

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 OTH 62/2023
(Please use this reference in your reply)

3 July 2023

Mr. Shohat,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may 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 your attention information we have received in relation to the use of surveillance technology, marketed by your company, the NSO Group, as Pegasus spyware, 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 Mexico. 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 your company, the NSO Group, to surveil, intimidate and harass journalists and human rights defenders were previously referred to your company through a communication sent by several Special Procedures mandate holders on 4 August 2021 (AL OTH 211/2021). Special Procedures mandate holders have also communicated with your company regarding your whistleblowing policy on two occasions, 20 February 2020 (AL OTH 2/2020) and 18 October 2019 (AL OTH 52/2019). We thank your company for its response to these communications, dated 20 September 2021, 1 June 2020 and 10 December 2019, respectively. We also thank your company for its repeated availability to meet with Special Procedures, and for holding a meeting with the Working Group on business and human rights during their 2022 country visit to Luxembourg. During this meeting, the Working Group learned that NSO Group Technologies had implemented a human rights policy to prevent, detect and address human rights impacts; implemented human rights due diligence; and established a product misuse investigations procedure through which it can terminate surveillance services.

The communication of August 2021 referred to an international investigation indicating the use of your company's Pegasus spyware to target at least 180 journalists, including human rights defenders, from 20 countries. In it, Special Procedures mandate holders expressed their concern at the findings of the investigation, along with your company's response to the revelations, notably an apparent threat of legal action against the authors of the investigative report and called for detailed information on the measures taken by the NSO Group to ensure its products, including the Pegasus spyware, are not used to infringe upon internationally recognised human rights.

We welcome the statement, in your company's response, that "Any accusation that Pegasus has been misused by a State or State agency to target any journalist, human rights defender or political leader in violation of their human rights is naturally very concerning", along with your statement that "NSO recognises fully its responsibility to respect human rights". However, we remain seriously concerned, especially in light of the information 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) is reportedly the only Mexican institution with a current contract for the use of your 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 and sold by your company, the NSO Group, which is domiciled in Israel, to surveil Ms. Aguilar Rodríguez and Mr. Aguirre Espinosa in apparent reprisal for their human rights work, and right to defend human rights, as enshrined in the UN Declaration on Human Rights Defenders. We note that your company, the NSO Group, claims only to sell Pegasus spyware to State customers, which would indicate that the devices of Ms. Aguilar Rodríguez and Mr. Aguirre Espinosa were hacked by State agencies.

Our serious concern about the information received is aggravated by the fact that the alleged use of your company’s spyware against human rights defenders on this occasion would not be the first instance in which persons promoting and protecting human rights have been subject to surveillance using these tools (see OTH 211/2021).

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 Mexico.

We also underline our concern about the possible relationship between the attempted surveillance of the members of the Centro Prodh and their accompaniment of victims of human rights violations, particularly in cases in which there are allegations of the involvement of the Mexican Armed Forces in the violations, as well as the possible link between the impunity that has prevailed over these violations and impunity for previous attacks on the rights of defenders. We fear that the Pegasus spyware may have been planted onto the devices of human rights defenders with the goal of monitoring, intimidating and possibly silencing them. If such an intrusive interference was carried out in contravention of human rights laws and norms, your company may have legal responsibility to those persons who were harmed as a result of such interference.

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 confirm whether the NSO Group is already informed of the above-mentioned allegations, and, if informed, what steps your company has taken to address the alleged misuse of your spyware, including engagement with those allegedly directly affected.
3. Please confirm whether your company has contracted with any agency of the Mexican State to provide for its use of the Pegasus spyware, including the duration of any such contract. If any such contract has been entered into, please provide information as to any steps taken prior to contracting to assess the risk of misuse of your product leading to the violation of human rights. Please also include information as to any clauses contained within any such contract to prohibit the use of your technology to the detriment of human rights. Finally, please indicate whether you applied your product misuse investigations procedure, through which you can terminate surveillance services, in this case, after the alleged human rights abuses.
4. Please describe the measures that the NSO Group has taken, or plans to take, to prevent the recurrence of such situations in the future.
5. Please provide an update on the steps that your company indicated it was going to take in its response to AL OTH 211/2021 dated 20 September 2021, particularly:
 - a. conducting a focused impact assessment regarding the potential misuse of your products in connection with the media and journalists;
 - b. working to devise additional potential measures to protect vulnerable populations from misuses of your products;
 - c. evaluating potential ways to facilitate remedy for affected individuals; and
 - d. working on identifying additional means of monitoring the use of your products, including further perspectives independent of the company.
6. Please provide information on the measures taken by the NSO Group to track the impact of its human rights due diligence policies, in line with UN Guiding Principle 17. Please also provide information on any steps

taken to improve the NSO Group's human rights due diligence processes in light of the results of any such tracking. If no tracking has taken place, as required by the UN Guiding Principles, please explain what will be done to ensure this tracking is carried out.

7. Please indicate whether the NSO Group has considered implementing heightened human rights due diligence throughout its activities, as recommended in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its country visit to Luxembourg (A/HRC/53/24/Add.2).
8. Please kindly provide information on how the NSO Group does not impact negatively the work of human rights defenders, specifically in light of the recommendations provided to businesses in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on guidance to ensure respect for human rights defenders (A/HRC/47/39/Add.2).

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.

Pending your reply, we would like to urge your company 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 State where your company is based, Israel, as well as the Government of Mexico.

Please accept, Sir, 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 connection with above alleged facts and concerns, we would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. 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.”

According to the Guiding Principles, 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.

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 cause or contributed to adverse impacts. Moreover, the commentary of 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 commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. (...) Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

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 lays 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”.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. 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).

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.