

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

REFERENCE:
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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 situation of human rights defenders and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 34/18, 34/5 and 32/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations that the Ministry of Telecommunications has issued an order to block public networks from accessing an online dating application called "Grindr", which is most commonly used by gay individuals, as well as allegations of interferences by Lebanese General Security with events related to sexual orientation and gender identity.**

According to the information received:

On 29 September 2018, the Lebanese General Security attempted to shut down the annual Networking, Exchange, Development, Wellness and Achievements (NEDWA) Conference organised by the Arab Foundation for Freedoms and Equality (AFE), a group that works on the equal enjoyment of human rights by lesbian, gay, bisexual, transgender people. It has been alleged that the General Security took the details of all conference participants from the hotel registry where the conference was being held, including participants from countries in which same sex relations and gender identity and / or expression are criminalised.

The four-day NEDWA conference, which includes workshops on human rights, advocacy, movement-building, health and the arts, has taken place annually in Lebanon since 2013 and sees inter alia the participation of people of diverse sexual orientations and gender identities. General Security's interference with the conference followed public statements from the Muslim Scholars Association, a group of religious leaders that frequently condemns events related to sexual orientation and gender identity, accusing NEDWA organisers of promoting homosexuality and drug abuse. The association called for the organisers' arrest and the cancellation of the conference on the grounds of "incitement to immorality." On the second day of the conference, AFE executive director, George Azzi, refused to sign a pledge to cancel the 2019 event and any similar future events. Accordingly, the General Security forced "Le Crillon Hotel" not to

host the conference, which drove organisers to move it to another hotel, where the conference took place despite the pressure.

Since the NEDWA conference was held in September 2018, it has been reported that General Security has prevented at least three of the conference attendees from re-entering Lebanon, without providing the individuals with any explanation.

Lebanese General Security Forces and Internal Security Forces have repeatedly interfered with human rights events related to gender and sexuality based on morality claims. In August 2017, General Security Forces ordered a hotel to cancel a human rights workshop organised by AFE. In October 2018, the gender and sexuality club at the American University of Beirut (AUB) was obliged to cancel a speed dating event for LGBT community (called 'queer dating') further to complaints and pressure raised by Dar Al Fatwa, Lebanon's Sunni authority.

In addition to the above, it has been alleged that on 18 January 2019, "Grindr", a popular dating app used by gay men, was blocked on 3G and 4G mobile networks. The application has also been blocked on all public or State-owned networks, leaving the application accessible only on private networks.

It has been reported that the Ministry of Communications ordered the blocking of the application for security reasons. However, there has been no official statement from the Ministry of Communications providing an explanation for the blocking. There has also been no indication for how long this blocking will remain in effect. Online dating applications that do not specifically cater to LGBTQ+ individuals have not been blocked.

Under Article 126 of the E-transactions and Data Protection Law, the Public Prosecutor may decide, in a criminal investigation, "to temporarily suspend certain electronic services, block websites or freeze accounts in such websites for no more than thirty days."

Under Article 125, the suspension of electronic services and website blocking beyond the thirty-day period requires judicial approval. The court presiding over the case can issue a decision to suspend or block electronic services and websites if they are "associated with crimes relating to terrorism, child pornography, prohibited gambling, organized electronic fraud, money laundering, crimes against internal and external security or crimes of compromising IT system integrity such as spreading viruses."

While we do not wish to prejudge the accuracy of these allegations, we express grave concern about the discriminatory restrictions on freedom of expression and association, based on sexual orientation and gender identity, and we question the legality of such infringement. We also express our concern that the collection of personal data by Lebanese General Security could have endangered the safety of NEDWA conference

participants, including in their respective countries, in some of which same sex relations and / or certain forms of gender identity are criminalised.

We further would like to express our concern at the blocking of “Grindr”. We are concerned that the blocking of the application is not based on a judicial approval, which is a requirement for the suspension of electronic services longer than thirty days under the E-transactions and Data Protection Law. The failure to explain the legal basis and reasons for the blocking or how long it will last reinforces our concern that the blocking is not “provided by law.” The lack of transparency, accountability or legal justification also raises concern that the blocking is unnecessary and disproportionate. Given the demographics of “Grindr”’s user base, we are particularly concerned that the blocking is discriminatory and will disproportionately impair the ability of gay individuals to communicate with each other.

We would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of expression, which includes the right to seek, receive and impart information of all kinds and through any form of media, in accordance with fundamental principles set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Lebanon on 3 November 1972.

As highlighted by the Human Rights Committee in their interpretation of article 19 of the ICCPR, “[a]ny restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with [article 19(3) of the ICCPR]” (CCPR/C/GC/34). In light of these criteria, the Human Rights Committee has found that “generic bans on the operation of certain sites and systems are not compatible with paragraph 3.” (*Id.*) The Human Rights Council has also “[c]ondemn[ed] unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and call[ed] on all States to refrain from and cease such measures.” (A/HRC/32/13).

For an elaboration of the international legal standards referenced above, please refer to the **Annex on Reference to international human rights law** attached to this letter.

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 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 indicate what measures have been taken or are envisaged to ensure that people in Lebanon are not discriminated against on the basis of their sexual orientation or gender identity and to guarantee their legitimate right

to freedom of expression and opinion, as well as their freedom of assembly and association.

