

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 OTH 3/2019

28 March 2019

Dear Mr. Sundar Pichai,

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.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning the availability on the Google's application store of the Saudi mobile phone application "Absher", allowing millions of "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

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

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.

We express our concern about the negative impact that the application Absher available on Google store could cause on the enjoyment of women’s human rights in Saudi Arabia. It is our firm belief that they are 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 company has a responsibility to respect human rights as set forth by the UN Guiding Principle on Business and Human Rights. This responsibility requires that Google avoid causing or contributing to adverse human rights impacts through their own activities, and address such impact when they occur. Google should seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

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 explain how making Absher available on your application store is consistent with Google's human rights policy and general public commitment.
3. Please provide information as to what human rights due diligence steps, as set out in the United Nations Guiding Principles on Business and Human Rights, have been undertaken by your company to identify, prevent, mitigate, and remedy the impact that allowing the use of Absher application could have caused on women's enjoyment of human rights, including the right to privacy and freedom of movement.
4. Please advise how Google aims to provide for or cooperate in remediation of adverse impacts to women's human rights caused, or contributed to, by the availability of Absher application on your online store.
5. Please provide information as to how Google is acting in accordance with Principle 23 of the UN Guiding Principles, that is, it seeks to honour the principles of internationally recognized human rights when operating in a country which might curtail women human rights.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company 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.

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 subject has also been sent to the Governments of Saudi Arabia, United States and to the other company involved.

Please accept, Mr. Sundar Pichai, 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

In connection with the above alleged facts and concerns, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), after years of consultations involving governments, civil society and the business community.

The Guiding Principles have been established as the global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and / or willingness of States to meet their own human rights obligations and does not reduce those obligations. It is an additional responsibility to comply with national laws and regulations for the protection of human rights.

"The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."(Guiding Principle 13).

To fulfill their responsibility to respect human rights, business enterprises should have in place:

- “(a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”(Guiding Principles 15)

In this connection, we recall that Guiding Principle 22 states that: “[w]here business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”. The Guiding Principle 20 states that business should track the effectiveness of their response. Tracking should: a) be based in appropriate qualitative and quantitative indicators; and b) draw on feedback from both internal and external sources, including affected stakeholders. ^

The Guiding Principles 25 to 31 provide guidance to business enterprises and States on steps to be taken to ensure that victims of business-related human rights abuse have access to effective remedy.

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