

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL SAU 4/2017

6 April 2017

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 33/30, 25/2, 25/18, 32/19, and 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged use of discriminatory male guardianship laws to arbitrarily arrest and detain Ms. Maryam Al Otaibi, a woman human rights defender in retaliation for her human rights work.**

Ms. Maryam Al Otaibi is a well-known human rights defender who has played a leading role, including through her *Twitter* account, in protesting against the male guardianship system in Saudi Arabia, which she identifies as one of the main motives for the abuse against her by her male relatives.

According to the information received:

On 1 November 2016, Ms. Al Otaibi was arrested on charges of "parental disobedience," following a complaint from her father. The disobedience that Ms. Al Otaibi is accused of involves her refusal to revoke a domestic violence charge filed against her brothers, alleging that they verbally and physically abused her, in part in retaliation for her involvement in the campaign to end male guardianship.

On 2 November 2016, the Government announced that Ms. Al Otaibi was being held in a "care house" in the city of Buraydah, and that she would not be released without the consent of her father.

Eventually, Ms. Al Otaibi agreed to withdraw the domestic violence charges against her brothers, and her father consented to her release.

The discriminatory male guardianship system persists in the Kingdom of Saudi Arabia despite Government pledges to abolish it. Under this system, a set of Saudi Arabian law, by-laws and state-sanctioned policies reportedly forbid women from

obtaining a passport, marrying, travelling, or accessing higher education without the approval of a male guardian, usually a husband, father, brother, or son. Authorities have also failed to prevent some employers from requiring male guardians to approve the hiring of adult female relatives or some hospitals from requiring the approval of a male guardian for certain medical procedures for women.

The guardianship system hinders the reporting and prosecution of domestic violence in the Kingdom of Saudi Arabia. Women are often unable to make reports of abuse to the police without the participation of a guardian, even when that guardian is the abuser that they seek to report. It has been reported that police and shelters return women to abusive guardians.

In the past, another woman human rights defender was detained for several months in relation to her support for the campaign against the guardianship system and was required to publish an apology for her participation, while a male activist was sentenced to one year in prison for his support of the campaign.

We express grave concern at the retaliation through criminal prosecution against Ms. Al Otaibi and other activists who through their legitimate human rights work and exercise of their right to freedom of expression oppose the system of male guardianship, a system that is in clear violation of international human rights standards. We are also gravely concerned that your Excellency's Government has condoned reprisals against Ms. Al Otaibi for her efforts to pursue domestic violence charges against her abusers and in doing so has severely violated her right to protection against violence against women, including domestic violence, and her right of access to justice.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore 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 arrest and detention of Ms. Al Otaibi.
3. Please indicate what measures your Government intends to take to ensure that human rights defenders in the Kingdom of Saudi Arabia, in particular women human rights defenders, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and reprisals of any kind.

4. Please indicate what measures have been taken to ensure that victims of domestic violence in the Kingdom of Saudi Arabia are able to safely report abuses without fear of reprisal, particularly when denouncing abuse at the hands of designated male guardians.

5. Please indicate what steps the Government is taking to follow through on its commitments to end the discriminatory male guardianship system and ensure compliance with its international obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

We would appreciate receiving a response which will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken prevent the re-occurrence of the alleged violations.

On the basis of the above allegations, we could decide to publicly express our concerns in the future as, in our view, the information upon which the press release could be based is sufficiently reliable to indicate a matter warranting public attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

José Guevara
Vice-Chair of the Working Group on Arbitrary Detention

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

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Alda Facio
Chair-Rapporteur of the Working Group on the issue of discrimination against women in
law and in practice

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to articles 9 and 19 of the Universal Declaration of Human Rights (UDHR), which provide for the rights not to be deprived arbitrarily of liberty and to freedom of expression, as well as to the Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test 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.

