

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to privacy; 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 USA 3/2019

28 March 2019

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to privacy; 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 35/7, 37/2, 32/19 and 32/4.

In this connection, we would like to bring to your attention information we have received concerning the availability on the US-based Google and Apple Application Stores of the Saudi mobile phone application “Absher”, allowing millions of private “male guardians” to technologically monitor and restrict women’s whereabouts and freedom of movement in Saudi Arabia.

According to the information received:

Absher is a mobile phone application that serves as part of the Government’s e-portal system, made available for download by the Ministry of the Interior at the application stores of Google and Apple. The application includes services such as the issuance of passports and birth certificates, paying for traffic fines, etc. Its official description says: “Absher has been designed and developed with special consideration to security and privacy of users’ data and communication. So, you can safely browse your profile or your family members, or labors working for you, and perform a wide range of eServices online.” According to the Ministry of the Interior, it has over 11 million users.

Among the services offered by Absher is to allow a male “guardian” to restrict a woman’s travel: he can decide the number and duration of her trips, as well as which airports she can use. He can also prohibit any kind of travel. The application alerts the male “guardian” via SMS when she has checked in at a particular airport or crossed an international border.

Making Absher available also constitutes a violation of women’s right to privacy, because it digitally enhances the ability of male “guardians” to arbitrarily monitor, restrict and control women’s whereabouts and freedom of movement without having to justify the need for such monitoring and restrictions.

Guardianship laws, based on conflicting interpretations of Shariah law, severely restrict women's enjoyment of their human rights to education, work, employment and access to justice, and seriously impair their freedom of movement, right to privacy and right to a family life, by making them conditional to the consent of a male "guardian" (spouse or other male family member).

In 2007, the Saudi Government issued Supreme Order No. 33322, instructing public institutions to refrain from requiring a woman to obtain a male guardian's permission in order to have access to services and procedures, except where justified by law. However, in most fields of public life women still need their "guardian's" permission. Women's freedom of movement is also conditioned by their "guardian", who needs to consent to their application for passports or other forms of official identification.

Furthermore, women are legally obliged to obey their "guardian", and can be arrested for not adhering to their obligation. When a woman is under arrest, she is only released to her "guardian". Women who want to get married require by law the consent of their male "guardian". By marrying a man, the woman is immediately subjected to his legal guardianship. In case of the man's death, it is the woman's son (or father, in his absence), who exercises the guardianship.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the negative impact that the application Absher available on Google and Appic application stores could cause on the enjoyment of women's human rights in Saudi Arabia. It is our firm belief that Absher is based on and result in discrimination against women and severely impair their enjoyment of human rights, including the rights to freedom of movement and right to privacy.

We would like to recall that your Excellency's Government has an obligation under international human rights law as well as under the UN Guiding Principles on Business and Human Rights to protect against human rights abuse by business enterprises domiciled in its country. This requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudication.

Furthermore, we wish to refer you to the 2018 report of the UN Special Rapporteur on violence against women on the topic of online violence against women (A/HRC/38/47), in which she recommends that information technology intermediaries should ensure data security and privacy, and ensure that the use of data is in compliance with international human rights law and has the fully informed consent of data providers.

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 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 highlight the steps that the Government has taken, or is considering to take, to protect against human rights abuse by business enterprises, including Apple and Google, and ensure that business enterprises domiciled in its territory respect human rights throughout their operations, including by carrying out human rights due diligence in line with the UN Guiding Principles on Business and Human Rights.
3. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure that business enterprises such as Google and Apple provide, or cooperate in the provision of, effective remedies to the affected women if they have caused or contributed to adverse human rights impact.

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

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(s) responsible for the alleged violations.

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

Please be informed that a letter on the same matter has also been sent to the Government of Saudi Arabia and the involved companies.

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

Surya Deva  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Joseph Cannataci

Special Rapporteur on the right to privacy

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

Ivana Radačić

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**

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19).

Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

In addition, the Committee on the Economic, Social and Cultural Rights in its General Recommendation No.24 (2017) states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.”.

We would also like to draw your Excellency Government attention to other international human rights standards, relevant for this case. Article 12 of the International Covenant on Civil and Political Rights, ratified by United States in 1992, sets out the right of everyone to liberty of movement.

In addition, we would like to bring to your attention the Article 12 of the Universal Declaration of Human Rights prohibits any arbitrary interference with a person’s privacy, family, home or correspondence. 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 proportionate to the aim pursued. Male guardianship does not pass the necessity and proportionality tests: it imposes severe restrictions on every woman’s sphere of privacy and autonomy by imposing them to constantly have a male companion in any public area, and by requiring them to ask for permission for a vast number of autonomous decisions that constitute basic freedoms, while its proponents having been able to justify a universal need for such restrictions other than social customs and tradition. 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.

The United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) requires putting an end to practices which discriminate against women, including the abolishment of the male guardianship system. In 2018, The Committee on the Elimination of all Forms of Discrimination against Women expressed its concern for the persistence of the male guardianship system, in particular its requirement that women have the permission of a male guardian in order to obtain a passport, travel abroad, study abroad on a government scholarship, choose their place of residence, gain access to health-care services and leave detention centres and State-run shelters. It stated that maintaining the guardianship system underscores the subordination

of women to a male guardian and undermines the rights and capacity of women and girls to develop their personal abilities and make free choices about their lives and life plans.

Furthermore, in her report to the Human Rights Council in 2018 on online violence against women (A/HRC/38/47), the Special Rapporteur on violence against women referred to General Assembly resolution 71/199, which recognizes that women were particularly affected by violations of the right to privacy in the digital age, and called upon all States to further develop preventive measures and remedies. The Special Rapporteur recommends that States should, in accordance with the principle of due diligence, ensure that regulations on Internet intermediaries respect the international human rights framework, including that with regard to business and human rights, which should be explicitly expanded to include women's human rights instruments that prohibit gender-based violence online.