



## FREEDOM NOW

### **FREEDOM NOW – INDIVIDUAL SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

#### **UNIVERSAL PERIODIC REVIEW (UPR): KINGDOM OF BAHRAIN 27<sup>TH</sup> SESSION HUMAN RIGHTS COUNCIL – UPR WORKING GROUP**

**September 21, 2016**

#### **Introduction**

1. Freedom Now individually submits this report to assist the UN Human Rights Council in its review of the policies and practices of the Kingdom of Bahrain (“Bahrain”). Freedom Now is a non-partisan, non-governmental organization (“NGO”) that works to free prisoners of conscience around the world through focused legal, political, and public relations advocacy.<sup>1</sup>
2. This report documents the Bahraini government’s use of arbitrary detention and politically motivated prosecutions in violation of international law.<sup>2</sup> As outlined in detail below, Bahrain reportedly continues to silence political opposition leaders, civil society activists and human rights defenders through wrongful criminal detention. Such a practice violates the government’s freely undertaken obligations under the International Covenant on Civil and Political Rights (“ICCPR”) – a pattern documented by numerous human rights organizations and international institutions, including the UN Working Group on Arbitrary Detention (the “Working Group”) and the UN Special Rapporteur on the Situation of Human Rights Defenders.

#### **History of Arbitrary Detention in Bahrain**

3. The Government of Bahrain has a long and well-documented history of detaining its citizens for exercising their fundamental human rights, including the rights to freedom of expression, association, and assembly. In the context of such politically-motivated prosecutions, the government has also repeatedly failed to meet minimum international due process standards and violated detainees’ rights to be free from torture and other forms of mistreatment.
4. In 2001, the Working Group conducted a fact-finding mission to Bahrain and documented that from 1996 to 2000 it had found 34 cases of arbitrary detention in Bahrain.<sup>3</sup> More recently, from 2008 to 2011, the Working Group continued to hear allegations of arbitrary

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<sup>1</sup> FreedomNow is currently serving as international *pro bono* counsel to Bahraini prisoner of conscience Abdulhadi al-Khawaja.

<sup>2</sup> While this report highlights violations of the rights to freedom of expression, assembly and association – the analysis is limited to a discussion of arbitrary detention. As such, it does not cover wrongful limitations on those rights that occur outside the context of imprisonment.

<sup>3</sup> Working Group on Arbitrary Detention, *Report on Visit to Bahrain*, E/CN.4/2002/77/Add.2, ¶9 (March 5, 2002).

detention in Bahrain, forwarding to Bahrain about 14 urgent appeals concerning nearly 160 persons.<sup>4</sup> Unfortunately, in the most recent reporting period this trend shows no signs of slowing; from 2012 to 2014, the Working Group sent 19 urgent appeals to Bahrain.<sup>5</sup>

5. Concern regarding the arbitrary detention of political prisoners figured prominently in the most recent Universal Periodic Review of Bahrain in 2012.<sup>6</sup> During that review, the Bahraini government accepted most of the recommendations related to arbitrary detention, such as “[amending] any article of its 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 [ICCPR];” “[releasing] all political prisoners and bring its national legislation into compliance with article 19 of the [ICCPR] which guarantees freedom of expression;” and “[investigating] and [prosecuting] all those responsible for torture and ill-treatment, unlawful killings and widespread arbitrary arrests.”<sup>7</sup> Bahrain, however, did reject the recommendation made by Iran to “[i]mplement fully all recommendations made to Bahrain by the United Nations mandate holders including the immediate end of violence and release of all political prisoners and ending impunity thus bringing perpetrators to justice.”<sup>8</sup>

6. Unfortunately, Bahrain has failed to implement the changes needed to effectuate the resolutions it accepted or to safeguard its citizens’ freedom from arbitrary detention and freedom of expression. Instead of amending its penal code to align with its obligations under international law to support freedom of expression, in 2014 Bahrain increased the penalty for slandering the king to up to seven years in prison.<sup>9</sup> Moreover, in the last three years, Bahrain’s Special Investigative Unit, tasked with prosecuting alleged instances of torture, has reportedly only secured one conviction out of 138 cases referred to it from the Office of the Ombudsman.<sup>10</sup> Finally, rather than releasing the existing political prisoners, it has imprisoned even more people, like Ibrahim Sharif in July 2015,<sup>11</sup> for raising their independent voices in opposition to the

