

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

www.lrwc.org – lrwc@portal.ca – Tel: +1 604 738 0338 – Fax: +1 604 736 1175
3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Friday, September 25, 2014

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
al-Manama, Kingdom of Bahrain

Dr. Ali Fadhul Al-Buainain
Attorney General
P.O. Box 207 Diplomatic Area,
Manama, Kingdom of Bahrain
Tel: 97317570001/ Fax 97317570005
afbuainain@gmail.com

Dear Excellency, Prime Minister and Attorney General;

Re: Call for the immediate withdrawal of charges against Maryam Al-Khawaja

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

LRWC is deeply concerned by the politically motivated criminal charges against Ms Maryam Al-Khawaja in Bahrain. This letter follows our [letter of 5 September 2014](#) where LRWC was already calling on Bahrain to withdraw unsubstantiated charges against Maryam Al-Khawaja. As a consequence of their human rights activities, Ms. Al-Khawaja as well as her father Mr. Abdulhadi Al-Khawaja and her sister Zainab Al-Khawaja have faced the most egregious ill-treatment authorized and carried out by the Government of Bahrain. Mr. Al-Khawaja is now serving a life-imprisonment sentence. Government authorities have used police, the prosecution and judicial powers to maliciously prosecute and arbitrarily detain these people for peacefully exercising their right, and lawfully carrying out their duty, to "promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind," a right and duty formally recognized by the UN General Assembly on 9 December 1998.¹

Following her arrival in Bahrain on 30 August 2014, Maryam Al-Khawaja was wrongfully arrested at Manama airport and then arbitrarily detained from 31 August 2014 to 10 September 2014, ostensibly pending investigation of charges of "assault and battery against on-duty public employees during their performance of official duty". She was not brought before a court or otherwise allowed to challenge the legality of her detention as required by all applicable international law including the *International Covenant on Civil and Political Rights* (ICCPR).

¹ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144*, available at: <http://www.refworld.org/docid/3b00f54c14.html> [accessed 25 September 2014]

Authorities now allege, we presume on the basis of manufactured evidence, that Ms. Al-Khawaja attacked and injured a lieutenant and another policewoman when she was asked her to hand over her mobile phone. Charges based on these spurious allegations are scheduled to be determined on 1 October 2014 by the High Criminal Court of Bahrain.

While LRWC was pleased to learn that authorities had released Ms Al-Khawaja on 18 September 2014, serious concerns remain that Bahrain authorities have irreparably deprived Ms Al-Khawaja of the right to a fair trial by the actions that include the following:

1. Arbitrary detention of Ms Al-Khawaja in violation of the ICCPR;
2. Failure to allow Ms Al-Khawaja to challenge the legality of her detention;
3. Incommunicado detention of Ms Al-Khawaja in violation of the ICCPR;
4. Confiscation of Ms Al-Khawaja's Danish passport without notice to, or authorization from, the Government of Denmark and without judicial or statutory authorization;
5. Stripping of Ms Al-Khawaja's Bahraini citizenship without judicial or statutory authority and without allowing Ms Al-Khawaja the opportunity to know and dispute any facts alleged in support of such action.

We note in regard to the above that Ms. Al-Khawaja holds a valid Bahraini identity card and that her Danish passport is the property of the Danish government.

Arbitrary detention of Ms Al-Khawaja

Persons arrested or detained are entitled by law to take proceedings to challenge the lawfulness of their detention. The legality of the detention must be determined promptly and release ordered, if detention if the detention does not comply with the ICCPR and the ECHR. This judicial remedy must be "effectively available" to the detainee. A person detained on remand must be able to take proceedings at reasonable intervals to challenge the lawfulness of his detention.

Under the ICCPR, pre-trial detention can be legitimately used only when detention is necessary to prevent flight, re-occurrence or interference with evidence *and* there is no other way of preventing proven risks. No risks associated by her release were either alleged or proven and Ms Al-Khawaja was not given the opportunity to dispute such allegations. The HR Committee, interpreting the ICCPR, states in *CCPR General Comment No. 8*, that "Pre-trial detention should be an exception and as short as possible"² and that the failure to bring the pre-trial detention under judicial review violated article 9(3), until cured.³

Denial of access to counsel, incommunicado detention and denial of fair trial rights

Timely and confidential access to counsel in criminal cases, particularly during the investigation stage is considered an integral part of fair trial rights. Incommunicado detention without access to counsel is considered fatal to fair trial rights.

The European Court of Human Rights in *El-Masri v. The Former Yugoslav Republic of Macedonia* (Application no. 39630/09, December 13, 2012), [unanimously held](#) Macedonia liable for the incommunicado confinement of Mr. El-Masri in a hotel room outside any judicial framework for 23 days, as this was inhuman and degrading treatment in contravention of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

The UN Human Rights Committee has determined in General Comments and in many decisions that denial of prompt and confidential access to counsel, particularly during the investigative stage,

² *CCPR General Comment No. 8*, *supra* note 23, at para. 3.

