

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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Thursday, June 13, 2013

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Dear Sirs;

**Re: Freedom of Assembly in Bahrain:
Domestic law and practice violates international law obligations**

We write to outline our concerns about freedom of assembly in Bahrain, on behalf of Lawyers Rights Watch Canada (LRWC), a committee of Canadian lawyers who promote human rights and the rule of law internationally. This briefing is supported by Canadian Journalists for Free Expression (CJFE), a Canadian organization founded in 1981 that works to defend and protect the right to free expression in Canada and around the world. CJFE manages IFEX on behalf of its members worldwide, which includes the Bahrain Centre for Human Rights (BCHR). BCHR was registered as an NGO in July 2002, and despite an order by the authorities in November 2004 to close, the BCHR continues to monitor violations and promote human rights in Bahrain.

LRWC, CJFE and BCHR remain concerned by the wrongful arrest, prosecution, conviction and sentencing of human rights advocates in Bahrain for peacefully exercising their internationally protected freedoms of association and assembly. We understand that some of these punitive actions have been carried out under the purported authority of *Law 32/2006 on Public meetings, Processions and Gatherings* ("*Law 32/2006*")¹ and Articles 178 to 182 of the *Bahrain Penal Code*.²

¹ *Law 32/2006 on public meetings, processions and gatherings*, amending the law of Decree 18/1973.

² Bahrain, Penal Code, Special Section, Part I, Chapter 3 *Demonstrations and Riots*.

Freedom of assembly is a key means of exercising freedom of expression collectively by assembling to criticize government action and lobby for reform. As recommended by the Bahrain Independent Commission of Inquiry (BICI), the United Nations Working Group on the Universal Periodic Review of Bahrain and other international experts, Bahrain must bring national laws into compliance with international law obligations and remedy violations of internationally protected rights. Instead, the Attorney General of Bahrain continues to conflate criticism of government with treason and authorize wrongful prosecutions. Arbitrary detentions continue and laws illegitimately criminalizing freedom of assembly remain in force.

The resulting injustice is demonstrated by the prosecution and detention of Nabeel Rajab, a well-known human rights defender incarcerated since July 2012 for peacefully exercising his internationally protected rights to freedoms of expression and assembly. Nabeel Rajab was sentenced to three years imprisonment for participating in assemblies deemed unauthorized or prohibited and imputed responsibility for acts of violence or aggression committed by others pursuant to Law 32/2006 and the *Bahrain Penal Code*.

Another example of such injustice is the ongoing detention of activist Zainab Al-Khawaja, who has been arrested numerous times, harassed and injured for peacefully exercising her internationally protected rights to freedoms of expression and assembly. She has been charged with illegal gathering even in incidences when she protested alone, not breaking the 5 person rule Penal Code provision. Zainab is currently serving 9 months and 22 days with at least one case pending.³

There are hundreds of people imprisoned in Bahrain for exercising freedoms of expression and peaceful assembly, including the people known as the Bahrain 13 case. The cases of Nabeel Rajab and Zainab Al-Khawaja are cited as examples of the practice in Bahrain of using illegitimate charges to imprison human rights defenders for exercising their freedom of expression and assembly to criticize government.

The United Nations 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. Detention for exercising rights and freedoms guaranteed by the *Universal Declaration of Human Rights* (“UDHR”) and/or the *International Covenant on Civil and Political Rights* (“ICCPR”) is specifically identified as arbitrary.⁴

LRWC CJFE and BCHR conclude, in accordance with the determination of the WGAD, that Nabeel Rajab and Zainab Al-Khawaja are arbitrarily detained, having been detained for exercising freedoms protected by the UDHR and ICCPR. BICI Chair Cherif Bassiouni denounced the National Security Court’s use of the Penal Code to convict “persons seeking to exercise their internationally guaranteed right of freedom of assembly, without the need to prove the commission of material or tangible conduct”.⁵

UDHR and ICCPR Articles on Freedom of Assembly and Expression

As a member of the United Nations and as a party to the ICCPR, Bahrain has legal obligations to ensure and protect freedoms of assembly and expression.

