

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the human rights of migrants and the Working Group on discrimination against women and girls**

REFERENCE:  
AL BHR 3/2021

16 September 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the human rights of migrants and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 43/4, 43/6 and 41/6.

In this connection, we would like to bring to the urgent attention of your Excellency's Government information we have received concerning **the expulsion imposed on Ms. Buthaina Ahmad, in connection with the exercise of her right to freedom of opinion and expression.**

According to the information received:

Ms. Buthaina Ahmad is an Omani national and was a permanent resident of Bahrain by virtue of being married to a Bahraini national. She is the mother of 4 children.

On 11 November 2020, Ms. Ahmad shared ironic messages via the instant messaging app WhatsApp, regarding the death of the Bahraini Ex-Prime Minister, Khalifa bin Salman Al-Khalifa on the same day. The messages were sent to a private group.

On the same day, she was summoned by the Cybercrime unit for interrogation over the messages she had sent, which have allegedly been leaked by a member of the private WhatsApp group. After admitting that the messages were from her, Ms. Ahmad was arrested and brought to the Central Investigation Department. She was charged with causing nuisance to third parties by misuse of telecommunication devices, under Article 290 of the Criminal Code.

Ms. Ahmad was transferred to the women's prison in Isa town, where she remained in preventive detention.

On 18 November 2020, the First Instance Court sentenced her to six months' imprisonment. The ruling also determined her definitive expulsion from the country, under article 64A of the Criminal Code.

Ms. Ahmad remained in the women's prison in Isa Town until 9 May 2021, when she finished serving her sentence. On the day of her release, she was transferred to a shelter for those violating residency rules.

On 12 May 2021, Ms. Ahmad was expelled from Bahrain, and arrived in Oman on the same day. Since then, the family is separated and her husband and children have to travel to Oman to see her, which is rendered difficult and expensive through the current pandemic.

Without prejudging the accuracy of these allegations, we would like to express our deep concern about the use of criminal legislation to curb Mrs. Ahmed's legitimate exercise of her freedom of opinion and expression, which resulted in imprisonment and her definitive expulsion from the country. We are concerned that the penalty has a disproportionate impact on her life and that of her family, including her four children, and that it may have a chilling effect on everyone's exercise of their right to freedom of opinion and expression in the country, and especially on that of foreign citizens.

In connection with the 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 be grateful for your observations on the following matters:

1. Please provide any additional information or comments in relation to the above-mentioned allegations.
2. Please provide information on the legal and factual basis for the arrest and charges brought against Mrs. Buthaina Ahmad and explain how is in conformity with your obligations under international human rights law, in particular the right to freedom of opinion and expression.
3. Please provide information on the legal and factual basis for the definitive expulsion of Mrs. Ahmad. Given that the removal has resulted in the separation of her family members, including her four children, please provide information on any assessment taken on whether or not such interference with Ms. Ahmad's family life can be objectively justified in light of the degree of hardship the family and its members, including children, would encounter as a consequence of such removal. Please also indicate how this decision is necessary and proportionate in relation to Bahrain's obligations to protect families.
4. Please provide information on the measures taken to incorporate a gender perspective in the analysis of complaints related to the exercise of freedom of expression, especially women's political participation in your country.

We would appreciate receiving a response within 60 days. After this deadline, this communication and any response received from your Excellency's Government will be made public through the communications reporting [website](#). They will also be made available subsequently in the regular report to be submitted to the Human Rights Council.

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

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

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Felipe González Morales  
Special Rapporteur on the human rights of migrants

Melissa Upreti  
Chair-Rapporteur of the Working Group on discrimination against women and girls

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), accessed to by Bahrain respectively on 20 September 2006 and 27 September 2007.

We recall in particular article 19 of the ICCPR, which guarantees that everyone shall have the right to hold opinions without interference, and the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one's own and on public affairs, cultural and artistic expression, and discussion of human rights (Paragraph 11) as well as expression of criticism or dissent. We note with concern the apparent retaliatory measures taken against Mrs. Ahmad for exercising her right to freedom of expression.

Restrictions to freedom of expression can only be imposed if adhering to the strict criteria established in article 19 (3) of the Covenant. Restrictions must meet the standards of *legality*, meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; *necessity and proportionality*, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and *legitimacy*, meaning that they must be in pursuit of an enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals. Although article 19 (3) recognizes "national security" as a legitimate aim, national security considerations should be "limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group". States should "demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight" (A/71/373). In this context, we underscore that "It is not compatible with article 19 (3), for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security (CCPR/C/GC/34 para. 30).

In its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), or on discriminatory grounds, in violation of article 2, paragraph 1, article 3 or article 26, are in principle arbitrary.

With regard to the protection of family unity and the enjoyment of family life, article 16 (3) of the Universal Declaration of Human Rights (UDHR) affirms: "The family is the natural and fundamental group unit of society and is entitled to

protection by society and the State.” Article 12 affirms: “No one shall be subjected to arbitrary interference with his [...] family [...].” Article 23 (1) of the ICCPR stipulates: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Article 17 of the ICCPR affirms: “No one shall be subjected to arbitrary or unlawful interference with his ... family.”

Article 10 (1) of ICESCR provides: “The States Parties to the present Covenant recognize that: The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. [...]”

In its thematic report on women deprived of liberty (A/HRC/41/33), the Working Group on discrimination against women and girls noted that women’s deprivation of liberty is a significant concern around the world and severely infringes their human rights. Against the backdrop of unequal power dynamics and systemic discrimination, women are deprived of their liberty, mostly arbitrarily and in a discriminatory fashion, as a practice in violation of the law and human rights standards, and this is often characterized by impunity. Depriving women of liberty also imposes great costs on society: not just the monetary costs of maintaining structures or institutions of confinement, but more importantly the human costs of missed opportunities and contributions and often intergenerational harm and negative impacts on families and communities.

As deprivation of liberty is deeply gendered and that women who experience intersectional forms of discrimination such as migrant women are more vulnerable to discriminatory rules and practices, the Working Group recommended the Member States to ensure that measures addressing conflict, crisis, terrorism and national security incorporate a women’s human rights focus and do not instrumentalize women’s deprivation of liberty for the purposes of pursuing government aim. In addition, the Working Group recommended to make available effective gender-specific interventions that aim primarily to divert women away from the criminal justice system, integrate into the national system the standards provided in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok rules), and to address the underlying factors leading to women coming into contact with the criminal justice system.