

Mandate of the Working Group on discrimination against women and girls

Ref.: OL BHR 4/2023

(Please use this reference in your reply)

18 October 2023

Excellency,

I have the honour to address you in my capacity as the Chairperson of the Working Group on discrimination against women and girls, pursuant to Human Rights Council resolution 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **restrictions on women's mobility that are based on certain interpretations of religion enshrined in legislation and social practices about "male guardianship", contrary to international human rights norms.**

According to the information received:

Under article 40 of the Family Law no. 19 (2017), women cannot leave the marital home without a "legitimate reason". Article 54 of the same Law stipulates that a woman may lose her right to marital maintenance (*nafaqa*) if she contravenes the previous provision, following a court judgement. Moreover, pursuant to the Family Law, a woman can be considered "disobedient" and lose her right to *nafaqa*, if she takes up a job without the consent of her husband after entering into marriage. On the other hand, article 56 of the Family Law stipulates that it shall not be deemed an act of disobedience that results in the rescinding of *nafaqa*, if, among other things, a woman goes outside the home to work, on condition that her husband was aware of her work at the time of their marriage, or if going to work is an expressed condition in the marriage contract, or if her husband has permitted that after the marriage.

Women's mobility and male guardianship.

Legal provisions and social practices that restricts women's mobility based on requirements of male guardianship, like the one mentioned above, are the manifestations of harmful stereotypical notions of men's superiority and are inherently discriminatory, humiliating and derogatory. They would constitute blatant violations of women's and girls' right to equality, including equality before the law and equal protection of the law, as well as of a broad range of other human rights, including the rights to freedom of movement, education, work, access to justice, privacy and family life, as guaranteed under international law. The Working Group has noted that such provisions and practices can easily lead to repressive control by male family members or unsupportive families or communities, resulting in the exclusion of women from certain areas of society and confinement in others (A/HRC/41/33).

The Working Group wishes to refer your Excellency's Government to its obligations under the International Covenant on Civil and Political Rights, acceded by Bahrain in 2006, including those concerning the liberty of movement, recognised in

article 12. In its general comment no. 27 on freedom of movement, the Human Rights Committee has clarified that it is incompatible with article 12, paragraph 1, that the right of a woman to move freely and to choose her residence be made subject, by law or practice, to the decision of another person, including a relative (CCPR/C/21/Rev.1/Add.9).

We would also like to draw to the attention of your Excellency's Government the obligations arising out of article 17 of the Covenant, which prohibits arbitrary or unlawful interference with a person's privacy, family, home or correspondence, whether emanating from State authorities or from natural or legal persons. As indicated by the Human Rights Committee, no interference can take place except in cases envisaged by the law, which itself must comply with the provisions, aims and objectives of the Covenant (INT/CCPR/GEC_6624_E (1)). The right to privacy is essential to human dignity, and any restriction in its enjoyment must be prescribed by law, necessary to achieve a legitimate aim, and be proportionate to the aim pursued. Example of legitimate aims for the restriction of the right to privacy include crimes or specific threats to the integrity of individuals, none of which apply in the case of male guardianship. Moreover, male guardianship does not pass the necessity and proportionality tests. It imposes severe restrictions on women's privacy and autonomy by requiring them to ask for permission for a vast number of autonomous decisions that constitute basic freedoms.

Moreover, we wish to refer your Excellency's Government to its obligation under the Covenant on Economic, Social and Cultural Rights, ratified by Bahrain in 2007, to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant, including the rights to education, work, an adequate standard of living, and to the enjoyment of the highest attainable standard of physical and mental health.

In addition, we would like to recall that the Convention on the Elimination of All Forms of Discrimination against Women, acceded by Bahrain in 2002, requires putting an end to practices which discriminate against women, including the abolishment of the male guardianship system. The Convention requires, inter alia, States Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (article 5). It also provides for equality between men and women before the law and for States Parties to accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile (article 15) and to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations (article 16).

In this regard, the Working Group wishes to recall CEDAW's Concluding Observations on Bahrain (CEDAW/C/BHR/CO/4), in which the CEDAW Committee noted with concern the restrictions on women's mobility imposed by article 56 of the Family Law and recommended that Bahrain take immediate steps to repeal or amend this provision to ensure that a woman may take up employment after entering into marriage without the consent of her husband. The CEDAW Committee furthermore noted with concern Bahrain's reservations to articles 2, 15 (4) and 16 of the Convention. It reminded Bahrain that reservations to articles 2 and 16 are

incompatible with the object and purpose of the Convention and called upon it to further review its reservations to the Convention, with a view to withdrawing them.

In addition, the Working Group would like to refer your Excellency's Government to its obligation under the ILO Discrimination (Employment and Occupation) Convention, 1958 (no. 111), ratified by Bahrain in 2000, which requires the adoption and implementation of a national policy designed to promote equality of opportunity and treatment in respect of all aspects of employment and occupation, including through the repeal of any discriminatory law and practice affecting women's access to and performance of employment and occupations.

As stressed in a Working Group report to the Human Rights Council (A/HRC/35/29), promising practices in cultural and family life require a guarantee of women's right to equality in autonomy and self-determination and the legal and social recognition of women as agents of cultural change. Legal and cultural norms that subjugate women to male control must be actively challenged and eradicated. States must endeavour to repeal all discriminatory provisions in the law, particularly those governing marriage and divorce, child-rearing, inheritance, freedom of movement, access to capital, credit and income-generating activities. In addition to the elimination of direct discrimination, promising practices in this area require that States take active measures to support substantive equality through the law and long-term awareness-raising initiatives directed towards the eradication of patriarchal stereotypes and attitudes.

The Working Group emphasizes the importance of respecting women's and girls' bodily autonomy and agency as well as their free, informed choices, while firmly rejecting any form of coercion stemming from patriarchal oppression. We have recommended to repeal all laws that support the patriarchal oppression of women in families and to recognize and apply, in law and in practice, the right to equality, which should apply in all areas of life and have primacy over all religious and customary norms, codes and rules, with no possibility of exemption, waiver or circumvention (A/HRC/29/44).

The Working Group would like to recall the recommendations made in the context of the Universal Periodic Review Fourth Cycle of Bahrain, which called for the repeal of all discriminatory provisions against women in legislation, including on the freedom of movement (A/HRC/52/4).

We would like to remind Your Excellency's Government that States have the primary responsibility and duty to protect, promote and realise all human rights and fundamental freedoms by taking necessary measures to create social, economic, political and other conditions and legal guarantees required to ensure that all persons, regardless of their sex and gender, under their jurisdiction, individually and collectively, can enjoy these rights and freedoms in practice.

We note that the requirement of a male guardian's consent for the granting of passports to women¹ has been repealed in Bahrain. We encourage your Excellency's Government to review also the provisions of the Family Law, and to remove all provisions therein that discriminate against, or have a discriminatory impact on women and girls, including those establishing male guardianship.

¹ See 2005 amendment to article 13 of Law No. 11 (1975) on Passports.

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

1. Please provide information on the nature and scope of the reported de jure and de facto restrictions and an assessment of the impact of current restrictions on women's mobility on their enjoyment of other human rights, including their access to work, education at all levels, and health services, goods and information.
2. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by UN human rights mechanisms, referred to above, and to bring its legislation into compliance with international human rights law.
3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to eliminate discriminatory social practices restricting women's mobility.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Dorothy Estrada-Tanck
Chair-Rapporteur of the Working Group on discrimination against women and girls