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<sup>4</sup> Working Group on Arbitrary Detention, *2008 Annual Report*, A/HRC/10/21, ¶ 17 (February 16, 2009); Working Group on Arbitrary Detention, *2009 Annual Report*, A/HRC/13/30, ¶ 27 (January 18, 2010); Working Group on Arbitrary Detention, *2010 Annual Report*, A/HRC/16/47, ¶ 16 (January 19, 2011); Working Group on Arbitrary Detention, *2011 Annual Report*, A/HRC/19/57, ¶ 26 (December 26, 2011).

<sup>5</sup> Working Group on Arbitrary Detention, *2012 Annual Report*, A/HRC/22/44, ¶ 23 (December 24, 2012); Working Group on Arbitrary Detention, *2013 Annual Report*, A/HRC/27/48, ¶ 27 (June 30, 2014); Working Group on Arbitrary Detention, *2014 Annual Report*, A/HRC/30/36, ¶ 36 (July 10, 2015). Unfortunately, the Working Group ceased reporting the number of detainees covered by each urgent appeal in 2012 and has not published the number of urgent appeals sent to Bahrain during the 2015 and 2016 reporting years as of July 1, 2016.

<sup>6</sup> Working Group on Universal Periodic Review, *Report of the Working Group on Universal Periodic Review: Bahrain*, A/HRC/21/6 (July 6, 2012) [*hereinafter* “UPR Report Bahrain”].

<sup>7</sup> *Id.* at ¶¶ 115.27, 115.87, and 115.146; *see also* ¶¶ 115.91, 115.98, and 115.110.

<sup>8</sup> Kingdom of Bahrain Universal Periodic Review; Interim Report, 55, (September 2014), available at: [http://www.upr-info.org/sites/default/files/document/bahrain/session\\_13\\_-\\_may\\_2012/bahrain\\_midterm\\_report\\_2014.pdf](http://www.upr-info.org/sites/default/files/document/bahrain/session_13_-_may_2012/bahrain_midterm_report_2014.pdf).

<sup>9</sup> Bahrain Human Rights Observatory, *Bahrain: Shadow Report on the Implementation of Gov. of Bahrain UPR Conclusions and/or Recommendations*, 4-5 (September 2014) available at: [http://www.upr-info.org/sites/default/files/document/bahrain/session\\_13\\_-\\_may\\_2012/bhro-midterm-bahrain.pdf](http://www.upr-info.org/sites/default/files/document/bahrain/session_13_-_may_2012/bhro-midterm-bahrain.pdf) [*hereinafter* “BHRO Report”].

<sup>10</sup> Human Rights Watch, *Bahrain: Lagging Efforts to End Torture* (June 13, 2016) available at: <https://www.hrw.org/news/2016/06/13/bahrain-lagging-efforts-end-torture>.

<sup>11</sup> The Guardian, *Bahrain Jails Secular Activist over Political Speech* (February 24, 2016) available at: <https://www.theguardian.com/world/2016/feb/24/bahrain-jails-ibrahim-sharif-national-democratic-action-society>.

government.<sup>12</sup>

## Continued Use of Arbitrary Detention

7. In March 3, 2014 and again on March 4, 2015, the Special Rapporteur on the Situation of Human Rights Defenders expressed concern about the detention of human rights defenders in Bahrain and the poor treatment to which they are subjected, reaffirming the inconsistency of these practices with Bahrain's acceptance of recommendations from the 2012 UPR process.<sup>13</sup> In addition, the Working Group has joined with several Special Rapporteurs to express collective "concern at the apparent continued harassment and imprisonment of individuals exercising their legitimate rights to freedom of opinion and expression in Bahrain."<sup>14</sup> The Working Group also referenced seven of its opinions from 2012 to 2014 as evidence that arbitrary detention and unfair trials are "systemic problems" in Bahrain.<sup>15</sup> Furthermore, on September 14, 2015, 33 UN member states submitted a joint statement to the Human Rights Council expressing concern about reports that Bahrain has continued to incarcerate people for exercising their right to freedom of expression, and urging Bahrain to release all such detainees.<sup>16</sup>

