

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion

Ref.: AL DEU 3/2022
(Please use this reference in your reply)

24 March 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 43/16, 51/8 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged intimidation of and cyber-attacks against Mr. Mark Somos, following his communications with various UN human rights bodies regarding alleged human rights violations committed by the State of Qatar against his clients.

Mr. **Mark Somos**, a dual US and Hungarian national, is a human rights lawyer based in Heidelberg, Germany, and Senior Research fellow at the Max Planck Institute for Comparative Public Law and International Law. He has served as counsel in proceedings in front of the International Court of Justice and is the director of Just Access, a non-governmental organisation based in Germany. He has also represented victims of human rights violations in a number of proceedings before UN bodies and human rights mechanisms. In this capacity, Mr. Somos submitted complaints and individual communications regarding alleged abuses against his clients by the State of Qatar.

According to the information received:

In December 2019, a series of cyberattacks began against Mr. Somos's Google accounts and lasted until February 2020, including attempts to access his accounts, and at least one occasion in which an unauthorised device accessed his Gmail account.

Between 8 December 2019 and 19 January 2020, an Android device using the reference "D13" accessed or attempted to access Mr. Somos's Google account, in at least one instance from a location close to his office in Heidelberg.

On 24 January 2020, Mr. Somos received a security alert from Google, informing him that the account recovery phone number and recovery email linked to his Gmail account had been changed by someone using a phone number with a Qatar telephone prefix (+974); Google had masked the rest of the number in its alert.

On 3 February 2020, an individual using an IP address understood to be based in Kerala, India attempted to hack his Gmail account. On the same day, an unknown individual or group using a Windows system had accessed his Gmail account utilising an IP address understood to be based in Hong Kong or

Singapore.

These cyber-attacks came less than two months after Mr. Somos submitted complaints and urgent appeals to the UN Human Rights Council, the UN Working Group on Arbitrary Detention (WGAD) and other UN human rights mechanisms regarding the detention of Sheikh Talal bin Abdul-Aziz bin Ahmed bin Ali Al-Thani, a member of the Qatari royal family, and alleged abuses against his wife and children by the State of Qatar.

In October 2019, Mr. Somos filed a complaint to the UN Human Rights Council on behalf of the wife and four children of Sheikh Talal Al-Thani, who have been detained in Qatar since 2013.

During the same period Mr. Somos also submitted complaints to the UN Special Rapporteur on Torture about psychological torture by the State of Qatar of Mrs. Arian and her children in the form of threats and intimidation and forced family separation. He also wrote to the Working Group on Discrimination against Women and Girls, about discrimination against Mrs. Arian with respect to her rights to property and adequate housing in Qatar. Furthermore, Mr. Somos also submitted communications on behalf of Sheikh Talal Al-Thani to the UN Special Rapporteur on the independence of judges and lawyers, requesting his access to a lawyer of his choice, and to the Special Rapporteur on the rights of person with disabilities, highlighting his treatment in detention that caused him disabilities.

On 17 December 2019, Mr. Somos submitted an urgent appeal to the Working Group on Arbitrary Detention (WGAD) in relation to Sheikh Talal Al-Thani. The WGAD transmitted a communication to the Government of Qatar in April 2021, to which it has received no reply. The WGAD made public its opinion concerning Sheikh Talal Al-Thani on 18 March 2022, in which it concluded that his arrest and detention were arbitrary, under Category I, III and that he was deprived of his liberty on the grounds of discrimination, namely his status as a member of the royal family.¹

On 19 October 2020, the Special Rapporteur on torture, the Working Group on Arbitrary Detentions and the Special Rapporteur on the right to health sent a joint letter to the Government of Qatar, expressing their concerns about the charges, judicial proceedings and decisions against Sheikh Talal Al-Thani, as well as about the use of intimidation against him and his family, and about his physical and mental integrity due to the conditions of detention and the denial of appropriate medical care.² On 15 January 2021, the Government responded to mandate-holders providing information about the criminal charges against Sheikh Talal Al-Thani and his conditions of detention.³

During this period, the NGO Just Access made joint public submissions to different UN human rights mechanisms, such as the treaty bodies, and Mr. Somos participated in NGO sponsored side-events at the margins of the Human Rights Council.

¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/286/66/PDF/G2228666.pdf?OpenElement>,

² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25631>

³ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35907>

Mr. Somos has reported the hacking attempts of his Gmail accounts and those of Mrs. Arian to the German police and security authorities, and her case is currently under examination by the prosecution.

On 27 January 2020 Mr. Somos wrote to Google, the European and Middle Eastern operations of which are run out of Dublin, Ireland. He provided background on the cyberattacks and requested further related information from Google.

On 29 January 2020, Mr. Somos received a reply from Google stating that a court order would be required in order for the company to comply with his request.

