

A ROADMAP

TOWARDS ENHANCING PRESS FREEDOM IN THE KINGDOM OF BAHRAIN



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The Executive Summary

This report aims at providing an objective reading of all Bahraini laws and legislation with regard to the regulation of press freedom in the Kingdom of Bahrain since the birth of Bahraini press in the middle of the last century until today. To do so, it seeks to consolidate the freedom of the press and its importance, and provide an analysis of the practical reality and obstacles to the work of the press, institutions and individuals. Moreover, it attempts to clarify the reasons that led to the decline in press freedoms while, on the other hand, providing appropriate recommendations for promoting positive practices and ensuring their development and improvement.

This report sheds light on the existing drawbacks and the necessary intervention and reforms, hoping to provide useful information for decision-makers in the state and the legislative authority to address the laws concerned, and for the executive authority to address problems and improve practices. Lastly, it is also hoped that this report serves as a reference for human rights organizations and those concerned with supporting freedom of the press, inside and outside Bahrain, to help them realize the legislative and executive reality of freedom of the press in the Kingdom of Bahrain.

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“Liberty is that good which makes it possible to enjoy the other goods.”

Montesquieu

Introduction

The constitutional philosophy of freedoms originates from the inherent nature of rights. Therefore, if the general rule and the basic premise is that every freedom has a basis in one of the rights, then freedom of the press stems from the right to seek, receive and broadcast news and ideas.

That was stated in Article 19 of the Universal Declaration of Human Rights and affirmed in Article 19 of the International Covenant on Civil and Political Rights.

As such, if the consolidation of rights is recognized by constitutions and laws, then freedoms are regulated within the framework and limits that do not affect the essence of the right. Therefore, we find that Article 19 of the International Covenant on Civil and Political Rights has set in its third clause the limits and restrictions that may not be violated while regulating freedom of expression (including the press as one of the manifestations of the exercise of freedom of opinion and expression).

Regulating the press law in Bahrain started at the beginning of the second half of the twentieth century. This report surveys regulating the freedom of the press with an analytical and inductive approach while presenting a historical overview of the stages of foundation, development and decline that affected the journalistic institution and its work.



Chapter One: History of the Press and Its Laws

Firstly: A brief history of the press in Bahrain:

The local history documents the engagement of the civil society with the press since the end of the nineteenth century, when Arab newspapers (such as Al-Urwah Al-Wuthqa) reached Bahrain. Some documents indicate the existence of correspondence between those newspapers and the Bahrainis. The Bahrain Newspaper-dating back to 1939-was the first newspaper to be published and printed in Bahrain. It continued to be issued weekly until 1944, when it stopped. However, media communication continued through listening to Arabic-speaking radio stations, some of which did not escape the banning decisions. Bahrain remained without local press until the publication of Sawt Al Bahrain (Voice of Bahrain) magazine in 1950. It included miscellaneous topics and articles before it became news focused in the last two years of its life. Sawt al-Bahrain's issues often included blank pages as a result of censorship and ban policies until it was completely banned by an official decree.

During the fifties, Bahrain witnessed the publication of many magazines and newspapers, such as Al-Khamila, Al-Watan and Al-Qafilah. Nonetheless, they were subject to decrees of suspension and banning although the Kingdom did not have then any laws regulating the press and publishing. The newspapers used to be issued with the space for the unendorsed articles left blank to signify protesting their banning. Moreover, in 1954, Al-Qafilah and Sawt al-Bahrain were shut down together. In 1956, the first law regulating media and the press was passed, which placed more restrictions on press initiatives.

Because of the Tripartite Aggression against Egypt (also known as The Suez Crisis) in October 1956, licencing new newspapers was suspended. At the same time, "official" weekly newspapers were published, including the "Al Najma Weekly" bulletin, a weekly newspaper issued by the Bahrain Petroleum Company Limited (Bapco). The newspaper/bulletin published official and national news and remained the only source of local news from 1957 until 1965.

As for the Official Gazette, it has been published regularly since 1930 until now. It is dedicated to publishing what is issued by the three authorities, constitutional rulings; laws issued by the legislative authority; decisions by the executive authority; and decrees of royal laws.