8. Any suggestion that Bahrain has made progress toward alleviating such human rights violations since 2012 through the creation of various monitoring groups like the Bahrain Independent Commission of Inquiry ("BICI") ignores the reality that the government is not adequately abiding by these groups' recommendations. For example, in June 2016, one of the leaders of the BICI declared that Bahrain had only implemented 10 of the BICI's 26 recommendations in the nearly five years since they had been issued.<sup>17</sup>

9. The human rights situation in Bahrain has worsened since 2012. In 2013 and again in 2014, Bahrain further tightened its already harsh anti-terrorism law.<sup>18</sup> In 2013 alone, 328 people were brought to trial for alleged terrorism offenses.<sup>19</sup> The vague nature of this anti-terrorism law

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<sup>12</sup> BHRO Report, *supra* note 9, at 20.

<sup>13</sup> Special Rapporteur on the Situation of Human Rights Defenders, *Observations on Communications Transmitted to Governments and Replies Received*, A/HRC/25/55/Add.3, ¶ 45 (March 3, 2014); Special Rapporteur on the Situation of Human Rights Defenders, *Observations on Communications Transmitted to Governments and Replies Received*, A/HRC/28/63/Add.1, ¶¶ 481-84 (March 4, 2015).

<sup>14</sup> Office of High Commissioner of Human Rights, *UN Experts Urge Bahrain to Release Human Rights Defender Maryam Al-Khawaja* (September 5, 2014) available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14992&LangID=E>.

<sup>15</sup> Ali Mahdi Has an Saeed et al. v. Bahrain, Working Group on Arbitrary Detention, Opinion No. 41/2015, ¶ 38 n.2 (March 22, 2016).

<sup>16</sup> *Joint Letter to the President of Bahrain* (September 14, 2015) available at: [http://www.adhrb.org/wp-content/uploads/2015/09/draft-joint-statement-on-Bahrain\\_13.09\\_with-list-of-states.pdf](http://www.adhrb.org/wp-content/uploads/2015/09/draft-joint-statement-on-Bahrain_13.09_with-list-of-states.pdf).

<sup>17</sup> Human Rights First, *State Department Releases Congressionally-Mandated Report on Bahrain's Progress on Reform*, (June 22, 2016) available at: <http://www.humanrightsfirst.org/press-release/state-department-releases-report-congress-bahrains-progress-reform>.

<sup>18</sup> US Department of State, *Country Reports on Human Rights Practices for 2015: Bahrain*, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> [*hereinafter* "Bahrain 2015 Country Report"]; Americans for Democracy & Human Rights in Bahrain, *NGOs Express Concern that Bahrain Anti-Terrorism Amendment Permits Human Rights Violations*, available at: [http://www.adhrb.org/wp-content/uploads/2014/12/2014.12.19\\_NGOs-Express-Concern-that-Bahrain-Anti-Terrorism-Amendment-Permits-Human-Rights-Violations.pdf](http://www.adhrb.org/wp-content/uploads/2014/12/2014.12.19_NGOs-Express-Concern-that-Bahrain-Anti-Terrorism-Amendment-Permits-Human-Rights-Violations.pdf) [*hereinafter* "Bahrain Anti-Terror Amendment"].

