

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA
BHR 1/2016:

17 March 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of arbitrary arrest and detention of Ms. **Zainab Al-Khawaja**, along with her 15-month old son, on the basis of sentencing related to repeatedly tearing a photograph of the King of Bahrain and insulting a police officer, which appear not to comply with international human rights norms.

Ms. Zainab Al-Khawaja is a prominent woman human rights defender and social media activist in Bahrain. Ms. Al-Khawaja was the subject of seven previous communications sent by various Special Rapporteurs on 21 January 2008, see A/HRC/10/12/Add.1, case no. BHR 3/2008; 12 April 2011, see A/HRC/19/44 case no. BHR 5/2011; 9 September 2011, see A/HRC/19/44, case no. BHR 18/2011; 20 January 2012, see A/HRC/20/30, case no. BHR 1/2012; 5 October 2012, see A/HRC/22/67, case no. BHR 8/2012; 30 July 2013 see A/HRC/25/74, case no. BHR 4/2013; and 18 December 2014, see A/HRC/29/50, case no. BHR 15/2014 We acknowledge the Government's response to five out of the seven communications dated 7 June 2011, 15 December 2011, 21 March 2012, 25 October 2012 and 29 August 2013, and reiterate our concerns in the context of the information below.

According to the information received:

On 14 March 2016, security forces broke into Ms. Al-Khawaja's in-law's house around noon, asking for her whilst recording with video cameras. At approximately 3:45pm, Ms. Zainab Al-Khawaja was arrested from her home along with her 15-month old son. Her husband was informed that she would be taken to the Al-Hooraa police station. The police officers kept Ms. Al-Khawaja in Al-Hooraa police station for over five hours, and she was carrying her son the entire time. She requested food for her son several times, but the police officers stated they had no food for her and her son. Ms. Al-Khawaja was then taken to the Ministry of the Interior, where she was kept for three hours and was denied food for her son. She eventually found a vending machine and was able to buy only a snack to feed her son.

On 15 March 2016, Ms. Al-Khawaja and her son were transferred to the Isa Town Women Prison. Due to reports of an outbreak of Hepatitis C in Isa Town Women's Prison, Ms. Al-Khawaja requested that she and her son eat in a cell separate from the other inmates to prevent contagion but the prison administration refused. There also concerns about inadequate detention conditions, especially for children.

Ms. Al-Khawaja has been arrested and detained on a number of occasions due to her human rights work, including on the same charge of "destruction of public property", when she repeatedly tore a photograph of the King of Bahrain, as well as a charge of "insulting a public official" (a police officer).

Ms. Al-Khawaja is facing a total of three years and one month in prison. Furthermore, her passport has not been renewed and her son is being denied a birth certificate and documentation.

The allegations above appear to be further disturbing given the adoption in April 2014 of Law 1/2014, which amended Article 214 of the Penal Code, providing for a maximum jail term of seven years and a fine of up to 10,000 Bahraini dinars (US\$26,500) for offending the King, Bahrain's flag, or the national emblem. Similarly and according to Article 216 of the Penal Code, "an individual shall be liable for imprisonment or payment of a fine if he/she offends by any method of expression the National Assembly, or other constitutional institutions, the army, law courts, authorities or government agencies".

Grave concern is expressed at the arrest, detention and sentencing of Ms. Al-Khawaja, which appear to be directly related to her activities in defence of human rights and her exercise of the right to freedom of opinion and expression. Concern is expressed at the health and well-being of Ms. Al-Khawaja's 15-month old son, who is also in detention with his mother.

We remain extremely concerned about the recent legislation and authorities' resorting to the criminalisation of the right to freedom of opinion and expression, including of human rights defenders. In that context, we call on the Government of Bahrain to respect and guarantee the right to freedom of opinion and expression and ensure an enabling environment for human rights defenders to carry out their activities without fear of persecution.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

While we do not wish to express an opinion on whether or not the detention of Ms. Al-Khawaja is arbitrary, the above allegations appear to be in contravention with her right not to be deprived arbitrarily of her liberty as set forth in article 9 of the Universal Declaration of Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Bahrain in 2006, as well as the right to fair proceedings before an independent and impartial tribunal, as set forth in article 10 of the UDHR and article 14 of the ICCPR.

Serious concern is expressed about the alleged violation of the legitimate exercise of her rights to freedom of opinion and expression, as provided for in Article 19 of the ICCPR and UDHR. In particular, we would like to refer your Excellency's Government to the specific conditions established under paragraph 3 that provides that restrictions may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. In this connection, and with regard to the criminalization of acts against authorities and symbols established in Articles 214 and 216 of Bahrain's Penal Code, we would like to refer you Excellency's Government to the Human Rights Committee's General Comment No. 34, which provides that the mere fact that forms of expression are considered to be insulting to a public figure, including those exercising the highest political authority, such as heads of State, is not sufficient to justify the imposition of penalties.

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, and in particular articles 1 and 2 which provides for the right to promote and to strive for the protection and realization of human rights and fundamental freedoms. Moreover, article 6 provides for the right to freely publish, impart or disseminate to others view, information and knowledge on all human rights and fundamental freedoms.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Zainab Al-Khawaja.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information concerning the legal grounds for the detention and sentencing of Ms. Zainab Al-Khawaja, and how these measures are compatible with Bahrain's international obligations, in particular concerning the right to freedom of opinion and expression, as enshrined in the UDHR and the ICCPR.
3. Please provide information on the compatibility of the national legislation, in particular articles 214 and 216 of the Penal Code, with Bahrain's international human rights obligations, including the ICCPR.
4. Please provide information concerning the legal ground for the detention of Ms. Zainab Al-Khawaja's 15-month old son with his mother, as well as measures taken to ensure access to adequate food and medical care.
5. Please provide information on the legal grounds invoked for denying Ms. Zainab Al-Khawaja not renewing her passport, and for denying her to obtain a birth certificate and documentation for her son, and how this is compatible with international human rights norms and standards.
6. Please provide information on measures taken, or to be taken, in order to revise or amend article 214 and article 216 of the Penal Code and to bring domestic legislation in conformity with Bahrain's obligations under international human rights instruments, hereunder the ICCPR.
7. Please kindly indicate what measures have been taken to ensure that human rights defenders in Bahrain are able to carry out their legitimate

work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders