

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the right to privacy

Ref.: AL ISR 5/2023

(Please use this reference in your reply)

21 June 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 the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 52/4, 44/15, 52/9, 50/17 and 46/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received in relation to the use of surveillance technology marketed as Pegasus spyware by the NSO Group, a company domiciled in the State of Israel, to surveil human rights defenders.

Ms. María Luisa Aguilar Rodríguez and **Mr. Jorge Santiago Aguirre Espinosa** are Mexican human rights defenders and members of the Centro de Derechos Humanos Miguel Agustín Pro Juárez A.C. (Centro Prodh), an association founded in Mexico in 1988 to promote and defend the human rights of individuals in precarious or vulnerable situations, and to contribute to the building of a just, equitable and democratic society in México. Centro Prodh works with indigenous people, women, migrants, and victims of social repression. The association has held Consultative Status with the Economic and Social Council of the United Nations since 2001 and has been an Accredited Organization with the Organization of American States since 2004. Ms. Aguilar Rodríguez and Mr. Aguirre Espinosa are respectively Coordinator of the International Area and Director of the Centro Prodh.

Allegations concerning the reported use of the Pegasus spyware developed by the NSO Group to surveil, intimidate and harass journalists and human rights defenders were referred to your Excellency's Government through two previous communications sent by several Special Procedures mandate holders on 5 August 2021 (AL ISR 7/2021) and 27 December 2021 (AL ISR 11/2021), respectively. We regret not receiving a reply to either of these communications and remain gravely concerned at what appears to be a trend continuing with impunity, considering the new allegations detailed below.

According to the information received:

Between June and September 2022, Ms. Aguilar Rodríguez and Mr. Aguirre Espinosa's mobile devices were "infected" by Pegasus spyware on at least five occasions. The infections were reportedly confirmed by researchers at the University of Toronto's Citizen Lab after Ms. Aguilar Rodríguez and

Mr. Aguirre Espinosa received alerts from Apple about possible acts of illegal intrusion into their devices by "state-sponsored attackers."

The digital attacks would have taken place on 22 and 23 June 2022, 13 July 2022, and on 24 and 29 September 2022. At the time of the alleged infections, the human rights defenders and the Centro Prodh were denouncing alleged human rights violations perpetrated by the Mexican Armed Forces and demanding accountability in emblematic cases, in particular with reference to the disappearance of the 43 Ayotzinapa students and cases from the 'Dirty War', as well as the murder of two Jesuit priests in Cerocahui, Chihuahua.

The Ministry of National Defense (SEDENA) would be the only Mexican institution with a current contract for the use of the spyware that was allegedly used to target the devices of the two human rights defenders. It was recently made public that this dynamic would also have affected at least one official in charge of human rights issues in the federal government.

Without intending to prejudge the information received, we express our deep concern at the alleged deployment of spyware developed by the NSO Group, a company domiciled in Israel to surveil Ms. Aguilar Rodríguez and Mr. Aguirre Espinosa in apparent reprisal for their human rights work. If confirmed, such surveillance would be a violation of their rights to privacy and freedom of opinion and expression, as well as an attack on their human rights work.

Our serious concern about the information received is aggravated by the fact that the alleged use of spyware against defenders on this occasion would not be the first instance in which human rights defenders have been subject to surveillance using spyware developed by the NSO Group (see AL ISR 7/2021). We underline our concern at the impunity that has prevailed with respect to these previous alleged attacks and insist on the importance and responsibility of the State of Israel to ensure that products developed by companies domiciled in its territory are not used to infringe upon human rights. In this regard, we repeat our concerns, as communicated to your Excellency's Government in AL ISR 7/2021, that the information received would indicate that the Pegasus software was supplied by the NSO Group to State agencies that do not have a track record of respecting human rights.

We express further concern that, due to the nature of the spyware used, and the difficulty in detecting attacks perpetrated with it, the alleged surveillance of Ms. Aguilar Rodríguez and Mr. Aguirre Espinosa may be only one of many instances in which the software has been deployed, successfully or otherwise, to target human rights defenders. This is particularly important in light of the chilling effect that the alleged use of spyware against human rights defenders can have on the overall freedom of expression, freedom of peaceful assembly and of association to preserve their civic space.

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 or comments regarding the information described above.
2. Please provide information on the measures your Excellency's Government has taken, or is considering taking, to prevent and protect against human rights abuses by companies, and in particular by products and services of the NSO Group products and services, consistent with the UN Guiding Principles.
3. Please provide information on steps that your Excellency's Government has taken, or is considering to take, to prevent and protect individuals and groups subjected to its jurisdiction against human rights abuses by business enterprises, and in particular by the products and services of the NSO Group, in line with the UN Guiding Principles. Please provide details on the way the expectation to respect human rights for all companies domiciled within the State of Israel territory and/or jurisdiction in all their activities was communicated and monitored. This may include measures, inter alia, to conduct human rights due diligence, consult meaningfully potentially affected stakeholders, and remediate any negative impacts.
4. Please provide detailed information on the laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, especially the protection of fundamental freedoms, and how they have been used towards the NSO Group, in line with the UN Guiding Principles. Please also provide information whether your Government is considering to enact any mandatory human rights due diligence legislation.
5. Please kindly provide information on how your Excellency's Government ensures that business enterprises under its jurisdiction do not impact negatively the work of human rights defenders, specifically in light of the recommendations provided to States in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on ensuring respect for human rights defenders (A/HRC/47/39/Add.2) recalling for States and business the normative and practical implications of the UN Guiding Principles in relation to protecting and respecting the vital work of human rights defenders, their freedom of expression and of association.
6. Please provide information regarding the measures that your Excellency's Government is taking or considering to take to ensure that those affected by the activities of the NSO Group have access to effective remedies, as per the UN Guiding Principles.

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.

Pending your reply, we would like to urge Your Excellency's Government to take all necessary measures to protect the rights and freedoms of the above-mentioned persons and to investigate, prosecute and impose appropriate sanctions on any person responsible for the alleged violations. We would also like to urge you to take effective measures to prevent such events, if they have occurred, from recurring.

We inform you that a letter on this subject has also been sent to the company that marketed the spyware, the NSO Group, as well as to the Government of Mexico.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ana Brian Nougrères
Special Rapporteur on the right to privacy

Annex

Reference to international human rights law

In relation to the facts and concerns detailed above, we again draw your government's attention to the international standards and norms applicable to them.

We would like to refer to the International Covenant on Civil and Political Rights (ICCPR) ratified by Israel on 3 October 1991, and in particular to its articles 17, 19 and 22, which establish the rights to privacy, freedom of opinion and expression, and freedom of association.

Article 17 of the ICCPR, which establishes the right to privacy, states that no individual shall be subjected to arbitrary or unlawful interference with his or her privacy and correspondence, and that everyone has the right to the protection of the law against such interference or attack. Article 19(3) states that any restriction on freedom of expression must be expressly prescribed by law and be necessary to ensure respect for the rights or reputations of others or for the protection of national security, public order (*ordre public*) or public health or morals. We would like to reiterate General Comment No. 34 of the Human Rights Committee, which stated that article 19(3) of the Covenant can never be used to justify the silencing of human rights activism (CCPR/C/G/34). Lastly, article 22(2) stipulates that "no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

We would also like to refer to Human Rights Council resolution 34/7 on "The right to privacy in the digital age", which states that "unlawful or arbitrary surveillance and/or interception of communications, and illegal or arbitrary collection of personal data, by constructing highly intrusive acts, violate the right to privacy and may interfere with other human rights, including the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association, and may be contrary to the precepts of a democratic society." The resolution highlights that "in many countries, individuals and organizations dedicated to promoting and defending human rights and fundamental freedoms frequently face threats, harassment and insecurity, as well as unlawful or arbitrary interference with their right to privacy, as a result of their activities." The same resolution calls upon all States, *inter alia*, to "take measures to put an end to violations of the right to privacy and to create the necessary conditions to prevent them, such as ensuring that relevant national legislation complies with their obligations under international human rights law;" and "to provide access to an effective remedy to individuals whose right to privacy has been violated through surveillance, illegal or arbitrary, in accordance with international human rights obligations."

