

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

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **blocking of the website of the online magazine "My.Kali" by Jordanian authorities, allegedly in relation to the publication of information about sexual orientation and gender identity.**

According to the information received:

My.Kali is a Jordanian website devoted to the publication of LGBTI inclusive content as well as fighting against homophobia and transphobia in the Middle East region. The website purports to raise awareness about the violence and discrimination to which the LGBTI community is subjected to in Jordan and other countries of the region.

On 14 July 2016, access to the website of My.Kali was blocked, allegedly without notification or explanation from the Audiovisual Media Commission of Jordan (AMC) or any other authority. This happened following the publication four days prior of an interview by its founder to the independent media platform Raseef22 entitled "How do homosexuals live in Jordan?" However, the magazine continued to be published through other online platforms.

Over a year later, on 31 July 2017, the AMC decided to formally order the blocking of My.Kali, following the request of a member of Parliament and spokesperson of the Jordanian Islamic Action Front to open an inquiry on the website. The decision was based on the alleged failure of My.Kali to request a licence for operation to the Ministry of Information, which is a requirement under the Press and Publication Law applying only to online media outlets which "engage in publication of news, investigations, articles, or comments that have to do with the internal or external affairs of the Kingdom". My.Kali, however, had been operating since 2007, without it having ever been considered to fall within this broad category.

The request of the member of Parliament and the decision of the AMC to block My.Kali is said to have gained attention among the Jordanian public. This prompted intolerant and discriminating statements by high-ranking public officials. Among others, the Minister of Interior and the Minister of Justice,

reportedly publicly stated that “Jordan has not and will never endorse any charter or protocol acknowledging homosexuals, or granting them any rights as it is considered a deviation from Islamic law and Jordanian constitution”, or that the “LGBTI communities’ sexual deviance violates (...) the state’s general system and decency.”

I express serious concern at the blocking of My.Kali by the Jordanian authorities, allegedly for not complying with the provisions of the Press and Publication Law requiring the obtention of a licence for operation by the Ministry of Information. I similarly express my deep concern at the ambiguity of this legal provision, which poses a severe burden over online media outlets without pursuing clearly legitimate objectives, and without providing sufficient safeguards, thus potentially allowing the authorities to discretionally limit freedom of online speech. Finally, I express concern that the blocking of My.Kali might be linked to the publication of LGBTI inclusive content, as suggested by the statements of the Minister of Interior and the Minister of Justice, which would represent a grave instance of discrimination on grounds of sexual orientation and gender identity.

While I do not wish to prejudge the accuracy of these allegations, they would appear to be in contravention of the right to equal rights and to freedom of opinion and expression, as established by articles 2 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Jordan on 28 May 1975. Article 2 determines that each State Party has an obligation to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 19, for its part, protects everyone’s right to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media. It is subject only to narrow exceptions that must be provided by law and necessary to protect one of an enumerated set of legitimate objectives.

As has been interpreted by the Human Rights Committee in its General Comment 34 (CCPR/C/GC/34), article 19’s guarantees extend especially to political discourse, commentary on one’s own and on public affairs, discussion of human rights and journalism, among others (paragraph 11). Article 19 also protects all forms of expression and the means of their dissemination, including all forms of audio-visual as well as electronic and internet-based modes of expression (paragraph 12). The UN General Assembly and Human Rights Council have each repeatedly emphasized that human rights apply both offline and online (A/RES/68/167 and A/HRC/RES/12/16). General Comment 34 also notes that “any restrictions on the operation of websites, blogs or any other internet-based (...) information dissemination system (...) are only permissible to the extent that they are compatible with paragraph 3”. It adds that “it is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government” (paragraph 43).

Under article 19(3), limitations may only be adopted when provided by law and where they are necessary for the respect of the rights or reputations of others, or the protection of national security, public order, public health or morals. It should be added that, under article's 19(3) requirement of legality, it is not enough that restrictions on freedom of expression are formally enacted as domestic laws or regulations. Instead, restrictions must also be sufficiently clear, accessible and predictable (CCPR/C/GC/34). The requirement of necessity also implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions "target a specific objective and do not unduly intrude upon the rights of targeted persons". The ensuing interference with third parties' rights must also be limited and justified in the interest supported by the intrusion (A/HRC/29/32). Finally, the restrictions must be "the least intrusive instrument among those which might achieve the desired result" (CCPR/C/GC/34).

In addition, it is pertinent to recall that last year, in its resolution 32/13, the Human Rights Council condemned the adoption of any measures intended to prevent or disrupt access to or dissemination of information online in violation of international human rights law, and called on all States to refrain from and cease such measures.

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

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for blocking My.Kali and explain how this action is compatible with Jordan's obligations under articles 2 and 19 of the ICCPR. Similarly, please explain the grounds under which My.Kali is considered to be an outlet that "engages in publication of news, investigations, articles, or comments that have to do with the internal or external affairs of the Kingdom", and thus should be subject to the requirement of licencing before the Ministry of Interior.
3. Please explain how the requirement of licencing before the Ministry of Interior under the Press and Publication Law is compatible with article 19 of the ICCPR and other relevant standards. In particular, please explain what the legitimate objective of this provision is, and how it is a necessary and proportional means to achieve such goal.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration

While awaiting a reply, I urge your Excellency's Government to take all necessary measures to ensure that the right to freedom of expression is fully respected in Jordan. Moreover, I request that your Excellency's Government adopt effective measures to prevent future restrictions on internet services.

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

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