<sup>19</sup> Bahrain Center for Human Rights, *The Terrorism Law in Bahrain*, 3 (March 13, 2014) available at:

has allowed the government to charge any person or any organization that “harms national unity” as a “terrorist,” placing people who attempt to exercise their freedoms of assembly, association and expression at risk of lengthy prison terms or even the death penalty.<sup>20</sup> For example, people have allegedly been arrested for such conduct as calling for protests, publicly expressing their opinion, and associating with persons of interest to the police.<sup>21</sup> In addition, the 2014 revisions to the law allow for suspected “terrorists” to be held in pre-trial detention for up to six months and for up to 28 days without charges.<sup>22</sup> Such prolonged periods of detention, put individuals at risk of torture leading to forced confessions. Beyond the anti-terror law, other provisions of the Bahraini penal code also allow for the criminalization of public speech if it is deemed to incite hatred or insult public institutions.<sup>23</sup>

## **Bahrain’s Abuses Exemplified: The Case of Human Rights Activists Abdulhadi al-Khawaja and Sheikh Ali al-Salman**

### *A. Abdulhadi al-Khawaja*

10. Abdulhadi al-Khawaja founded and served as president of the Bahrain Center for Human Rights and has acted as a regional coordinator for Front Line Defenders, an international NGO that lobbies on behalf of human rights defenders at risk. During the unrest that enveloped Bahrain in early 2011, Mr. al-Khawaja publicly criticized the regime’s brutal response to anti-government protests and demanded that charges of torture and corruption be brought against members of the royal family. On April 9, 2011, Mr. al-Khawaja was arrested without warrant by 15 masked men who stormed his home and beat him unconscious, fracturing his face in four places. He was held *incommunicado* for several weeks and repeatedly denied access to his attorney in advance of trial. On June 22, 2011, after a trial before a military tribunal which was replete with due process violations, Mr. al-Khawaja was sentenced to life imprisonment under charges of financing and participating in terrorism to overthrow the government, and spying for a foreign country. While in prison, Mr. al-Khawaja has suffered beatings, solitary confinement, attempted sexual assault, psychological torture and, in response to a hunger strike, drugging and forced-feeding.

11. Since Mr. al-Khawaja’s unlawful arrest and detention, numerous international bodies and prominent statesmen have spoken out about his arbitrary detention. On May 2, 2012, the Working Group opined that Bahrain had arrested Mr. al-Khawaja because of his political and human rights advocacy, raised concerns about the use of a military tribunal for his trial, the numerous violations of international fair trial standards, the “vague nature” of the charges against him, and called for his immediate release.<sup>24</sup> In addition, the United States, Denmark and Ireland have all expressed concern about Mr. al-Khawaja’s case.<sup>25</sup> International NGOs,<sup>26</sup> Members of

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<http://www.bahrainrights.org/sites/default/files/Terrorism%20Laws%20in%20Bahrain%20-%20FINAL.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> Bahrain 2015 Country Report, *supra* note18.

<sup>22</sup> Bahrain Anti-Terror Amendment, *supra* note18.

<sup>23</sup> Bahrain 2015 Country Report, *supra* note18.

<sup>24</sup> Al-Khawaja v. Bahrain, Working Group on Arbitrary Detention, Opinion No. 6/2012, ¶¶ 42-49 (May 2, 2012).

<sup>25</sup> UPR Report Bahrain, *supra* note 6, at ¶¶ 36, 69, 84.

<sup>26</sup> *See, e.g.*, Front Line Defenders, *Third Anniversary of Arrest: Calls for the Release of Abdulhadi Al-Khawaja* (April 9, 2014) available at: <https://www.frontlinedefenders.org/en/case/case-history-abdulhadi-al-khawaja>.

European Parliament,<sup>27</sup> and United States Senators<sup>28</sup> have also called for his release.