Article 19 of the UDHR stipulates:

³ For more details: <http://bahrainrights.org/en/node/5734>

⁴ Working Group on Arbitrary Detention accessible at http://www.frontlinedefenders.org/manual/en/wgad_m.htm

⁵ *Report of the Bahrain Independent Commission of Inquiry*, Mahmoud Charif Bassiouni, Nigel Rodley, Badria Al-Awadhi, Philippe Kirsch, Mahnoush H. Arsanjani, Presented in Manama, Bahrain, on 23 November 2011 (Final Revision of 10 December 2011), para. 1286, online at: <http://www.bici.org.bh/BICIREportEN.pdf>

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20(1) of the UDHR provides that:

Everyone has the right to freedom of peaceful assembly and association.

Article 19 of the ICCPR provides protection for freedom of expression and explains the narrow restrictions on that right:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a) For respect of the rights and reputations of others;
 - b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 21 of the ICCPR recognizes the freedom of assembly:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the 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 legitimacy of Law 23/2006 and Penal Code sanctions on freedom of assembly was considered and rejected during the second Universal Periodic Review (“UPR”) of Bahrain. The resulting report was adopted by the United Nations Human Rights Council on 19 September 2012. During the UPR, several states called on Bahrain to bring its national laws into compliance with ICCPR obligations to protect and ensure freedom of assembly.⁶ States also recommended the release of Mr. Rajab and others detained for exercising freedoms of expression and assembly.⁷ Bahrain accepted Canada’s recommendation to amend its laws on assembly and association to comply with ICCPR obligations but has not made the required amendments.

Bahrain has also failed to implement the recommendations of the November 23, 2011 *Report of the Bahrain Independent Commission of Inquiry*⁸ to vacate wrongful convictions. The BICI urged the Government of Bahrain to ensure that all persons charged with offences involving political expression, not consisting of advocacy of violence, have their convictions reviewed and sentences commuted or, as the case may be, outstanding charges against them dropped.⁹

⁶ 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).

⁷ *Ibid.*, paras. 115.100 (Czech Republic), 115.101 (Germany), 115.122 (Norway).

⁸ Human Rights Watch, *Bahrain: Promises Unkept, Rights Still Violated*, Head of Independent Commission: Implementation ‘Inadequate’, 22 November 2012, online at: <http://www.hrw.org/news/2012/11/22/bahrain-promises-unkept-rights-still-violated>

⁹ *Supra.* 5 para. 1291.

Law 32/2006 and Articles 178 to 182 of the *Bahrain Penal Code* exceed legitimate restrictions that a state may impose on the exercise of freedoms of assembly and are incompatible with Bahrain's legal obligations to ensure and protect assembly rights arising from both the UDHR and the ICCPR.

The Report of the Special Rapporteur

The 21 May 2012 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted best practices for states to promote and protect the rights to freedom of assembly and association.

1. Negative obligation not to interfere unduly with assembly rights

Blanket time and location prohibitions must not be imposed except when necessitated by a competing public interest and no other measure would suffice. The state should avoid imposing blanket time and location prohibitions. Prohibition should be a last resort and may prohibit a peaceful assembly only when a less restrictive response would not achieve the legitimate aim(s) pursued by the authorities.¹⁰

The United Nations High Commissioner for Human Rights recently specified that a "measure of last resort" must be understood as a measure "adopted to protect lives".¹¹

Article 11 of Law 32/2006 imposes blanket restrictions on both time and location. Demonstrations cannot start before sunrise or continue after sunset except by special written permission from the general director of the police or his deputy. The Governor may specify a number of public areas in his province to hold demonstrations, for which organizers must apply for permission.

2. Positive obligation to protect and ensure assembly rights

Beyond the requirement of non-interference with the right to freedom of assembly, states have positive legal obligations to protect participants in peaceful assemblies. These obligations include protecting participants from others whose aim is to disrupt or disperse such assemblies. The organizers should not have to assume this obligation. This includes protection from individuals working on behalf of the state. Such responsibility should be explicitly stated in domestic legislation.¹²

Law 32/2006 does not provide for the state's duty to ensure the protection of peaceful participants nor does it specify that the organizers should not assume such responsibility. Instead, in the case of a public meeting that has not been authorized by prior notice, the person(s) organizing the meeting can be held responsible for any resulting damage or violence notwithstanding that person's lack of involvement in the damage or violence.

