab**

We write on behalf of Lawyers Rights Watch Canada (LRWC), a committee of Canadian lawyers who promote human rights and the rule of law internationally. LRWC also provides support to lawyers and other human rights defenders in danger because of their advocacy.

LRWC is deeply concerned about the ongoing detention of Mr. Nabeel Rajab, President of the Bahrain Centre for Human Rights (BCHR) and Director of the Gulf Centre for Human Rights (GCHR). Mr. Rajab was sentenced to three years' imprisonment on 16 August 2012 by the Lower Criminal Court. The charges were in relation to three occasions where he participated in peaceful gatherings promoting democracy and fundamental freedoms: freedoms recognized by the *Universal Declaration of Human Rights* and guaranteed by the *International Covenant on Civil and Political Rights*.

On 08 November 2012, the Bahrain Appeals Court resumed hearing Mr. Rajab's appeal. An Observatory-mandated observer and several French and American diplomats attended the hearing. The Court rejected a request for his provisional release. The Court also the application made on behalf of Mr. Rajab for a reference to the Supreme Court to determine whether the law banning demonstrations in Bahrain accords with domestic and international law obligation. The Court indicated its decision on the appeal would be handed down on 11 December 2012.

Bahrain ratified the *International Covenant on Civil and Political Rights* (ICCPR) on 20 September 2006 which guarantees rights of assembly and association and prohibits unreasonable or arbitrary state interference. These rights are also enshrined in the *Universal Declaration of Human Rights* (UDHR) which was accepted unanimously by the UN General Assembly on December 10, 1948.

Article 20 of the UDHR states that “Everyone has the right to freedom of peaceful assembly and association.” Article 22 of the ICCPR, provides that,

(1) Everyone shall have the right to freedom of association with others

...

(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others....

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association recently reminded states of their positive obligation to ensure and protect to right of citizens to engage in peaceful assembly and protest as an integral part of their right to participate in democracy and public life. The Special Rapporteurs for human rights defenders for the UN and African Union and the UN Special Rapporteur on the right to freedom of opinion and expression, joined in stating,

States should provide support to the efforts exerted by human rights defenders to effectively and efficiently mobilize, organize and monitor peaceful protests. This includes, *inter alia*, public recognition of the prominent and constructive role of human rights defenders in peaceful protests; and access to unconditional and safe medical assistance for victims of violations during protests.<sup>1</sup> (emphasis added)

The Inter-American Commission on Human rights, interpreting the same rights established by the *American Convention on Human Rights* emphasized the duty of law enforcement officials to facilitate public protests.

The competent institutions of the State have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly. This involves everything from rerouting pedestrian and vehicular traffic in a certain area, to escorting those who are participating in the mass gathering or demonstration in order to guarantee their safety and make it possible for the activities involved to take place. The police must be aware of their rules of conduct and have the professional training needed to perform in situations involving mass concentrations of people, so as to create the conditions that will enable these events to unfold in accordance with the established regulations and without infringing upon other human rights. The State has an obligation to supply its police officers with the equipment and communication devices, vehicles, means of personal defense and non-lethal deterrence suitable for intervening in the event of problems. The police must also receive clear and unequivocal instructions that their job is to protect the participants in a public meeting or demonstration or mass gathering so long as they are exercising their right.<sup>2</sup> (emphasis added)

Negative state obligations—not to unduly restrict freedom of assembly—have also been noted. For example, the Special Rapporteur on the rights to freedom of peaceful assembly and of

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<sup>1</sup> Statement by the Special Rapporteur on human rights defenders of the African Commission on Human and Peoples’ Rights and the Special Rapporteurs of the United Nations present at the Seminar “Human Rights Defenders and Peaceful Protests” held in Oslo on 6-8 June 2012, 6 June 2012, para. 7, online at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12524&LangID=E>

<sup>2</sup> Inter-American Commission on Human Rights, *Report on Citizen security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, 31 December 2009, para. 193, online at: <http://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm>

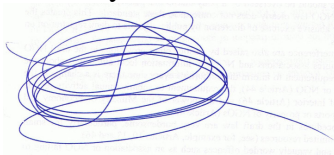
association has stressed that states have a duty not to interfere with public protests. Referring to the submission by the Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Panel of Experts, the Special Rapporteur noted best practice determinants:

[States are] not to unduly interfere with the right to peaceful assembly. The Special Rapporteur holds as best practice “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.”<sup>3</sup> (emphasis added)

LRWC calls on Bahrain to end the harassment and criminalization of those who assemble peacefully, and to implement measures to protect protesters.

LRWC calls on Bahrain to ensure a fair re-hearing of the conviction and sentencing of Nabeel Rajab and to ensure that an impartial judicial determination of the scope and legitimacy of the Bahrain law restricting the right of assembly carried out with proper reference to Bahrain’s international law obligations.

Sincerely,



Gail Davidson  
Executive Director, LRWC

CC:

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<sup>3</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Venezuela*, OEA/Ser.L/V/II.118, Doc.4 rev.2, 29 December 2003, para 39, online at: <http://www.cidh.org/countryrep/venezuela2003eng/toc.htm>