

H.M. King Hamad bin Isa Al Khalifa
Office of His Majesty the King
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19 August 2020

Your Majesty,

We are writing on behalf of the Bar Human Rights Committee of England and Wales (“BHRC”), to raise concerns regarding the prosecution and judicial harassment of a number of lawyers and human rights defenders in Bahrain, following the recent conviction and sentencing of human rights lawyer Abdullah Al-Shamlawi on 30 June 2020. We also note concern regarding the ongoing prosecution of lawyer Abdulla Hashim. The prosecutions and disciplinary measures taken against Mr Al Shamlawi and others amount to unwarranted restrictions on freedom of expression for members of one section of the community, and those perceived to be critical of the government, in contravention of both the Bahrain Constitution and international conventions and instruments to which Bahrain is a signatory.

BHRC is the international human rights arm of the Bar of England and Wales. BHRC is an independent body of legal practitioners who work to protect the rights of advocates, judges and human rights defenders around the world and defend the rules of law and internationally recognised legal standards relating to human rights and the right to a fair trial. BHRC has taken a close interest in human rights issues in Bahrain, engaging in dialogue with the government, conducting trial observations and publishing a number of reports and letters of concern over many years.

Mr Al-Shamlawi is a well-known human rights lawyer who has represented opposition figures and rights activists in Bahrain. He has practised law in Bahrain since 1977. He has been convicted in two separate cases on charges including misuse of a telecommunications appliance and inciting hatred of a religious sect with regards to comments made on Twitter. Mr Al-Shamlawi has posted bail and will remain outside of custody until his first appeal hearing, currently scheduled for 25 August 2020.

BHRC is further concerned that the Minister of Justice, Khalid bin Ali Al Khalifa, has issued disciplinary proceedings against Mr Al-Shamlawi, which has resulted in the Disciplinary Board of Lawyers prohibiting him from practising as a lawyer for one month.

In relation to the first conviction (Court Ruling 07202001781) Mr Al-Shamlawi cited a hadith and expressed personal views on religious practices and Islamic history related to Ashura, the most important date in the Shi'a religious calendar. BHRC understands that in an interview with the public prosecutor, Mr Al-Shamlawi defended his position by citing a renowned expert in the field of hadith, Muhammad Nasiruddin al-Albani, a scholar of the Salafist tradition.

At trial, Mr Al-Shamlawi contended that his right to express personal opinions is protected by Article 23 of the Constitution, which guarantees freedom of expression. There is nothing in Mr Al-Shamlawi's tweets which could properly be construed as incitement, or an intention to incite religious hatred: the tweets merely express a personal view. Individuals who do not share his opinion should not be used to evidence alleged anger amongst the public, or to justify a clampdown on freedom of expression exercised by Mr Al-Shamlawi

or others. At its highest, the reaction of individuals illustrates that there are some people who take exception to Mr Al Shamlawi's views.

BHRC is concerned that the judgment against Mr Al-Shamlawi (Court Ruling 07202001781) expressly suggests that Mr Al-Shamlawi's tweets fell outside the Constitutional guarantees on freedom of speech because they "violated public morals". This is a vague term which goes beyond the permissible limitations on the protected rights listed in Article 23.

It is clear from the judgments that the basis of the cases against Mr Al-Shamlawi has been founded entirely on tweets containing personal opinions on an historical religious matter in the first case, and in the second case on a matter of contemporary public interest: discrimination in the provision of social housing. If a section of the community considers Mr Al Shamlawi's views inaccurate or objectionable, it must be remembered that freedom of expression encompasses the right to express not only mainstream ideas but also controversial opinions.

In the context of this case, it appears that the right to practice religion is also engaged, given that the prosecution is directed at criminalising one view of a matter that has separated traditions for centuries. The right to practice religion is guaranteed by Article 22 of the Constitution. The prosecution also reflects a wider crackdown on social media in Bahrain, and harassment of leading lawyers, in particular those from the Shi'a community and those expressing views critical of the government.

Similarly, the prosecution of Abdulla Hashim relates to tweets critical of the government, which are said to constitute "fake news" threatening public order.

These prosecutions follows similar charges brought in recent times against prominent human rights lawyer Mohamed Al-Tajer for private WhatsApp voice messages.

The BHRC has previously drawn attention to and expressed its concern with regard to persistent and substantial curbs on freedom of expression of lawyers and human rights defenders in Bahrain. The case of prominent human rights defender Nabeel Rajab drew widespread international condemnation. Mr Rajab, President of the Bahrain Center for Human Rights, has recently been released from a series of prison sentences imposed on conviction for charges which violated Constitutional guarantees on his right to freedom of expression, under alternative sentencing measures. Those charges also related to social media posts and tweets.

In addition to guarantees in the Bahrain Constitution, Article 19 of the International Covenant on Civil and Political Rights, and Article 32 of the Arab Charter on Human Rights, both of which Bahrain has ratified, protect the right to freedom of opinion and expression. Any qualifications to these rights must be: provided by law, in pursuit of a legitimate aim, and conform to a strict test of necessity and proportionality. Human Rights Council Resolution 12/16 calls on States to refrain from imposing restrictions which are not consistent with these limitations, including "discussion of government policies and political debate; reporting on human rights, government activities and corruption in government, engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expressions of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups."

BHRC reiterates that the prosecution and harassment of lawyers and human rights defenders for freedom of expression 'offences' violates Bahrain's obligations as a signatory to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Arab Charter on Human Rights (ACHR). Bahrain also has an obligation as a UN Member State to cooperate in the protection and promotion of human rights.

We also reiterate that the rights of lawyers are protected under the UN Basic Principles on the Role of Lawyers, in recognition of the fundamental role of the legal profession in the administration of justice and

maintenance of the rule of law. Principle 23 of the Basic Principles underlines that lawyers, like other citizens, are entitled to freedom of expression, belief, association and assembly. Principle 16(a) of the Basic Principles ensures that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”.

All lawyers performing professional duties according to the law should be free from fear of retribution or reprisals by the State. A State which subscribes to the rule of law must protect lawyers and ensure that they are not subject to arbitrary or improper prosecution or other harassment. BHRC is concerned that the continued persecution of lawyers, including through criminal prosecution, represents a threat to the rule of law in Bahrain and places Bahrain in breach of its international legal obligations.

BHRC respectfully urges that the Public Prosecutor should reflect on the basis of the convictions of Mr Al Shamlawi and should not oppose the forthcoming appeal, and that the Minister of Justice should discontinue the disciplinary proceedings. We also urge a reconsideration of the prosecution in the case of Mr Hashim, and a turn away from what appears to be a policy of criminalising and harassing lawyers, with respect to freedom of expression. In the absence of such reviews, BHRC urges the King to pardon Mr Al Shamlawi, to ensure that constitutional rights are upheld and Bahrain respects its international obligations.

Yours sincerely,

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