The independence period did not yield a qualitative development in the press field, despite the 1973 constitution clearly stipulated the expansion and guarantee of freedoms. Newspapers and magazines were focused on sports and cultural themes and events. Only two newspapers were concerned with political affairs and news reports, namely, Akhbar Al-Khaleej daily (1976) and Al-Adwaa newspaper (1965-1993) weekly. In addition to an English-language newspaper, the Gulf Daily News (1978).

The issuance of these newspapers coincided with the enforcement of the State Security Law, which criminalizes any political action contrary to the state governance. In 1989, Al-Ayyam newspaper was published to be the second daily newspaper, along with Akhbar Al-Khaleej newspaper. During this period, the press was restricted and governed by official perceptions and special directives. It was also subject to prosecution of the State Security Law, the criminalization of political action, and the confiscation of public liberties.

In 2001, after the vote on the National Action Charter, Bahrain witnessed a significant advancement in press freedoms as a result of easing security restrictions, canceling the State Security Law, and, more broadly, the phase of political openness the country entered. Eventually, Bahrain witnessed the publication of many new daily newspapers such as Al-Wasat, Al-Watan, Al-Waqt, Al-Bilad, Al-Mithaq, Nabaa, and Al-Ahed.

In addition, publications by political parties such as Al-Wifaq Society newspaper, Democratic Action Association newspaper, Al-Minbar Al-Taquadumi (progressive) newspaper, and Al-Minbar Al-Islami newspaper. During this period, the Bahraini press lived at its best, and the Press Association was established (with government patronage). It also witnessed the cooperation of some elite journalists with national figures to present a draft law to establish a journalists' union. However, it was an unsuccessful attempt. It is noteworthy that the 2002 Press and Publications Law, which is still in force today, restricts press freedoms because it stipulates prison sentences for journalists, complicates conditions for granting permits to establish newspapers, and other arbitrary practices that restrict press work.

After the events of 2011, the manifestations of healthy atmosphere changed into a poisonous and suppressive atmosphere. The penalties for journalists were tightened and they were prosecuted by the penal code and the laws of terrorism. In addition, most newspapers issued after 2002 were also shut down and the state reinforced the authority of laws that suppress press freedoms and freedom of expression. In 2014, the Penal Code was amended and the prison term for

insulting the country was raised to seven years. In 2015, a two-year prison sentence for “insulting” state institutions such as the Parliament or the security forces of the Ministry of Interior was added.

As a matter of fact, Bahrain has become a more hostile environment for journalists. The authorities began arresting many writers and civil society activists for criticising of the state’s policies, and about 95 journalists were expelled unjustifiably in the aftermath of 2011.

After 2011, journalists were increasingly charged with participating in demonstrations or persecuted under the anti-terrorism law. Terrorism charges may lead to life imprisonment and revocation of the citizenship of some journalists, contrary to the provisions of the constitution and the law.

In 2016, the Bahrain Photography Society was shut down by government authorities, which claimed that its members were acting “contrary to law and public order.” Moreover, the government relied on a zero-tolerance policy towards criticism of the state’s allies in the region. For instance, during the two years 2015-2016, human rights defenders and political analysts were imprisoned for questioning the international legitimacy of the Saudi-led military campaign in Yemen. The total number of documented cases of violations and infringements on press freedoms and freedom of expression since the outbreak of protests in mid-February 2011 until December 2021 amounted to about 1,755 violations.

Secondly: Press laws in Bahrain

erew sniamod cilbup ynam ,3791 ni detfard saw noitutitsnoc tsrfi s«niarhaB erofeB regulated by laws and government directives, including the regulation of «press and publishing». It is worth noting that before the ratification of the first press law, a circular (public directive) had been issued by the Bahraini Government Advisor (the British Assistant Political Resident) warning correspondents (both Bahrainis and residents) not to deal or communicate with foreign newspapers without obtaining permission and registration with the Bahrain Government Administration. It also threatened that whoever violates this is subject to punishment (either a fine of 2,000 rupees or imprisonment for 6 months). What was peculiar about this circular is that it encouraged whistleblowers with a decent reward if they report anyone violates this directive.

The emergence and stages of enforcing the publishing and press law in Bahrain, in parallel with press freedoms in the country, can be divided into 6 stages:

- **The Beginning (1953):**

On February 15, 1953, the first press law was issued by the Bahraini Government Advisor. This law was characterized by simplicity, as it included 8 articles. The first article dealt with the issue of defining the terms (the newspaper, the printing press). The second article clarified the conditions for obtaining permission (permit) to publish the newspaper. In the third article, the law stipulated a security deposit of 2000 rupees (two thousand rupees) - the official currency at the time - the applicant must place as insurance with the Bahrain government. The fifth article stated that the Bahraini government has the discretion to accept or reject the request without giving reasons. In addition, the government of Bahrain may give approval on specific conditions it decides. Moreover, the law included a penalty of confiscation in case of violation of this law.

The articles of this law, in its simple form, sought to organize a new experience so that this law is subject to trial in reality to figure out any problems it may face in the future to inform its amendment. More importantly, however, is that the law was characterized by direct orders from the Bahrain Government Advisor that they were not subject to appeal or objection before a judicial authority. This may be due to the fact that the concepts of freedom of expression, or even general rights and freedoms, were not prevalent.

• **The First Amendment Phase (1954):**

About 18 months after the issuance of the first law, on 24 November 1954, the Press Law was issued by the ruler of Bahrain and its territories, Sheikh Salman bin Hamad Al Khalifa. One can identify three main observations in this amendment:

- I. It was issued by the ruler of Bahrain, not the Government Advisor.
- II. A definition for “printing” was added after the first law defined “newspaper” and “printing press” only.
- III. The application of a one-year prison sentence or a fine of 1,000 rupees for anyone who breaks the law.

As such, this law was the first adoption of prison sentence for journalists in Bahrain.

• **The First Development Phase (1965):**

After Sheikh Isa bin Salman Al Khalifa took over the government of Bahrain and its territories in late 1961 and the amendments to a number of laws, the Press and Publication Law was issued on 29 July 1965, and the Press Law of 1954 was accordingly abolished. This law can be considered as paving the way for a phase of development. It came out in a detailed form based on human rights principles, especially in its second article, which stipulates the right to freedom of expression and the protection of this right. It also opened the door for administrative (non-judicial) appeals in case a request for a license to issue the newspaper is rejected. This law consisted of 4 chapters (25 articles), the first chapter on general principles and conventions, the second chapter on issuing newspapers, the third chapter on issues prohibited from publishing, and the fourth on general laws and provisions.

Although this law regulated many administrative issues, it did not recognize the right to sue and appeal to the judiciary in the event that the administration abused the authority of licensing, shutting down, or confiscating newspapers.

• **The Regression Phase (1979):**

After the independence of Bahrain and the promulgation of the first constitution in 1973, the Emir of Bahrain, Sheikh Isa bin Salman Al Khalifa, issued Decree Law No. 14 of 1979 on 7 August 1979. The Decree was the Publications Law, which reflected the security situation in Bahrain at the time. The law came in eight chapters (70 articles).

The fourth chapter was devoted to the press (from Article 19 to Article 40) and regulating license application, which remained at the discretion of the Minister of Information and the Council of Ministers. Nonetheless, the appeal against the rejection decision was not transferred to the judiciary but rather before the same accepting/rejecting

authority. This made the law bearing the same defect as its predecessor. Meanwhile, the law also became more inclusive of issues pertaining to publishing bans, criticising the government, as well as increased restrictions and censorship imposed on newspapers and opinion writers.

• **The Second Development Phase (2002):**

With the beginning of the new era of King Hamad bin Isa Al Khalifa taking over the reins of government (and before the beginning of the first legislative term of the Parliament's work), Decree Law No. 47 of 2002 was issued on 23 October 2002. The law came in an extensive and detailed form with a total of 96 articles concerning the press, printing and publishing. The regulation of the press started from its third chapter.

Paradoxically, the law expanded the immunity of the press and journalists on the one hand, and approved the imprisonment and pre-trial detention of the journalists on the other hand.

It also opened the door to judicial appeals for newspapers against administrative decisions before the courts and made the decision to confiscate or close newspapers conditioned by a court ruling. This law represented an obvious qualitative leap, but it was supposed to draw on the world's prevailing vision of the position of the journalist and the press, and what international decisions have reached in this regard. In particular, pertaining to two very important issues:

The first is concerning the immunity of the journalist and the abolition of imprisonment, detention, and pretrial detention.

