



## **Bahrain: As appeal case continues, trial observation mission found Nabeel Rajab’s five-year prison sentence followed unfair trial proceedings**

### **International Trial Observation Mission Report - 21 February 2018 (Publication date: 08 May 2018)**

#### **I. INTRODUCTION**

On 21 February 2018, prominent Bahraini human rights defender **Nabeel Rajab** was sentenced to five years in prison for tweeting about the war in Yemen and poor conditions in Bahrain’s Jaw prison. Nabeel Rajab had already been sentenced to two years in prison in a separate case for media interviews and has been imprisoned under particularly harsh conditions since his arrest on 13 June 2016.

Nabeel Rajab is the President of the Bahrain Center for Human Rights (BCHR), Founding Director of the Gulf Centre for Human Rights (GCHR), Deputy Secretary General of FIDH, and a member of the Human Rights Watch MENA Advisory Board. He has been a long-time human rights advocate in the Gulf region, giving a voice to those unable to speak for themselves. As a result of his work, he has been repeatedly subjected to physical intimidation, questionable arrests and detention, prison sentences and travel bans from Bahraini authorities.

On the occasion of the hearing on 21 February 2018, a coalition of human rights organisations including GCHR, the Observatory for the Protection of Human Rights Defenders - a partnership of FIDH and the World Organisation Against Torture (OMCT), Front Line Defenders, English PEN, and BCHR mandated a trial observation mission to Bahrain<sup>1</sup>. It was carried out by a Barrister-at-Law in Ireland, who wrote this report.

During her mission, the observer met with Nabeel Rajab’s lawyer **Jalila Al-Salman** at her offices to discuss the case and the trial procedure, and attended the trial of Nabeel Rajab on 21 February 2018, along with international observers. This trial observation mission report looks at Nabeel Rajab’s trial process culminating with a five-year sentence on 21 February 2018, the compliance with international human rights treaties and the general human rights situation on the ground in Bahrain.

#### **II. NABEEL RAJAB’S ENDLESS JUDICIAL HARASSMENT**

On 02 April 2015, Nabeel Rajab was arrested following tweets said to have been posted from a *Twitter* account in his name. The first charge, “insulting a statutory body” (Ministry of Interior), under Article 216 of the Bahraini Criminal Code, refers to tweets denouncing the

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<sup>1</sup> See Joint Press Release “[Bahrain: Nabeel Rajab sentenced to five more years in prison for tweeting in unfair trial proceedings, according to trial observation mission](#)” published on February 23, 2018.

torture of detainees at Jaw prison (“Jaw prison tweets”). This was also documented in an opinion piece published in [the Huffington Post](#).

The second charge, “disseminating false rumours in a time of war”, made under Article 133 of the Bahraini Criminal Code, relates to tweets said to have been retweeted by Nabeel Rajab about civilian casualties caused by the Saudi Arabia led coalition airstrikes in Yemen. This contravened a government prohibition of any public mention that is critical of the conflict. Nabeel Rajab was also charged with “offending a foreign country” (Saudi Arabia) under Article 215 of the Bahraini Criminal Code (“Yemen tweets”).

Nabeel Rajab was held in police custody until 04 April 2015, when he was presented to the Public Prosecutor for investigation. At the end of the investigation session, the Public Prosecutor ordered the detention of Nabeel Rajab for seven days. This detention was repeatedly renewed for 15 days at a time until 14 May 2015, when he was sentenced to six months in prison for tweets made in September 2014, in which he spoke out against extremist and terrorist groups, including those who had been members of the Bahraini security forces.

On 13 July 2015, the King of Bahrain issued a royal pardon releasing Nabeel Rajab from serving the remaining period of his six-month prison sentence. On the same day, the Public Prosecutor imposed a travel ban against Nabeel Rajab in relation to the two charges of “insulting a statutory body” and “disseminating false rumours in a time of war,” in a separate case<sup>2</sup>.

A year later, on 13 June 2016, Nabeel Rajab was arrested again and cases against him were revealed in the following months, including the reactivation of the cases for which he had previously been arrested in April 2015 before being sentenced on other charges.

