

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 Special Rapporteur on the right to privacy

REFERENCE:
AL SAU 10/2019

5 July 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 extrajudicial, summary or arbitrary executions; 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 Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 35/7, 35/15, 34/18, 34/5 and 37/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the surveillance, intimidation and harassment against Mr. **Omar Abduaziz Alzahrani** in possible reprisal for his work in the defense of human rights and his criticism of the Government of Saudi Arabia.

According to the information received:

Mr. Omar Abduaziz Alzahrani is a Saudi Arabian human rights defender residing in Canada since 2009. After arriving in Canada to pursue his university studies, Mr. Alzahrani became increasingly active in social media expressing his criticism about policies of the Government of Saudi Arabia and of the impact it has on human rights. As he gained notoriety, the Government of Saudi Arabia asked Mr. Alzahrani in 2013 to cease his public comments against the Government.

Mr. Alzahrani ignored the Government's request, which caused the withdrawal of the Government's sponsorship that he was receiving for his studies in Canada. The Government requested him to return to Saudi Arabia, but he refused and obtained political asylum in Canada in 2014.

Two officials of the Government of Saudi Arabia visited Mr. Alzahrani in May 2018 and invited him to return to Saudi Arabia in order to assist the Government's efforts for social and political reform. Alzahrani rejected the offer.

On 23 June 2018, Mr. Alzahrani received an SMS related to an online purchase he had made hours earlier. Clicking on the link contained in the message caused Mr. Alzahrani's mobile phone to download the spyware application Pegasus, which gave the Government of Saudi Arabia full access to Mr. Alzahrani's phone.

Pegasus allowed the Government to survey all of Mr. Alzahrani's communications, data, microphone and camera. The software was developed and is sold by Israeli company NSO Group.

In August 2018, Citizen Lab, a civil society organization based in Toronto, Canada, specialized in surveillance against human rights defenders, informed Mr. Alzahrani that his phone was infected by Pegasus. The Royal Canadian Mounted Police is currently investigating the case.

Mr. Alzahrani regularly communicated with Mr. Jamal Khashoggi, a Saudi Arabian journalist killed at the Consulate of Saudi Arabia in Istanbul on 2 October 2018, to discuss common journalistic activities. Mr. Khashoggi was the object of an urgent appeal to the Government of Saudi Arabia (SAU 12/2018) on 8 October 2018. Because the Pegasus software gave the Government of Saudi Arabia access to Mr. Alzahrani's communications, the professional interaction online between Mr. Alzahrani and Mr. Khashoggi may have been surveyed by the Government.

Serious concern is expressed over what appears to be illegal surveillance, harassment and intimidation against Mr. Alzahrani's in order to dissuade him from continuing his human rights criticism of the Government of Saudi Arabia.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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 any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the purchase of spyware, including Pegasus, developed by NSO Group, and its use targeting journalists, human rights defenders or activists, in or outside the territory of Saudi Arabia.
3. Please provide detailed information on any investigation which has been made into allegations of surveillance, intimidation and harassment against Mr. Alzahrani.

4. Please provide any information available on pending investigations against Mr. Alzahrani or members of his family, along with the details of any charges against him.
5. Please indicate the steps that the Government has taken, or is considering to take, in order to guarantee the rights to privacy and to freedom of expression of Saudi Arabian journalists, human rights defenders and activists.
6. Please indicate what measures have been taken to ensure that human rights defenders and journalists in Saudi Arabia, including Saudi-Arabian citizens living abroad, are able to carry out their legitimate work in a safe and enabling environment without fear of threats, harassment or acts of intimidation directed against them or their family members.
7. Please provide information on steps that your Excellency's government has taken, or is considering to take, to protect against human rights abuses by business enterprises, in line with the United Nations Guiding Principles on Business and Human Rights.

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.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Joseph Cannataci
Special Rapporteur on the right to privacy

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 12 and 19 of the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948 (UDHR), which guarantee the rights to not be subjected to arbitrary or unlawful interference with one's family or home and to freedom of opinion and expression.

We would like to refer to article 12 of the UDHR, which protects the right to privacy and provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence. In relation to the facts set out above, it is pertinent to recall that the Human Rights Committee affirmed in its Concluding Observations to the report presented by Bulgaria (CCPR/C/BGR/CO/3, para. 22) that, in the context of the right to privacy, the protection of "correspondence" includes telephone communications. The General Assembly also emphasized that unlawful or arbitrary surveillance as a highly intrusive act, which violates the right to privacy and may contradict the tenets of a democratic society' (A/RES/68/167). We also refer to General Assembly's resolution 73/179, which noted that surveillance of digital communications must be consistent with international human rights obligations and must be conducted on the basis of a legal framework, which must be publicly accessible, clear, precise, comprehensive and non-discriminatory.

In his report on online content regulations, the Special Rapporteur on the rights to freedom of opinion and expression noted that "While these principles apply in all cases of targeted surveillance, they have particular force when expression in the public interest is implicated. Targeted surveillance creates incentives for self-censorship and directly undermines the ability of journalists and human rights defenders to conduct investigations and build and maintain relationships with sources of information" (A/HRC/38/35/Add.2, para. 53). In his report on surveillance and human rights, the Special Rapporteur on the rights to freedom of opinion and expression called upon States to "impose an immediate moratorium on the export, sale, transfer, use or servicing of privately developed surveillance tools until a human rights-compliant safeguards regime is in place" (A/HRC/41/35 para. 66).

Concerning the allegations that Mr. Alzahrani has been a victim of surveillance, harassment and acts of intimidation as a result of his legitimate work reporting on human rights related issues, 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.

Furthermore, we wish to refer to article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

We would also 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 and/or jurisdiction. 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).

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.