The second is limiting the discretionary authority of the licensing authority and opening the door to press work in compliance with general conditions.

• **The Phase of Discussing the Coming Bill (2022-2026):**

of Decree-Law No. 47 of 2002 to the Council of Representatives during the fourth session of the fifth legislative term, which ended in May 2022. However, since the draft law is still under study by the parliamentary committees, and in light of our reading of it, we can make some important observations on it:



First: The project attempted to abolish imprisonment and detention of journalists and limiting their penalties to criminal fines. Nonetheless, other articles in the draft kept the penalty of imprisonment or imprisonment and detention of journalists under other laws.

For example, in Articles 16 and 69 of the draft amendment we find the phrase “without contradicting any severer penalty stipulated in any other law.” As a result, a judge can sentence a journalist to imprisonment or detention by applying the Penal Code, the Terrorism Law, or similar laws.

It goes without saying that crimes punishable by imprisonment or detention are subject to pretrial detention. Accordingly, the claim to abolish freedom-depriving sanctions against journalists is a clear fallacy.

Second: This project tried to give the impression that it abolished pretrial detention, but it is not a general rule but rather limited to the crimes stipulated in the law.

Therefore, if the crime (the act) is deemed as one of the crimes stipulated in the Penal Code or other laws, the journalist may be remanded in custody.

Thus, one can claim that the reason behind the abolition of Articles 70 and 72 is their existence in the Penal Code.

Third: This bill does not bring any added value that could give the press institution immunity or any kind of independence and the freedom to establish news agencies without restrictions.

Fourth: This bill does not offer any amendment that would allow the press institution to found its own union and to guarantee its independence.

Fifth: This draft law does not add any amendment or expansion of appeals against the decisions of the supervisory authority before the judiciary.

Sixth: This bill does not address the issue of incitement and hate speech by law, nor did it benefit from the recommendations of the Rabat Action Plan or the recommendations of the Royal Independent Commission of Inquiry (the Bassiouni Commission Report).

Seventh: This draft law does not address with the arbitrariness the authority practices in accepting or rejecting licensing applications to establish newspapers under general conditions. It also maintained the state of discretion of the government.

These are the most important points that should be considered during the discussions that will be held by the legislative authority in the sixth legislative term (2022-2026).

Chapter Two:

Obstacles and Impediments

1. Administrative Obstacles:

The state regulates public affairs on abstract, necessary, and nonarbitrary terms. In the reality of work and press freedoms in Bahrain, it is possible to pinpoint some of the administrative obstacles facing any press institution wishing to obtain a license. Decree-Law No. 47 of 2002 sets among articles (44 to 50) the legal conditions and channels for obtaining licenses for establishing newspapers. Article 44 gives the Ministry of Information and the Council of Ministers absolute authority to evaluate those requests.

On the ground, the government identifies the founders' political orientations and, accordingly, give its explicit or implicit rejection. Although the law opened the door to appeal the decision before the judiciary, the reality of the judiciary seems to be consistent with government decisions and tendencies. In order to overcome this obstacle, it is possible to resort to a semi-governmental independent body in partnership with civil society organization, in particular the Journalists' Syndicate to assume the responsibility of granting licenses, censorship and accountability. The authority of granting licenses should not be left in the hands of the executive authority alone.

2. Legal Obstacles (Laws and Decisions):

The National Action Charter stipulates in Chapter One, Clause (4), that freedom of publication, press and printing is guaranteed within the limits set by law. Moreover, Article 24 of the Constitution of the Kingdom of Bahrain 2002 affirmed the same concept. However, the constitutional text has given the legislator the right to intervene in to regulate and limit this freedom. This is what actually happened despite the fact that Article 31 of the Constitution stipulated a condition for the legislator in the event of regulating rights and freedoms by not undermining the essence of the right or freedom.

One of the biggest obstacles facing the press is the constitutional text, which should not leave setting limits and restrictions for the legislative bodies' ultimate discretion. In addition, it is vitally necessary to establish the freedom to form unions and syndicates independently, including the Press and Journalists Syndicate, in accordance with the internationally applicable terms of reference.

