



## JOINT PUBLIC STATEMENT

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### **Kenyan labour rights activist leaves Qatar after paying hefty fine for publishing "false news"**

Malcolm Bidali, a Kenyan national, who was forcibly disappeared by Qatari authorities on 4 May and held in solitary confinement for a month, has finally been allowed to leave the country after paying a hefty fine for his human rights activism. The 28-year-old is a security guard, [blogger](#) and activist, who has been [vocal](#) about the [plight](#) of migrant workers like himself, and has written for a number of online platforms.

On 14 July, Qatar's Supreme Judiciary Council handed down a criminal order stating Malcolm Bidali had broadcast and published "false news with the intent of endangering the public system of the state" under Article 6 of the controversial cybercrime law arising purely from the exercise of his right to freedom of expression. The charges violate international human rights law and standards and particularly the right to freedom of expression, and as such the Qatari authorities should take immediate steps to have the unjust 'conviction' quashed. Malcolm was ordered to pay a fine of QR25,000 (approximately US \$6,800), as well as having his personal mobile confiscated and his social media accounts on Twitter and Instagram (@NoahArticulates) through which "the crime was committed", blocked.

Throughout his detention Malcolm Bidali was denied access to legal counsel. The criminal order was handed down without him ever having been formally charged, brought before a court or even informed of the nature of the criminal charges he was facing, even after he obtained access to a lawyer following his conditional release on 31 May.

Although dated 14 July, Malcolm Bidali was only made aware of the criminal order on 27 July 2021, two weeks after it was issued, leaving only one day to appeal the decision. An organization working on the rights of migrant workers paid the fine and he was allowed to leave Qatar on 16 August.

Speaking after leaving, Malcolm Bidali said:

"I'm extremely fortunate to have gotten out (relatively) unscathed, given the selection of charges levelled against me. Outrageous charges, and an even more outrageous fine, for simply sharing our lived experiences and pointing out shortcomings of the specific entities responsible for workers' welfare, none of which translates to 'misinformation'.

“What I learnt from this was that a) free speech is expensive, and b) free speech is immensely effective. The latter is why so many activists and advocates do what they do, despite the very real risks involved. It's an honour for me to be counted as one.

“I'd like to thank all involved from the moment I was detained, all the way to my release.”

Amnesty International, the Business and Human Rights Resource Centre, FairSquare, Human Rights Watch and Migrant-Rights.org, a coalition of civil society organizations that have [advocated](#) on Malcolm Bidali's behalf since his detention, welcomed the news of his departure from Qatar after almost four months, but remain concerned that his treatment stemmed solely from his legitimate human rights activism, and what this means for other migrant workers and freedom of expression more widely. The coalition calls on Qatar to urgently reform its judicial processes, including the cybercrime law that has been used against Malcolm.

The coalition said:

"While we are relieved that Malcolm Bidali's ordeal is over and he has finally been able to leave Qatar, he should never have been detained in the first place. It has been clear all along that he was being penalized for his human rights activism, and this unjust 'conviction' for spreading 'false information' only confirms that.

“Malcolm's abduction, forced disappearance, detention, interrogation and hefty fine – all carried out without due process – risk leaving a chilling legacy on freedom of expression in Qatar. If the government is serious about protecting human rights ahead of the 2022 World Cup, it must stop using abusive laws to criminalize those who dare to speak up in the country, including about the dire treatment of the very migrant workers making the tournament possible. The abuse and exploitation Malcolm wrote about through his blogs and social media accounts has been well documented by human rights and labour rights organizations over many years.”

## **A SERIES OF DUE PROCESS VIOLATIONS**

The detention and conviction of Malcolm Bidali was beset with a raft of due process violations from the moment of his arrest.

### **ENFORCED DISAPPEARANCE**

On 4 May, Malcolm was taken at the request of the Qatari authorities from his labour accommodation to the state security office for questioning. He was then forcibly disappeared by state security services for almost a month. During this time, the authorities refused to reveal Malcolm's whereabouts to his family or explain why he had been detained, despite repeated requests for information from his mother and human rights and labour rights organizations. On 12 May, Qatari authorities acknowledged that Malcolm Bidali was in their custody, but would not disclose his location.

An enforced disappearance is a crime under international law, which, according to the UN Convention on Enforced Disappearances, occurs when any person is arrested or otherwise detained by agents of the state, “followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place(s) such a person outside the protection of the law.”

## **SOLITARY CONFINEMENT AND LACK OF LEGAL REPRESENTATION**

Following his enforced disappearance, the Qatari authorities held Malcolm Bidali in solitary confinement for 26 days, until his conditional release from custody on 31 May.

On 20 May, Qatari state security services permitted Malcolm to call his mother, following an intervention by the Kenyan ambassador in Qatar. In the 10-minute phone call, he assured his mother that he had not been harmed but was unable to tell her where he was being held or why. He said he was being held in solitary confinement for 23 hours a day and that he had no legal representation. He also told his mother that two officers were present as he made the call.

During his detention, Qatari interrogators repeatedly questioned Malcolm without the presence of a lawyer and made him sign multiple papers in Arabic, a language he does not understand, without written translation.

