

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 and expression

Ref.: AL OTH 19/2023
(Please use this reference in your reply)

24 March 2023

Dear Mr. Pichai,

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.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on the information that we have received.¹ Special procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals and other communications. The intervention can 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 the attention of your company 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.

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

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.²

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.³ 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.⁴

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.

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

² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/286/66/PDF/G2228666.pdf?OpenElement>.

³ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25631>

⁴ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35907>

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.

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 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.

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 company - 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 the Government of the Federal Republic of Germany.

Please accept, Mr. Pichai, 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 draw the attention of Google LLC to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

As set forth in 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), all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. Moreover, the commentary of the principle 11 states that "business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes".

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (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).

Principles 17-21 lay down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "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 Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

We would like to refer you 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.

Furthermore, we would like to bring your attention to the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; and
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.
- article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.