3. Judicial Obstacles (Criminal and Civil Judgments):

The judiciary is the guardian of rights and freedoms, and this is the role of the independent judiciary in performing its role to protect rights and freedoms holders from the encroachments of the government or individuals. However, some of the obstacles and politicized court rulings the press, journalists and civil society activists have endured over the past years leaves no doubt that the judiciary system needs fundamental reforms. The crisis is not limited to the application of the press law, but extends to journalists and civil society activists who face charges and court trials for expressing their opinions. The result is threatened independence and freedom of expressing or publishing opinions.

The independence of the judiciary in Bahrain seems to be a thorny issue for decades;

it is closely related to the political crisis. For the time being, however, and until the judiciary enjoys its independence, this problem can be overcome by having an independent syndicate for journalists responsible for monitoring, accountability, and regulation of the profession of the press in all its fields. It should be noted here that this right does not prevent journalists from being sued before civil courts in defamation and libel cases.

4. Criminal liability restricting journalistic work:

Journalists need to perform their work in a free space that is not restricted by criminal liability (as there is no authority over the press and the journalist except his conscience and the honor of his profession). This requires the abolition of criminal liability under the Press Law, the Penal Code, and the Terrorism Law. Collectively, these laws prescribe penalties that amount to imprisonment, detention, and criminal fines for newspapers and journalists.

This is not to suggest in any way removing criminal liability in public and private laws against journalists, as they are in the end of the day members of the society. Rather, what is intended is the reliability related to the nature of their work and profession (as is the case for members of the legislative authority). Thus, immunity in the press work and what is associated with it; otherwise, for the journalist as a member of society, he and the rest of society are equal before the law.

It is necessary to accept some of the necessary restrictions on the press, which are the restrictions adopted by the Rabat Plan of Action issued by the United Nations. Restrictions are necessary and should be proportionate and does not undermine the essence of right and freedom. These restrictions are meant to preserve civil and national peace, and not to spread hate speech or insult people. These restrictions are necessary to protect rights and freedoms in their coherent and integrated form, without prioritizing a right over a right or a freedom over a freedom.

In the laws and legislations inside Bahrain, and with regard to press work, we find many restrictions and penalties on the press and journalists. Below we review these penalties:

- **Decree-Law No. 48 of 2002 (Press and Publication Law):**

This law stipulates in Chapter 6 criminal liability in Articles 68 - 74 (8 Articles). Article 68 establishes a prison sentence of no less than 6 months and no more than 5 years in prison for a journalist who publishes news or an opinion deemed criticizing the King, the government policies, or the state religion, or inciting to overthrow the regime. This article with the same content is stipulated in the Penal Code. In addition, articles 68 - 74 stipulate imprisonment or detention for journalist, and closure for newspapers.

- **Decree-Law No. 15 of 1976 (Penal Code):**

The Penal Code dedicated Chapter Five to criminal liability for crimes that occur by means of publicity (Articles 92 to 98). Such penalties can be adapted to newspapers and journalists directly. In addition, the Penal Code contains (31) articles establishing imprisonment, detention and criminal fines that can be adapted to press activities (called publishing and broadcasting offenses).

- **Law No. 58 of 2006 (Terrorism Law):**

This law stipulates in the text of Article No. 11, the penalty of imprisonment and a fine for mere publication that may be understood as promoting or in favor of violence or terrorism. This article too is subject to political adaptation. It is unfortunate that this article has been used against journalists in light of the crisis that Bahrain has been experiencing since 2011 until this year 2022.

Chapter Three:

Reform Requisites: Recommendations

1. Political Will:

Freedom of the press is positioned as a guarantee of freedom of expression in any free and advanced society. The press is the mirror of society and the authority that monitors the performance of the executive and legislative branches in any democratic society. Therefore, it is not logical for the press in Bahrain to be of one color that represents the government's point of view and does not accept criticism or any monitoring work, presenting ideas and solutions, or addressing public affairs. The existence of a real political will on the part of the ruling establishment in Bahrain remains critical to correct the course and enhance press freedoms is an urgent necessity to proceed with any reform steps or initiatives. The proof of the existence of this will is the immediate release of all those convicted in cases related to freedom of expression, and in the restoration of the Bahraini citizenship of all journalists whose nationalities have been revoked, and giving them back the due recognition.