3. Support of human rights defenders in promoting peaceful assemblies

States have a duty to support the work of human rights defenders. This includes supporting the organization of peaceful protests by publicly recognizing the prominent and constructive role of

¹⁰ *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

¹¹ *Report of the United Nations High Commissioner for Human Rights*, 22nd session, Agenda items 2 and 3, A/HRC/22/28, 21 January 2013, para. 12, online at:

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.28.pdf>

¹² *Supra*. 10, para. 33.

human rights defenders and providing access to medical assistance for victims of violations during protests.¹³

Law 32/2006 does not provide for any such monitoring of assemblies.

4. Prior notification and authorization

Freedom of assembly must not be fettered by a requirement for prior notification or consent. While the Special Rapporteur recognized that assemblies should not be subject to previous authorization by the authorities, a prior notification (not exceeding 48 hours prior to the planned date of assembly) may be required to allow state authorities to facilitate that freedom and take measure to protect public safety and the rights and freedoms of others.¹⁴ Failure to provide notification cannot legitimately result in criminal or civil sanctions.¹⁵

Law 32/2006 requires both prior notification and authorization. Article 2(a) requires notification at least three days before the assembly, which exceeds the maximum of 48 hours recommended by the Special Rapporteur. Article 3 specifies that this notification procedure corresponds to an application for authorization of the meeting. Article 3(c), provides that the notice can be considered invalid or the meeting time or place changed. Article 11 prohibits the use of vehicles without special written permission from the general director of the police or his deputy. Article 13(c) provides for imprisonment and/or fine for violations of Article 11. Article 9 provides that the head of police or his deputy can modify the route of the march without providing any justification for that decision.

Regarding criminal and civil sanctions for failure to provide prior notification, the Special Rapporteur concluded that if organizers fail to notify authorities, the assembly should not be dissolved immediately nor should organizers be subject to criminal or civil sanctions. Legislation should allow for the holding of spontaneous assemblies or assemblies without organizers and they should be exempted from any notification requirement.¹⁶

State action to disband an assembly because of no prior notification is an unreasonable restriction on freedom of assembly. The European Court of Human Rights (ECtHR) in the case *Bukta and Others v. Hungary*¹⁷ ruled:

...in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.¹⁸

¹³ Seminar "Human Rights Defenders and Peaceful Protests" held in Oslo on 6-8 June 2012, *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*, 6 June 2012, para. 4, online at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12524&LangID=E>

¹⁴ *Supra*, 10, para. 28.

¹⁵ *Supra*, 10, para. 29.

¹⁶ European Court of Human Rights, *Bukta and Others v Hungary*, Application no. 25691/04, para. 36, online at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81728>

¹⁷ *Supra*, 10, para. 29.

¹⁸ *Supra*, 15.

¹⁸ *Supra*, 10, para. 29.

“Special circumstances” refer to cases when “an immediate response to a current event is warranted in the form of a demonstration”.

Law 32/2006 does not contain provisions guaranteeing that, in absence of notification, an assembly will not be automatically prohibited. There are no provisions ensuring that spontaneous assemblies are exempted from prior notification. Even in the event of a notification procedure, Article 3(c)(5) states that if the application does not provide all the information required, the procedure will be invalidated and thus the assembly prohibited. Organizers are subject to both criminal and administrative sanctions resulting in fines and imprisonment under Article 13(a).

5. Criminalization of peaceful protest

The exercise of freedom of assembly cannot legitimately be restricted and punished through criminal sanctions that either impute accountability for the acts of others or impose punishment for participation in unauthorized assemblies. The State should presume the peaceful intentions of participants. A peaceful protestor does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or punishable acts committed by others in the course of the demonstration.¹⁹

The Human Rights Committee has emphasized the state duty to carefully discriminate between those peacefully protesting and those committing criminal acts and ensure that only those committing criminal offences during demonstrations are arrested.²⁰

Article 13 of Law 32/2006 considers that from the moment a meeting is prohibited, any person participating should be considered a criminal offender and should accordingly be punished by imprisonment and/or fine, even if the person was behaving peacefully. Article 13(e) imposes criminal sanctions on any person who violates any provisions of Law 32/2006. Articles 178 to 181 of the Penal Code criminalize the attempt to participate in violence without having to prove that tangible steps have been taken towards the commission of the crime. Article 182 of the Penal Code criminalizes the participation in any demonstrations for which an order to disperse has been given.