We would also like to refer to 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, in particular articles 1, 2, 6, 9 and 12, and to General Assembly resolution 68/181, according to which "domestic law and administrative provisions and their application should enable the work of women human rights defenders, including by avoiding any criminalization or stigmatization of the important activities and legitimate role of women human rights defenders and the communities of which they are a part or on whose behalf they work, as well as by avoiding impediments, obstructions, restrictions or selective enforcement thereof contrary to relevant provisions of international human rights law."

We would further like to recall that international human rights law and standards require States to treat all persons under any form of detention or imprisonment with humanity and with respect for the inherent dignity of the human person (article 10, International Covenant on Civil and Political Rights; Principle 1, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and General Assembly resolution 43/173 of 9 December 1988).

We would also like to call your Excellency's Government's attention to article 7(c) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), ratified by the Kingdom of Saudi Arabia on 7 September 2000, which explicitly provides for the promotion and protection of women in freely participating in public matters. States agreed to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure to women, on equal terms with men, the right to participate in non-governmental organizations and associations concerned with the public and political life of the country.

With regard to the current concept of guardianship in the Kingdom of Saudi Arabia, we would like to refer to CEDAW articles 2 (f), 5 (a), 11, 12, 13, 15, and 16 , as well as to articles 1, 2, 7, 12 and 23 of the UDHR, and to note the CEDAW Committee’s concern in its most recent review of Saudi Arabia that the system of guardianship “severely limits women’s exercise of their rights under the Convention” (CEDAW/C/SAU/CO/2, para 15). We are further concerned that reservations to critical articles in CEDAW and Saudi Arabia’s general reservation to the treaty cast serious doubt on its overall commitment to advancing women’s human rights.

In its report on discrimination against women in family and cultural life (A/HRC/29/44), the Working Group recommended inter alia to repeal all laws that support the patriarchal oppression of women in families and to recognize and enshrine, in constitutions and laws, the right to equality, which should apply in all areas of life and have primacy over all religious and customary laws, norms, codes and rules, with no possibility of exemption, waiver or circumvention.

We would also like to draw your Excellency’s Government’s attention to General Assembly resolution 68/181 as well as Human Rights Council resolution 31/32, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders.

Also, as highlighted by the Working Group on discrimination against women in law and in practice in one of its reports (A/HRC/23/50), stigmatization, harassment and outright attacks have been used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex; they may experience intimidation, attacks and death. Violence against women defenders is sometimes condoned or perpetrated by State actors.

In addition, we would like to recall your Excellency’s Government’s acknowledgment during its first Universal Periodic Review that “the concept of guardianship [...] often loses its connotation of responsibility and care, which are transformed into domination and coercion,” (A/HRC/11/23, para 10) and its acceptance during that process of several recommendations that the guardianship system be abolished (A/HRC/11/23/Add.1, para 33), and to further recall that during the most recent cycle of the Universal Periodic Review, 13 Member States made recommendations relating to the abolition of the guardianship system (A/HRC/25/3, para 138.100-112) which were largely endorsed by your Excellency’s Government (A/HRC/25/3/Add.1, para 12).

Furthermore, we would like to reiterate the principle stated in resolution 2005/38 of the Commission on Human Rights which calls on States to facilitate the full, equal and effective participation and free communication of women at all levels of decision making in their societies and in national, regional and international institutions, including in mechanisms for the prevention, management and resolution of conflicts.

We would like to call the attention of your Excellency's Government to the international human rights standards contained in the United Nations Declaration on the Elimination of Violence against Women, particularly article 4 (d & f) which calls on States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. In 2012, recognizing the importance of eliminating violence against women in public and political life, the General Assembly, in its resolution 66/130, called for an environment of zero tolerance for violence against women elected officials and candidates for public office.

Finally, we also deem it appropriate to make reference to Commission on Human Rights resolution 2005/41 on the Elimination on Violence against women, which calls on States to take all measures to empower women and strengthen their economic independence, and to protect and promote the full enjoyment of all human rights and fundamental freedoms in order to allow women and girls to protect themselves better against violence and, in this regard, to give priority to and promote the full and equal participation in public and political life of women as well as to ensure their full and equal access to education, training, economic opportunity and economic advancement.