2. A law that meets the needs of the press institution:

The National Action Charter of 2001 and the Constitution of the Kingdom of Bahrain of 2002 guarantee constitutional protection for freedom of the press. However, Decree-Law No. 48 of 2002 (the Press and Publication Law) crossed the boundaries of organization to obstruction and besieging the press freedoms in Bahrain.

The new press law requires commitment to two rules:

The first is the preservation of the freedom of the press and the non-aggression against it in practice and publishing.

The second is the commitment of the press to carrying out its duties within the established constitutional limits and not exceeding its frameworks in a way that ensures that the components of society or the rights, freedoms and public duties are not violated.

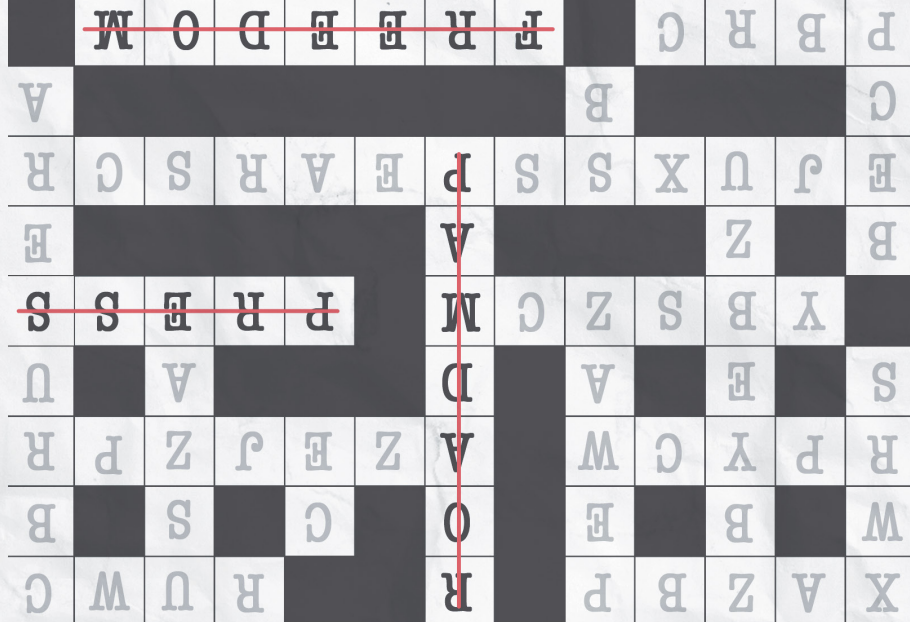
The intrinsic value of the press deserves the protection of legislative bodies as it represents a balanced role that guarantees the society's right to knowledge, political participation, economic development and promoting cultural diversity. This includes protecting journalists by removing all laws that deprive freedoms (imprisonment/detention) and preventing any referral of journalists to court in accordance with any other law. The criminal responsibility of journalists in connection with the performance of their work duties should be abolished, and accountability should be the prerogative of an independent syndicate.

3. A quasi-governmental regulatory body and an independent syndicate for defense and oversight:

The executive authority should not have the right to regulate, license or monitor newspapers and journalists individually. Accordingly, and in a transitional phase, the formation of a quasi-governmental body in which civil society institutions participate--in its membership, management and organization of work--becomes an initiative that will reduce the government's domination of the press and journalists. In addition, the existence of an independent press and journalists' union/syndicate, which enjoys independence and clear and broad legal powers to regulate its affairs is an urgent and necessary need. The work of the syndicate includes defending journalists and freedom of expression in its broader sense and contributing to monitoring and accountability in cases related to violations of the profession and transgression of its literature. Indeed, this will be a positive and reforming factor in Bahrain. If the principle of separation of powers is one of the foundational principles of democracy, then it is a fortiori that the fourth authority (journalism) attains full independence of the executive authority and its hegemony. It should also enjoy its own entity (a union/syndicate) that regulates its affairs. Accordingly, amending the Press and Publication Law has become an imperative, including adding a chapter on the establishment and organization of the syndicate, its work and competencies as well as ensuring its independence of the Ministry of Information.

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IN THE KINGDOM OF BAHRAIN



رابطة الصحافة البحرينية
Bahrain Press Association

This report was issued by the Bahrain Press Association, an independent organization established on 9th July 2011 and headquartered in London. The Association is concerned with defending freedom of expression and press freedoms in the Kingdom of Bahrain.

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