3. Please indicate how the interference and the prohibition of events, related to discrimination and violence based on sexual orientation and gender identity, is compatible with Lebanon's obligations under international human rights law.
4. Please provide information about the legal basis for blocking "Grindr", including reasons for the blocking, and how the blocking is compatible with Lebanon's obligations under international human rights law.
5. If the blocking was ordered for security reasons, please specify the security risks and concerns associated with the use of "Grindr".
6. Please provide information about the current status of the blocking and whether it has been lifted (or when it will be lifted).
7. Please provide additional information on how this ban is in accordance with domestic law, including Articles 125 and 126 of the E-transactions and Data Protection Law.
8. Please indicate measures taken to fully decriminalise same sex relations and to include the grounds of sexual orientation and gender identity as prohibited grounds for hate speech, incitement to discrimination, and incitement to violence and hate crimes.

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.

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to recall articles 2, 17, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Lebanon is party since 3 November 1972. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

We would particularly like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of expression, which includes the right to seek, receive and impart information of all kinds and through any form of media, in accordance with fundamental principles set forth in article 19 of the ICCPR.

Article 19(1) of the ICCPR protects the right to "hold opinions without interference." Article 19(2), which protects the right to freedom of expression, states that this right shall include the "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 his [or her] choice." Under article 19(3), any restrictions on freedom of expression must be "provided by law", proportionate, and necessary for "respect of the rights and reputations of others", "for the protection of national security or of public order, or of public health and morals". The General Assembly, the Human Rights Council and the Human Rights Committee have concluded that permissible restrictions on the Internet are the same as those offline. (A/68/167, A/HRC/26/13, CCPR/C/GC/34)

Under the article 19(3) requirement of legality, it is not enough that restrictions on freedom of expression are formally enacted as domestic laws or regulations. 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).

It follows that "[a]ny restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with [article 19(3) of the ICCPR]." (CCPR/C/GC/34). In light of these criteria, the Human Rights Committee has found that "generic bans on the operation of certain sites and systems are not compatible with paragraph 3." (*Id.*) The Human Rights Council has also "[c]ondemn[ed] unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and call[ed] on all States to refrain from and cease such measures." (A/HRC/32/13).

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has emphasized that States have obligations to, inter alia, protect rights to freedom of thought and expression, association and peaceful assembly without discrimination on the grounds of sexual orientation or gender identity. To that end, they should review and repeal discriminatory provisions in domestic legislation that have a disproportionate impact on the exercise of these rights by LGBT persons and others advocating for their rights. The High Commissioner for Human Rights has recommended that States repeal laws that impose discriminatory restrictions on freedom of expression, association and assembly and ensure that antidiscrimination legislation includes sexual orientation and gender identity among prohibited grounds (A/HRC/29/23, para. 18 and 79(b)(c)).

We would like to recall that, in a joint statement on free expression and association, UN and regional human rights experts stated that they “categorically reject arguments that such restrictions to the rights of LGBTI people are necessary to protect public morals, health or the well-being of vulnerable people.”¹ The right to peaceful assembly has been reaffirmed by a number of Human Rights Council resolutions as well, including resolutions 15/21, 21/16 and 24/5. Furthermore, in its resolution 24/5, the Human Rights Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote those rights. This has been reaffirmed in the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in 2014 (A/HRC/26/29, para 22).

While the right to freedom of peaceful assembly is not an absolute right under international human rights law, and it ‘can be subject to certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others’ (Human Rights Council resolution 15/21, OP 4); these restrictions should be the exception and not the rule.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to article 1, 2, and 6 of the Declaration

¹ Joint statement by UN Special Rapporteurs on freedom of opinion and expression, freedom of peaceful assembly and of association, right to health, and human rights defenders African Commission on Human and Peoples’ Rights, Special Rapporteur on Human Rights Defenders in Africa, Inter-American Commission on Human Rights and OSCE Representative on Freedom of the Media, “Free expression and association key to eliminating Homophobia and Transphobia” (May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E>

which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring your Excellency's Government's attention to its article 17, which provides that in the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

We further would like to draw attention to the principles of equality and non-discrimination as part of the foundations of the rule of law and human rights. Sexual orientation and gender identity are prohibited grounds of discrimination under international law. Under article 1 of the Universal Declaration of Human Rights, '[a]ll human beings are born free and equal in dignity and rights', and '[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, 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 2 of the Declaration). Similarly, articles 2/2 and 26 of the ICCPR provided for the right to non-discrimination and the State obligation to adopt laws that give effect to the rights guaranteed under the Convention. The Human Rights Committee also found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3). In its General Comment No. 34, the Human Rights Committee stated that "the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition". Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination (CCPR/C/GC/34, paragraph 32).

Moreover, in accordance with article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Lebanon on 3 November 1972, everyone has the right to take part in cultural life. As stressed by the Committee on Economic, Social and Cultural Rights, the right to take part encompasses the right to participate, access and contribute to cultural life. Participation covers in particular the right of everyone — alone, or in association with others or as a community — to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one's own cultural practices and to express oneself in the language of one's choice. Everyone also has the right to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity. Contribution to cultural life refers to the

right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community (E/C.12/GC/21, paras. 14 and 15).

Finally, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 5 (a), of the declaration establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully. Furthermore, article 7 provides for the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.