Nabeel Rajab is currently serving a seven-year prison sentence following two separate sentences:

- On 10 July 2017, Manama’s Lower Criminal Court handed down a two years’ prison sentence against Nabeel Rajab under charges of “deliberately spreading false information and malicious rumours with the aim of discrediting the State” in relation to television interviews he participated to. This sentence was upheld on 22 November 2017 by the Court of Appeals and on 15 January 2018, by the Court of Cassation. On this sentence alone, he will remain in jail until December 2018, even though he has now been in jail already since June 2016.
- In the so-called “Twitter case”, on 21 February 21, 2018, the High Criminal Court of Bahrain sentenced him to five years in prison on charges of “insulting a statutory body”, “disseminating false rumours in time of war” and “offending a foreign country [Saudi Arabia]”. Those charges are related to the above-mentioned “Jaw prison tweets” and the “Yemen tweets”. On 23 April 2018, Rajab appealed the five-year sentence, although he had previously decided not to appeal given the likelihood that he would not receive a fair hearing. Judge Ebrahim Al-Zaeed from Bahrain’s Court of Cassation postponed the hearing to 08 May 2018. On 08 May, the case was postponed to 20 May 2018 for closing arguments.

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<sup>2</sup> See Joint Open Letter “[Bahrain: Travel ban of human rights defender Nabeel Rajab must be overturned so family can travel for medical assistance, say NGOs in letter to King](#)” published on January 22, 2016.

Moreover, Nabeel Rajab faces additional charges in at least two other cases related to articles published in foreign newspapers about Bahrain's human rights record<sup>3</sup>.

### **III. VERDICT FALLS SHORT OF BAHRAIN'S INTERNATIONAL OBLIGATIONS**

On the morning of 21 February 2018, the observer attended Bahrain Central Criminal Court and met with Nabeel Rajab's legal team and diplomats from the United States, United Kingdom and German Embassies, who were present at the trial and regularly observe Nabeel Rajab's hearings. The observer presented a copy of her passport and her legal professional identification to the security staff outside the court. She waited outside the court with the respective diplomatic representatives for approximately 15 minutes before they were granted access to the court.

The atmosphere in the court was tense and apprehensive. The observer sat in the body of the court and the prisoners were detained to the left behind a protective screen. The observer could see Nabeel Rajab, who looked tired. Whilst waiting for Nabeel Rajab's case to be called the observer was able to watch approximately ten other defendants who had their cases heard. Most striking was that the defendants were not permitted to speak. Each case was called, and a legal representative approached a bench but none of them got to make representations; the judge spoke and the legal representatives then left the court. When Nabeel Rajab's case was called it followed the same process; as his name was called, he approached the partitioning screen and his legal team approached a bench below the judges. The judge spoke, but neither the legal representatives nor the defendant got an opportunity to speak, which contravene international standards of due process, as outlined below. After a very brief hearing of only two minutes, Nabeel Rajab was escorted from the court - he smiled and gestured the sign for perseverance (*Sumood*) as he left.

Rajab was sentenced on the same day as over ten other defendants, and in none of the cases were the defendants allowed to speak. Rajab's verdict took less than two minutes to complete. The observer subsequently commented that as a lawyer, she "found the experience both unusual and unsettling," saying that the fact that someone could be sentenced to a five-year prison term without his legal team having uttered a single word in his defence was astonishing.

Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) on the right to a fair trial sets out the rights of an accused to defend herself/himself through legal assistance; however, the court process that the observer witnessed first-hand raises serious concerns over the fairness of Nabeel Rajab's trial. A five-year sentence was handed down without allowing any representation from his legal team, which is irreconcilable with his right to a defence.

During the observer's time in the court, she witnessed a significant military presence to the extent that court officials and indeed some lawyers seemed to be personally familiar with military officials, which raises concerns over the independence of the judiciary. The observer was informed by a reliable source that the ruling authorities have sanctioned that civilians are being tried in a military court. This is arguably contrary to Article 14(1) of the ICCPR which states that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal."