17. Despite international condemnation for his continued detention, Mr. al-Khawaja remains in prison as of the date of this submission. Moreover, Bahrain has also incarcerated one of his daughters when she returned to Bahrain to visit her ailing father in September 2014.<sup>29</sup> Another daughter, who had also spent much of 2013 and 2014 in prison, was jailed from March to June 2016 along with her one-year-old son.<sup>30</sup>

### *B. Sheikh Ali al-Salman*

18. Sheikh Ali al-Salman was the Secretary General of Al-Wefaq, the largest political opposition society in Bahrain.<sup>31</sup> On December 26, 2014, he gave a speech calling for political reform in Bahrain after his reelection as Secretary General, and was arrested two days later.<sup>32</sup> Despite numerous due process violations throughout his trial, he was sentenced to four years in prison on June 16, 2015 on charges of insulting public institutions and inciting others to break the law, based on evidence pulled from his public speeches.<sup>33</sup> On May 30, 2016, his sentence was increased to nine years on appeal when the court overturned the acquittal on an earlier charge of attempting to overthrow the regime.<sup>34</sup>

19. On September 2, 2015, the Working Group concluded that Sheikh al-Salman had been detained for exercising of his freedom of expression and that he had been denied his right to a fair trial, and called for his immediate release.<sup>35</sup>

## **Conclusion and Recommendations**

18. As a party to the ICCPR, Bahrain is obliged to respect its citizens' rights to freedom of expression, association, and assembly. By systematically imprisoning peaceful activists and opposition leaders for exercising these fundamental human rights, the government clearly violates its freely undertaken obligations under international law. As such, Freedom Now recommends that Bahrain:

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<sup>27</sup> Front Line Defenders, *MEPs Call for the Immediate Release of Maryam Al-Khawaja, Abdulhadi Al-Khawaja and All Those Wrongfully Imprisoned in Bahrain* (September 9, 2014) available at:

<https://www.frontlinedefenders.org/en/case/case-history-abdulahdi-al-khawaja>.

<sup>28</sup> *Letter to Prime Minister al-Khalifa* (April 20, 2012) available at: <http://www.freedom-now.org/campaign/abdulahdi-alkhawaja/>.

<sup>29</sup> Office of High Commissioner of Human Rights, *UN Experts Urge Bahrain to Release Human Rights Defender Maryam Al-Khawaja* (September 5, 2014) available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14992&LangID=E>.

<sup>30</sup> Frontline Defenders, *Case History: Zainab al-Khawaja*, available at:

<https://www.frontlinedefenders.org/en/case/case-history-zainab-al-khawaja>.

<sup>31</sup> Americans for Democracy & Human Rights in Bahrain, *Bahrain Court of Appeal Increases the Sentence of Al-Wefaq's Sheikh Ali Salman to Nine Years in Prison* (May 30, 2016) available at: [http://www.adhrb.org/2016/05/bahrain-court-appeal-increases-sentence-al-wafaqs-sheikh-ali-salman-nine-years-prison/\[hereinafter "Salman Sentence Increased"\]](http://www.adhrb.org/2016/05/bahrain-court-appeal-increases-sentence-al-wafaqs-sheikh-ali-salman-nine-years-prison/[hereinafter%20%22Salman%20Sentence%20Increased%22).

<sup>32</sup> *Id.*

<sup>33</sup> Bahrain 2015 Country Report, *supra* note 18.

<sup>34</sup> Salman Sentence Increased, *supra* note 31.

<sup>35</sup> Sheikh Ali Al-Salman v. Bahrain, Working Group on Arbitrary Detention, Opinion No. 23/2015, ¶¶ 32-36, 40-42 (September 2, 2015).

- Immediately and unconditionally release and rehabilitate the civil and political rights of Abdulhadi al-Khawaja and Sheikh Ali al-Salman and all other individuals who have been detained under criminal or administrative charges for exercising their fundamental human rights, including the right to freedom of expression, the right to freedom of association, and the right to freedom of assembly and allow them to peacefully promote the cause of human rights in accordance with the rights guaranteed to them in international human rights treaties.
- Thoroughly investigate all cases of arbitrary detention, torture, and other rights abuses directed against Mr. al-Khawaja, Sheikh al-Salman and other human rights activists and independent voices.
- Ensure that all detainees have immediate access to legal counsel of their own choosing and that all procedural rights are fully respected.
- Fully cooperate with, respond to, and follow the recommendations of all Human Rights Council special procedure mandate holders – including the Working Group and the UN Special Rapporteur on the Situation of Human Rights Defenders.