We would also like to recall that articles 17 and 19 of the ICCPR are highly linked, since the right to privacy is an essential requirement for the realization of the right to freedom of expression (see A/RES/68/167, A/HRC/27/37, A/HRC/23/40 and A/HRC/29/32). We would also like to place particular emphasis on what was said by the former Special Rapporteur on the promotion and protection of the right to freedom

of opinion and expression in his report A/HRC/23/40, to the effect that: "communications surveillance should be considered a highly disturbing act that could involve an interference with the rights to freedom of expression and privacy, and that it undermines the foundations of a democratic society. Legislation should stipulate that communications surveillance by the State should only be carried out in exceptional situations and only under the supervision of an independent judicial authority. Legislation should include safeguards concerning the nature, scope and duration of possible measures, the grounds for providing them, the authorities competent to authorize and supervise them, and the type of remedies provided for in national law" (para. 81). The Special Rapporteur has called on 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).

Furthermore, we would like to draw the attention of Your Excellency's Government to the fundamental standards set forth in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In particular, we would like to refer to articles 1 and 2, which state that everyone has the right to promote and pursue the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has the primary responsibility and duty to protect, promote and fulfil all human rights and fundamental freedoms and article 6, which establishes the right to obtain and possess information on human rights, as well as the right freely to publish or impart opinions, information and knowledge relating to human rights, to discuss whether human rights are observed and to bring such information to the attention of the public.

We would like to refer to the report of the former Special Rapporteur on the situation of human rights defenders presented at the end of his official visit to Mexico in 2017 (A/HRC/37/51/Add.2) in which he stated that "The secret and unsupervised surveillance of human rights defenders is a new problem of concern, especially in the context of weak judicial oversight of the collection, storage and sharing of personal data obtained by digital surveillance methods. After the visit, federal authorities and some state authorities were accused of acquiring and using the Pegasus spyware to monitor politicians, human rights defenders, journalists and lawyers through their cell phones. The Special Rapporteur reiterates his joint call with other UN experts in July 2017 for an independent and impartial investigation into the alleged illegal surveillance, which constitutes a serious violation of the rights to privacy, freedom of expression and association (para. 41). It urged the authorities to develop "protocols for investigating online crimes committed against human rights defenders and to ensure that mechanisms are in place to prevent illegal online surveillance" (recommendation F, p. 21).

In addition, the Special Rapporteur on the rights to peaceful assembly and association has emphasized in various reports the importance of digital technology to exercise the mentioned rights, and in his report on freedom of assembly and association in the digital age, he detailed that "those [...] technologies are important tools for organizers who seek to mobilize a large group of people in a prompt and effective manner, and at little cost, and also serve as online spaces for groups of people that are marginalized by society and are confronted with restrictions when operating in physical spaces" (A/HRC/41/41 para. 11).

We would also like to highlight the United Nations Guiding Principles on Business and Human Rights (guiding principles), which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultation with governments, civil society and the business community. The guiding principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These Guiding Principles are based on the recognition of:

- a) "States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
- b) The role of corporations as specialized organs of society that perform specialized functions and must comply with all applicable laws and respect human rights;
- c) The need for rights and obligations to be accompanied by adequate and effective remedies in the event of non-compliance".

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, have an independent responsibility to respect all internationally recognized human rights (Guiding Principle 11). They 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 (Guiding Principle 15). 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. In its guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights highlighted the urgent need to address the adverse impacts of business activities on human rights defenders. It unpacked, for States and businesses, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights defenders.

States may be considered to have breached their obligations under international human rights law when they fail to take appropriate measures to prevent, investigate and remedy human rights violations committed by private actors. While States generally have discretion in deciding on such measures, they must consider the full range of permissible preventive and remedial measures.