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<sup>3</sup> See "Letter from a Bahraini jail", September 4, 2016, *The New York Times* and "Berlin et Paris, révisez vos liens avec les monarchies du Golfe", in *Le Monde* December 19, 2016.

During his incarceration Nabeel Rajab has reportedly been subjected to physical mistreatment and repeated lengthy periods of solitary confinement. Personal belongings such as clothes and books have been removed from his possession. His aunt passed away in early February 2018 and despite applying for compassionate leave to attend her funeral, which is allowed under the Bahraini law, this was not given proper consideration and he remained in prison. All of this arguably amounts to cruel and degrading treatment and arbitrary detention contrary to Articles 7 (Prohibition against Torture) and 9 (The Right to Liberty and Security of Persons) of the ICCPR.

Whilst awaiting trial Nabeel Rajab's case was adjourned over a dozen times causing unnecessary and unjustifiable delays in proceedings. This is contrary to his right to have his trial heard within a reasonable time under both Article 9 and Article 14 (3)(c) of the ICCPR.

The case itself violates Article 19 (Right to Freedom of Expression) and Article 22 (Right to Freedom of Association) of the ICCPR.

In addition, the case violates Articles 19 and 20 of the Constitution of the Kingdom of Bahrain as follows:

#### **Article 19 – Prohibition against Torture**

*“d. No person shall be subjected to physical or mental torture, or inducement, or undignified treatment, and the penalty for so doing shall be specified by law. Any statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void.”*

#### **Article 20 – Criminal Trials**

*“c. An accused person is innocent until proved guilty in a legal trial in which he is assured of the necessary guarantees to exercise the right of defence at all stages of the investigation and trial in accordance with the law.*

*d. It is forbidden to harm an accused person physically or mentally.*

*e. Every person accused of an offence must have a lawyer to defend him with his consent.*

*f. The right to litigate is guaranteed under the law.”*

Bahrain has also made commitments to other human rights obligations including the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders).

#### **IV. CONTINUED ILL-TREATMENT OF NABEEL RAJAB**

Since the beginning of his detention on 13 June 2016, Nabeel Rajab has been held under particularly harsh detention conditions, including solitary confinement, and is regularly prevented from accessing his lawyers. Locked in his cell 23 hours a day, prison authorities regularly deprive Nabeel Rajab of basic commodities and health treatments needed. Nabeel Rajab was also reportedly subjected by prison guards to degrading treatment, including humiliating and degrading body searches, forcibly shaving his hair, arbitrarily raiding his cell at night and confiscating his personal items<sup>4</sup>.

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<sup>4</sup> See BCHR's timeline harassment of Nabeel Rajab: [http://bahrainrights.org/en/updates-arrest-and-detention-bchrs-president-nabeel-rajab?\\_ga=2.212874194.755018715.1494506593-1099758628.1494506593](http://bahrainrights.org/en/updates-arrest-and-detention-bchrs-president-nabeel-rajab?_ga=2.212874194.755018715.1494506593-1099758628.1494506593)

In April 2017, Nabeel Rajab underwent a surgery at the Bahrain Defence Forces (BDF) hospital, following which he was returned to his cell, where the post-operative care was so poor that it resulted in him developing a serious infection and he had to spend several months recovering in hospital. He has a number of health conditions, including heart problems and high blood pressure.

On 25 October 2017, Nabeel Rajab was transferred from the hospital to Jaw prison where he remains detained as of 08 May 2018, in a segregated wing and in the same cell as five convicted high-ranking Da'esh (ISIS) members, all of them from the Bin Ali clan. Three years ago, Nabeel Rajab was charged over tweets criticising Bahrain for turning a blind eye on the rise of ISIS. In his tweets he referred indirectly to the same Bin Ali clan. This puts him at further risks of being ill-treated.

In late March 2018, Nabeel Rajab was transferred to the Ministry of Interior hospital, where he underwent pre-surgery procedures. However, he was later informed that he would only be allowed to undergo the surgery at the military hospital. Nabeel Rajab refused because of acts of ill treatment previously received there. He was supposed to undergo a pilonidal sinus excision, abscess incision and drainage surgery which he has already received last year. Prior to the new surgery, Nabeel Rajab's doctor recommended that he should go to a laser clinic to remove his hair in order to ease the surgery, but the doctor's recommendation was ignored by prison authorities.