The United Nations High Commissioner for Human Rights stated:

The promotion and protection of human rights in the context of peaceful protests require not only an adequate legal framework, but also continuous efforts for their effective implementation. Dialogue between protest organizers, administrative authorities and the police, as well as human rights training programmes for police forces, including on the use of force during protests, can also contribute to the promotion of human rights linked to peaceful protest.²¹

The United Nations Human Rights Council on 18 March 2013 repeated the call on states to bring domestic law and practice in line with international law obligations and urged,

...States, as a matter of priority, to ensure that their domestic legislation and procedures are consistent with their international obligations and commitments in relation to the use of force

¹⁹ *Supra* 10, para. 25.

²⁰ *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)

²¹ *Supra*. 11, para. 78.

by law enforcement officials, in particular applicable principles of law enforcement such as the principles of necessity and proportionality, bearing in mind that lethal force may only be used to protect against an imminent threat to life and that it may not be used merely to disperse a gathering;²²

The Special Rapporteur concluded his report with a series of recommendations for the protection of freedom of peaceful assembly. The following table identifies failures of the *Law 32/2006* and the *Bahrain Penal Code* to accord with these recommendations.

Special Rapporteur Recommendations	<i>Law 32/2006 and the Bahrain Penal Code</i>
<ul style="list-style-type: none"> ○ A presumption in favour of holding peaceful assemblies should be established in law in a clear and explicit manner. 	<p>Law 32/2006 Article 13(a) <i>Imprisonment for a term not exceeding six months or a fine not less than 100 Dinars or both punishments shall be imposed on the organizers and members of the committees for public meetings, marches, demonstrations and gatherings which are held without permission or despite being banned. The same punishment will be imposed on the persons who continue to call for the same actions despite the ban.</i></p> <p>Law 32/2006 Article 13(b) <i>Imprisonment for a term not exceeding four months or a fine not less than 50 Dinars or both punishments shall be imposed on any person who participates - despite the warnings of the general security - in a meeting or march or demonstration or gathering which has not applied for permission or for which there has been a banning order or who resists an order to disperse.</i></p> <p>Law 32/2006 Article 13(c) <i>Imprisonment for a term not exceeding one month or a fine not less than 50 Dinars or both punishments shall be imposed on anyone who uses a vehicle in any march or demonstration or gathering without special permission from the head of the general security or his deputy.</i></p> <p>Law 32/2006 Article 13(e) <i>Imprisonment for a term not exceeding one month or a fine not less than 50 Dinars or both punishments shall be imposed on anyone who violates any of other judgments stated by this law.</i></p>
<ul style="list-style-type: none"> ○ States should facilitate and protect peaceful assemblies, including through negotiation and mediation. ○ Wherever possible, law enforcement authorities should not resort to force 	<p>Penal Code Article 180 <i>If one of the public authority officers finds that 5 persons or more have demonstrated with the intent of causing a riot, he may in such capacity order them to disperse. Thereafter, he shall be empowered to take the necessary measures for dispersing those who have not complied with the order by arresting them and may use force within reasonable limits against any person resisting the said order. He may not use firearms except in extreme necessity or when someone's life is threatened.</i> <i>Persons still demonstrating after the issuance of an order to disperse</i></p>

²² *The promotion and protection of human rights defenders in the context of peaceful protests*, 22nd session, Agenda item 3, A/HRC/22/L.10, 18 March 2013, para. 8, online at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=21380