³ HR Committee: Communication No. 521/1992, *Vladimir Kulomin v. Hungary*, at para. 11.2.

irreparably impairs the ability of the accused to participate meaningfully in the proceedings and violates the ICCPR fair trial provisions.

Not only was Ms. Al-Khawaja denied the right to meet her lawyer before the interrogation, but also her lawyer himself was prevented from informing her of her legal rights during the interrogation. Her lawyer was equally denied the right to meet her before the hearing. LRWC wishes again to remind Bahrain of its international obligations under the ICCPR, the Universal Declaration of Human Rights and other UN instruments protecting rights to liberty, expression and fair trial.

According to Article 14(3) (b) of the ICCPR, in the determination of any criminal charge against him, everyone shall have the right “to have **adequate time and facilities for the preparation of his defence** and to communicate with counsel of his own choosing” (emphasis added). Principle 18 of the *Body of principles for the protection of all persons under any form of detention or imprisonment* further states that “a detained or imprisoned person shall be entitled to communicate and consult with his legal counsel” as well as “allowed **adequate time and facilities for consultations with his legal counsel**” (emphasis added).

Other denials of due process occurred during the arbitrary detention of Ms Al-Khawaja that are themselves fatal to fair trial rights. Prosecutorial officials refused to:

- a. investigate and act on a complaint filed by Ms Al-Khawaja’s lawyer that she was assaulted and injured by police during their illegal arrest of her at the Manama airport;
- b. review the evidence of medical reports suggesting that Ms Al-Khawaja was injured by police at the airport;
- c. allow Ms Al-Khawaja to give complete evidence of these matters during the so-called investigation.

LRWC sees no reasonable prospect of the charges being determined by an independent and impartial tribunal. Bahrain should bear in mind its obligations under Article 14(1) of the ICCPR, which states that

[a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a **fair and public hearing** by a competent, **independent and impartial tribunal** established by law. (emphasis added)

Ms. Al-Khawaja is facing politically motivated charges that will be determined by an unfair process on the basis of manufactured evidence from the prosecution and incomplete evidence from the defendant.

Consequently, the criminal proceeding, lacking due process, independence and impartiality, if allowed to proceed, could result in the arbitrary and wrongful imprisonment—for up to two years—of Ms. Al-Khawaja.

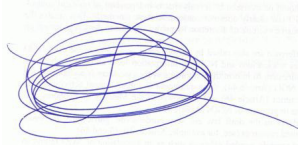
LRWC calls on the Government of Bahrain to stop all judicial harassment against Ms. Al-Khawaja and her family for reasons of their human rights activities. Among its various international obligations as a state, LRWC reminds Bahrain that is responsible for ensuring the respect of freedoms of expression and assembly.

LRWC calls on Bahrain to:

1. Withdraw all charges against Maryam Al-Khawaja and ensure that new charges will not be approved;
2. Return to Maryam Al-Khawaja her Danish passport; and
3. Allow Maryam Al-Khawaja to remain in Bahrain to visit and attend to the needs of her family.

LRWC looks forward to your response and your action on these critical matters.

Sincerely,



Gail Davidson, Executive Director, LRWC



Marion Caussanel, Bahrain Monitor, LRWC

Copied to:

Mr Frank La Rue

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

E-mail: freedex@ohchr.org;

Mr Mads Andenas

Chair Rapporteur of the Working Group on Arbitrary Detention

E-mail: wgad@ohchr.org;

Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders
action@ohchr.org ; defenders@ohchr.org;

The Honourable John Baird, Canadian Minister of Foreign Affairs

2249 Carling Ave Suite 418

Ottawa, Ontario K2B 7E9; Email: bairdj@parl.gc.ca;

H.E. Dr. Nabil ElAraby

Secretary General

League of Arab States

Secretariat - Tahrir Square

Tel: 5752966 – 5750511

Fax: 5740331 - 5761017 – 5779546

P.O. Box: 11642

Email:

complaint.dept@las.int; relations.dept@las.int;

humanrights.dept@las.int ;

Mr. Nabeel Rajab

President

Bahrain Center for Human Rights

Nabeel.rajab@bahrainrights.com;

Nawaf M Almaawdah,

Ombudsman - MOI

nawaf@ombudsman.bh ;

Nawaf Abdulla Hamza, Head Prosecutor

Special Investigation Unit

Tel: 97317570035/ Fax: 97317570567

nahamza_bh@yahoo.com, nawafhamza@gmail.com ;