On 04 April 2018, Nabeel Rajab was briefly transferred to Bahrain military hospital because of continued feelings of dizziness and loss of conscience, his blood was taken for further examinations. During the transfer, Nabeel Rajab was strip searched and shackled in a bus which had a small cell inside and resulted in him banging his head on the iron bars every time the bus driver stopped. Later, on the same day, officers at the hospital received orders to take him back to Jaw prison.

On 20 April 2018, Nabeel Rajab's family reported that he had not been allowed to drink for more than 24 hours. He was finally given water after another inmate collapsed because of dehydration<sup>5</sup>.

In its Concluding Observations on Bahrain published on 12 May 2017, the United Nations Committee Against Torture (UN CAT) drew attention to the fact that "excessive use of solitary confinement constitutes cruel, inhuman or degrading punishment or, depending on the circumstances, even torture"<sup>6</sup>. The UN CAT added that it was "deeply concerned" by the arbitrary imprisonment, torture and ill-treatment of detained human rights defenders in Bahrain, including Nabeel Rajab.

Nabeel Rajab's health has steadily worsened since his detention in 2016. With the current custodial sentences of seven years there are serious concerns over how much more his already fragile health can sustain. If such degrading and inhumane treatment of Nabeel Rajab continues there is a very real risk that he may die in prison.

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<sup>5</sup> See [Observatory Urgent Appeal](#) BHR 006 / 0812 / OBS 048.32, published on April 24, 2018.

<sup>6</sup> See CAT Concluding Observations on the second and third periodic reports of Bahrain, adopted by the Committee at its sixtieth session (18 April to 12 May 2017), par. 20. See also Working Group on Arbitrary Detention, Opinion A/HRC/WGAD/2013/12 No. 12/2013, 25 July 2013, par. 20.

## V. RESTRICTIONS ON ENTERING BAHRAIN

Upon arriving at Bahrain International Airport on 20 February 2018 the observer made an application for a temporary visa. Her passport and application were taken from her and she was left to wait for what seemed like an unordinary amount of time.

Finally, an airport official came over to the observer and questioned her about the type of law she practiced and the purpose of her visit to Bahrain, before she was finally granted a two-week visa. The observer said that she found the nature of the questions “intimidating and accusatory”, the reaction of the airport officials seemed alarming and she could only surmise this was due to the fact that her stated occupation on her visa application was that of lawyer.

From the experience of the NGOs that organised the mission, the observer knew that she would not be allowed to access the country if she revealed that she was planning to attend Nabeel Rajab’s trial. Over the past few years, dozens of international missions and observers were indeed denied access to the country, notably and most recently:

- Bahrain refused to receive a European Parliament (EP) delegation attempting to assess its human rights situation, the head of the EP Subcommittee of Human Rights, **Antonio Panzeri** said at the European Parliament on 26 April 2018<sup>7</sup>;
- Bahrain refused entry to **Lars Aslan Rasmussen**, a Danish Member of Parliament, and to **Brian Dooley**, GCHR Advisory Board member, on 04 April 2018, claiming the two posed a "security risk". They were attempting to visit jailed human rights defender **Abdulahdi Al-Khawaja**, a Danish citizen and founder of GCHR on his birthday<sup>8</sup>;
- A FIDH mission to visit detained human rights defenders and political prisoners scheduled for October 2017 and then for March 2018 was refused twice by the Bahraini embassy in Paris.
- An observer was denied entry to Bahrain prior to Nabeel’s Rajab’s hearing in the twitter case on 22 March 2017. His mission was mandated by the Arabic Network for Human Rights Information (ANHRI), Front Line Defenders, GCHR, and the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT).