<p>during peaceful assemblies and ensure that, “where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (Council resolution 19/35, para. 6).</p>	<p><i>while being aware of such order, shall be liable for imprisonment and a fine not exceeding BD300, or either penalty.</i></p>
<p>○ The exercise of the right to freedom of peaceful assembly should not be subject to prior authorization by the authorities, but at the most to a prior notification procedure, which should not be burdensome.</p> <p>○ When an assembly is not allowed or restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court.</p>	<p>Law 32/2006 Article 2(a) <i>Any person who wishes to organize a public meeting has to notify the head of general security at least three days before the meeting.</i></p> <p>Law 32/2006 Article 3(c) <i>Those who apply for the authorization must be:</i></p> <ol style="list-style-type: none"> <i>1) Residents of the place in which the meeting is going to be held.</i> <i>2) His residency shall be in that town or village and shall be known among the residents by his good reputation.</i> <i>3) Must be entitled to their political and civilian rights.</i> <i>4) Must mention their names, profession and the place of residency.</i> <i>5) If the application does not have all this information, it will be considered invalid.</i> <p>Law 32/2006 Article 4(2) <i>The decision to ban the meeting will be sent to the organizers or to one of them or to the address provided in the application.</i></p> <p>Law 32/2006 Article 9(2) <i>The head of general security or his deputy has the right to modify the route of the march or the demonstration after he informs the organizers in accordance with article (4) of this law.</i></p> <p>Law 32/2006 Article 11 <i>No demonstrations or marches or rallies can start before sunrise or continue after sunset except by special written permission from the head of the general security his deputy. It is not allowed to organize marches, demonstrations or gatherings, which are set up near hospitals, airports, commercial units, or places of security nature, provided that the ministry of interior shall specify these places and announce them.</i></p> <p>Law 32/2006 Article 5(2) <i>Public meetings must not be held before 7 am and must not last till after 11.30 pm except when permission from the head of the general security has been obtained.</i></p>
<p>○ Spontaneous assemblies should be recognized in law, and exempted from prior notification.</p>	<p>Penal Code Article 178 <i>Every person who take part in a demonstration in a public place where at least five persons are assembled with the aim of committing crimes or acts intended to prepare or facilitate the commission of such crime or aimed at undermining public security, even though for the realization of a legitimate objective, shall be liable for imprisonment for a period of no more than two years and a fine not exceeding BD200, or either penalty.</i></p>

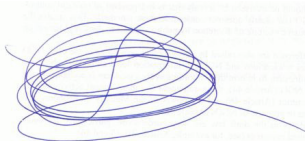
<p>○ Simultaneous assemblies should be allowed, protected and facilitated, whenever possible.</p>	<p>Law 32/2006 Article 3(a) <i>When applying for authorization for the meeting, the organizers must point out the time, the place and the theme of meeting and the objectives of the meeting, lecture or general debate.</i></p>
<p>○ Assembly organizers and participants should not be held responsible and liable for the violent behaviour of others.</p>	<p>Law 32/2006 Article 2(b) <i>... if the meeting or the demonstration is held without authorization, the organizers of the meeting will be held responsible for supporting the aggressors and they will be responsible for compensating for the damage.</i></p> <p>Penal Code Article 170 <i>If one demonstrator or several demonstrators attempt to use violence for the realization of the purpose for which they have assembled, their action shall be deemed as a riot. The penalty for each person who knowingly takes part in such riot shall be a prison sentence and a fine not exceeding BD500, or either penalty.</i></p>
<p>○ States should also ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies.</p>	<p>Bahrain law does not provide for the state's duty to ensure the protection of peaceful participants nor does it specify that the organizers should not assume such responsibility.</p>

6. Conclusions

LRWC, CJFE and BCHR call on authorities in Bahrain to:

- Make the amendments and policy changes necessary to bring domestic legislation and procedures into conformity with Bahrain's international obligations and commitments to ensure and prevent violations of freedoms of expression and peaceful assembly;
- Ensure that laws and procedures adhere to the recommendations of the Special Rapporteur on the rights to freedom of peaceful assembly and of association;
- Review the convictions and commute the sentences of Nabeel Rajab, Zainab Al-Khawaja and others convicted for exercising rights to peaceful assembly and expression;
- Release Nabeel Rajab, Zainab Al-Khawaja and all others detained for exercising freedoms of expression and assembly, pending the reviews;
- Ensure a determination by an independent and impartial tribunal of the legitimacy of the restrictions to assembly and expression rights contained in *Law 32/2006* and the *Bahrain Penal Code* in consideration of Bahrain's international law obligations under the ICCPR and UDHR.

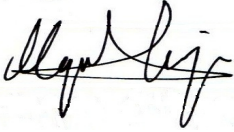
Sincerely,



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Maryam Al-Khawaja, BCHR Acting President

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