As a state party to the International Covenant on Civil and Political Rights (ICCPR), Qatar is obligated to ensure that everyone has the right to due process, and that no one is arbitrarily detained or subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The right to due process includes the right of all suspects or accused to have access to and assistance of legal counsel from the outset of any criminal investigation and throughout questioning. The Special Rapporteur on torture has recommended that anyone who has been arrested “should be given access to legal counsel no later than 24 hours after the arrest”.

Further, the ICCPR and the Convention Against Torture, to which Qatar is also a state party, prohibits the use in court of any evidence obtained through coercion, which includes, but is not limited to, torture and other cruel, inhuman or degrading treatment. Prolonged solitary confinement – as Malcolm Bidali was subjected to – can constitute torture. Under international law, as reflected in the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), solitary confinement can be used “only in exceptional cases as a last resort, for as short a time as possible”. Further, as the UN special rapporteur on torture described in 2020, prolonged solitary confinement of more than 15 consecutive days is considered a form of torture, and is therefore also a form of prohibited coercion.

As such, Qatar should have excluded from court proceedings any “evidence” gathered while Malcolm Bidali was being held in solitary confinement.

## **TRUMPED-UP CHARGES AND A TRAVEL BAN**

On 29 May, Qatar’s Government Communications Office (GCO) released a statement to the press saying Malcolm Bidali had “been officially charged with offences related to payment received from a foreign agent for the creation and distribution of disinformation within the State of Qatar”.

However, Malcolm was not aware of any charges brought against him and when he was conditionally released two days later on 31 May, told his mother he would be free to leave the country. Since then, he was prohibited from travelling and did not receive any official charge sheet. The GCO statement also said that Malcolm was “receiving legal advice and representation”, although that was not the case until he left detention.

Indeed, when Malcolm was finally presented with official record of charges against him, they did not relate to receipt of payments from foreign agents, but rather to his online activism.

The right to due process also includes the right to be informed promptly after arrest, and in a language the accused understands, of the nature of charges faced. This is critical to the effective exercise of the right to challenge the lawfulness of detention. Once formal charges are brought, the accused has the right to be given sufficiently detailed information about the charges to enable them to prepare their defence. This includes information about the law under which they are charged and the alleged facts which form the basis of the accusation. According to UN Human Rights Council General Comment 32, “The right to be informed of the charge “promptly” requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such.”

## **SUPPRESSION OF FREEDOM OF EXPRESSION**

On 28 July, Malcolm Bidali was presented with a criminal order from Qatar’s Supreme Judiciary Council, however up until this point he had not been informed, whether formally or informally, of the charges or allegations against him. The order was dated 14 July but was not relayed to Malcolm or his lawyer until two weeks later, leaving him with just one day to appeal. It stated that after reviewing “evidence and all the papers and documents accompanied by it”, it found Malcolm had “established and published false news with the intent of endangering the public system of the state” - “criminal” acts which it says are punishable under Article 6 of the Cyber Crime Prevention Law of 2014. Article 6 carries a maximum sentence of three years in prison and a fine of QAR 500,000 (approximately US \$137,000) for anyone who “through an information network or an information technology technique sets up or runs a website to publish false news to threaten the safety and security of the State or its public order or domestic and foreign security.” Anyone who “promotes, disseminates or publishes in any way such false news for the same purpose” can be punished with up to a year in prison and a fine of QAR 250,000 (US \$68,000).

Multiple credible organizations have called on Qatar to repeal or significantly amend the cybercrime law under which Malcolm was charged. When the law was published in 2014, the New York-based [Committee to Protect Journalists](#) stated that, “this law is ostensibly to stop cybercrime but at least two articles [including Article 6] will severely restrict freedom of expression, which is not a crime”. Amnesty International raised particular concerns about provisions on “false news” and said the law contained “broad and vaguely-worded provisions that fly in the face of international standards”. The governments of France, Czechia, Sweden and Austria all called on Qatar in its 2019 Universal Periodic Review to make amendments to the law to bring it into compliance with international standards on free expression.

More recently, Qatar [amended the penal code](#) introducing vaguely worded provisions criminalizing a broad range of speech and publishing activities further restricting freedom of expression in Qatar. This is contrary to the ICCPR, which Qatar received international praise for joining in 2018, Article 19 of which guarantees the right to seek, receive and impart information and ideas.

## **BACKGROUND**

After arriving in Qatar in 2018, Malcolm Bidali had been on the front line of the fight to reform Qatar’s labour laws, including by writing about his experiences as a migrant worker in the country. Malcolm tweeted about labour abuses in Qatar using a pseudonym and a week before his arrest, gave a presentation to a large group of civil society organizations and trade unions about his experiences working in Qatar.

On 26 April 2021, a Twitter user tagged Malcolm Bidali in a tweet containing a graphic which Human Rights Watch had used for an August 2020 report about wage abuse in Qatar. The tweet also contained what appeared to be a YouTube link to a Human Rights Watch publication. However, according to [Amnesty International's analysis](#), the link led to a suspicious URL capable of recording the IP address and other data about the person who clicked on it. This is a social engineering tactic known as phishing, and may have been used to identify or locate Malcolm. State security forces detained him on 4 May, barely a week after the phishing attack.

Under the UN Declaration on Human Rights Defenders, governments must actively protect human rights defenders from harm. They have an obligation to put in place social and legal structures to create environments that are safe and supportive for human rights defenders to carry out their work.