## VI. CONCLUSION AND RECOMMENDATIONS

Behind the smokescreen of Bahrain’s flourishing economy, the Kingdom is hiding numerous rights violations and relentless efforts to silence those who are shedding light on these abuses, committed both within Bahrain and abroad, including in Yemen through its participation to the Saudi-led coalition. Today, Bahrain is under a blackout, preventing local human rights defenders from expressing themselves or traveling, and forbidding foreign journalists and human rights organisations from investigating. Authorities have detained, imprisoned, tortured, intimidated, stripped of their nationality, or forced into exile many people who peacefully opposed or openly criticised the authorities’ actions and policies. There is no independent newspaper or media coverage. Since the beginning of 2018, the number of people sentenced to death has already entered into double figures.

At the forefront, Nabeel Rajab is one of the country’s most notorious human rights defenders. Continuously harassed, criminalised and imprisoned since 2011, he now serves a seven-year

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<sup>7</sup> European Parliament human rights delegation 'denied entry to Bahrain', 27 April 2018 (The New Arab - Al-Araby English)

<sup>8</sup> [Bahrain: Danish MP and human rights activist deported while attempting to visit Abdulhadi Al-Khawaja](#), 2018-04-04

prison sentence for speaking out on rights violations. As documented by the observer, the trial which led to his latest sentence was marred by numerous irregularities and fell short of international fair trial standards.

The sentence hearing was a striking example of how his right to due process has been violated throughout the entire proceedings, as Nabeel Rajab only appeared for a couple of minutes and his defence team was not even given an opportunity to speak. This conclusion is drawn with great concern as his appeal trial opened on 23 April 2018.

The observer concluded, “As a lawyer it should be my right to be able to enter a court room and to observe the legal process of that jurisdiction. Whilst I was not prevented from doing so I did feel that my presence was not welcomed or appreciated either upon arrival at the airport or at the court buildings.”

Nabeel Rajab’s sentence and detention condition, which are the latest illustration of the abusive tactics Bahrain’s authorities have been using for years to silence him, grow immense concerns as his health has been severely impacted by his detention and the lack of medical care received.

By pushing the judicial and penitentiary harassment to extremes, Bahraini authorities seek to crush and silence the country’s most renowned human rights defender. It is no longer his health, but his life which is at risk, for a man whose sole wrongdoing has been to proclaim his attachment to freedom of opinion and expression.

**In view of these elements, GCHR, the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT), Front Line Defenders, English PEN, and BCHR urge the Bahraini authorities to:**

- i. Guarantee in all circumstances Nabeel Rajab’s physical and psychological integrity and that of all human rights defenders in Bahrain;
- ii. Release Nabeel Rajab immediately and unconditionally, as his detention is arbitrary and its conditions amount to ill-treatment and are endangering his life;
- iii. Ensure that representatives of Bahraini and international NGOs and diplomatic missions have access to Nabeel Rajab in prison;
- iv. Provide Nabeel Rajab with adequate medical care while in prison;
- v. Put an end to any act of harassment, including at the judicial level, against Nabeel Rajab and against all human rights defenders in Bahrain;
- vi. In the meantime, ensure that all judicial proceedings against him are carried out in full compliance with his right to a fair trial as protected under international human rights law;
- vii. Conform in any circumstances with the provisions of the Declaration on Human Rights Defenders, adopted on December 9, 1998 by the United Nations General Assembly, in particular its Articles 1, Article 6 (c), 9, 11 and 12.2;

viii. Ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments ratified by Bahrain, as well as implementing the recommendations of the UN CAT; and

ix. Allow foreign delegations, including parliamentarians, NGOs and UN and EU representatives, to enter Bahrain to visit detained human rights defenders, observe their trials and meet with officials to discuss the human rights situation in Bahrain.

**In view of this report, GCHR, the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT), Front Line Defenders, English PEN, and BCHR urge the EU, UN and countries with diplomatic representation in Bahrain to:**

i. Continue to raise the case of Nabeel Rajab and other detained human rights defenders including Abdulhadi Al-Khawaja with the Bahrain Government;

ii. Request and conduct visits of Nabeel Rajab until his release;

iii. Attend the trials of Nabeel Rajab and other human rights defenders, protest when they are imprisoned in contravention of international law, and call for their immediate and unconditional release.