On 4 February 2020, Mr. Somos's solicitors wrote to Google with information on the two further breaches that occurred on 3 February 2020, as cited above. Google responded that it would only provide information following a court order. Mr. Somos subsequently presented his case to the Irish High Court against Google as Defendant, arguing that the company had become mixed up in wrongdoing, possibly inadvertently, and may have further information that could assist in identifying the hacking perpetrator. He requested a Court order available in Ireland and known as a *Norwich Pharmacal* order, for the disclosure of information.

Without prejudging the accuracy of these allegations, we express our deep concern at the intimidation and cyberattacks on his Gmail and Google account which may constitute acts of intimidation or reprisal against Mr. Somos, which appear to be directly linked to his legitimate work as a human rights defender including his cooperation with the UN and its mechanisms in the field of human rights. We are also concerned that they would have caused considerable distress to Mr. Somos, not only as a breach of his privacy and personal data rights but also his confidential activities as a lawyer and human rights defender, and the victims that have potentially been in communication with him. In this regard, we highlight that privacy functions as a gateway right to the protection of a host of other fundamental rights including non-derogable rights. We are further concerned about the chilling effect the alleged intimidation, cyber-attacks and breaches of privacy rights can have on the right to freedom of expression, including the freedom to seek, receive and impart information.

Regarding allegations indicating that the violations could be an act of intimidation and reprisals against those who cooperate with the UN in the field of human rights, we would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, 42/28 and 48/17 which reaffirmed the right of everyone, individually or in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council urged States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts.

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 provide any relevant information on whether any investigations, prosecutions or criminal proceedings have been initiated in connection with the alleged cyber attacks against various accounts of Mr. Somos.
3. Please provide information on measures taken to ensure the physical and psychological integrity of Mr. Somos and whether any protection measures have been taken or are envisaged.

We would appreciate receiving a response within 60 days. Past 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.

In light of the allegations of reprisals for cooperation with the United Nations on human rights in relation to minority rights and concerns, we reserve the right to share this communication – and any response received from Your Excellency's Government - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official designated by the Secretary-General to lead the efforts within the United Nations system to address this issue.

Please note that a letter regarding the aforementioned allegations will also be sent to the Government of the State of Qatar and to Google LLC.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified on 21 June 1995.

In particular, we refer your Excellency's Government to articles 2(3), 17, 19 and 22, of the ICCPR which guarantee the rights to privacy, to freedom of opinion and expression, to freedom of association and to participate in political and public affairs, respectively and to the right to effective remedy.

We would like to draw your attention to the right to privacy, which is enshrined in article 12 of the Universal Declaration of Human Rights and article 17 of the ICCPR, which state that no one should be subjected to "arbitrary or unlawful interference with his privacy, family, home or correspondence". Article 17(1) of the ICCPR provides for the rights of individuals to be protected, inter alia, against unlawful or arbitrary interference with their privacy and correspondence, and provides that everyone has the right to the protection of the law against such interference. "Unlawful" means that no interference may take place except in cases envisaged by the law which in itself must comply with provisions, aims and objectives of the ICCPR. Arbitrariness "is not confined to procedural arbitrariness, but extends to the reasonableness of the interference with the person's rights under article 17 and its compatibility with the purposes, aims and objectives of the Covenant" (CCPR/C/59/D/558/1993).

UN resolution A/HRC/RES/34/7 recognises "that the right to privacy can enable the enjoyment of other rights and the free development of an individual's personality and identity, and an individual's ability to participate in political, economic, social and cultural life, and noting with concern that violations or abuses of the right to privacy might affect the enjoyment of other human rights, including the right to freedom of expression and to hold opinions without interference".

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes "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 choice". Under article 19(3) of the ICCPR, any restriction on the right to freedom of expression must be: (i) provided by law; (ii) serve a legitimate purpose; and (iii) be necessary and proportional to meet the ends it seeks to serve. As such, article 19, provide protection for, inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights, journalism, among others (Human Rights Committee, general comment no. 34, para. 11). While all restrictions must comply with the requirements of necessity and proportionality, the penalisation of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression (CCPR/C/GC/34 para. 42). In this connection, we recall that the Human Rights Council, in its Resolution 12/16, called on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or

political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. We would like to remind your Excellency's Government of its positive obligation as required by article 2 of the ICCPR, to ensure that they are fully discharged not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities (general comment 31, para 8).

Article 22 of the ICCPR guarantees the right to freedom of association. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued.

We would like to further refer to general comment 36 of the Human Rights Committee. The Committee affirmed in this Comment that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats, including those emanating from private persons and entities. The duty to protect the right to life requires States parties to adopt special measures of protection for persons in vulnerable situations who have been put at particular risk because of specific threats, including human rights defenders. According to the Committee, States parties must respond urgently and effectively to protect persons under specific threat, including by adopting special measures such as the provision of 24-hour police protection (paras. 22, 25 and 27). States parties may violate article 6 even if such threats and situations do not result in loss of life (para. 7).

Finally, we wish to recall that in accordance with principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court state, and as reiterated in the jurisprudence of the Working Group on Arbitrary Detention, legal counsels are to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.