



ANNEX 1

AMNESTY INTERNATIONAL LETTER TO NSO GROUP RE: NSO GROUP
INTERNAL INVESTIGATIONS
25 SEPTEMBER 2020

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To NSO Group

E-mail: [REDACTED]

Cc: [REDACTED], [REDACTED]
whistleblowing@nsogroup.com

25 September 2020

RE: NSO GROUP'S INTERNAL INVESTIGATIONS

Dear Mr. Hudio,

We are writing to seek clarity and further information about NSO Group's policies and practices on investigating human rights abuse brought about by the misuse of your company's technology. The purpose of this is to seek information for human rights defenders targeted for surveillance with NSO Group's Pegasus spyware (the "HRDs"), who may wish to pursue remedy from NSO Group for such targeting in line with the right to an effective remedy under international human rights standards such as the UN Guiding Principles on Business and Human Rights (the "Guiding Principles").

The right to effective remedy lies at the core of international human rights law. Companies' responsibility to respect human rights entails enabling access to remedy for adverse human rights impacts with which the business is involved, including where appropriate through effective operational-level grievance mechanisms. We understand that NSO Group intends to offer such a grievance mechanism as detailed in its External Whistleblowing Policy.¹ HRDs who are in contact with Amnesty International may be interested in submitting information about their targeting in order to initiate or further direct investigation and remediation by NSO Group.

Amnesty International remains seriously concerned, however, about the effectiveness of the remediation process as outlined by NSO Group and the potential repercussions for individuals submitting personal identifying information to your company. The External Whistleblowing Policy as written falls far short of standards on remedy required by international law and the effectiveness criteria delineated in the Guiding Principles (Principle 31), most notably with respect to predictability, equitability, and transparency. Indeed, "[p]oorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process." (See Principle 31 Commentary.) If HRDs are to engage with NSO Group regarding human rights impacts, they must have confidence that their efforts and submission of sensitive data will result in real action to remediate harms and prevent future human rights violations.

Amnesty International thus seeks further clarity about NSO Group's practices in investigating human rights abuses linked to its operations. We invite your responses to the following questions:

- In your response to the former UN Special Rapporteur on freedom of expression, David Kaye, dated 21 June 2020, you provide some detail on your company's policy of investigating allegations of misuse. You state, "The Head of Compliance also will review NSO's existing documentation relevant to the allegation. Once all of this information is analyzed, the Head of Compliance, General Counsel, and other high-level Company personnel will evaluate the report and existing information, and determine whether to proceed with a full investigation, as described above, seek additional information, or stop the review, typically because there is not enough information to proceed."

¹ https://www.nsogroup.com/wp-content/uploads/2019/09/External-Whistleblowing-Policy_September19.pdf

Has a thorough and effective investigation been initiated as a result of the information we provided in October 2019 and June 2020 about the targeting of three human rights defenders in Morocco using NSO Group's technology? If yes, please provide details thereof, including information on the progress of any such investigation and remediation action carried out. Further, could you provide information about the criteria under which NSO Group would initiate a thorough and effective investigation after a review, including a detailed description of what NSO Group defines as 'misuse' of its tools?

- If HRDs were to indeed engage with NSO Group in seeking remedy, what specific timeframe will NSO Group commit to in handling and responding to complaints? When can a submitting party expect to hear from NSO Group?
- The External Whistleblowing Policy indicates that only NSO staff would carry out any investigation, raising concerns around a lack of independence and impartiality in the process. Please could you clarify the procedures around conducting an investigation, including how the team of investigators will be appointed? Has the company taken any steps to ensure the grievance mechanism is functionally independent of company operations?
- The Guiding Principles state that any grievance mechanisms undertaken by companies should be transparent. This includes, 'keeping parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake'. Transparency around how a company addresses its human rights impacts is a key component of human rights due diligence. However, NSO Group's External Whistleblower Policy states, "Due to legal or commercial restrictions you may not be informed of the outcome of the assessment." Will NSO Group inform the submitting party, (1) whether an investigation has in fact been launched, (2) when an investigation has concluded, (3) whether a specified device was in fact targeted with NSO Group technology, (4) whether a specified device was in fact infected through application of NSO Group technology, and (5) whether remedial action was in fact undertaken? As the foregoing questions simply require basic confirmation, is it accurate that confidentiality requirements would not prevent NSO Group from answering? If confidentiality requirements prevent NSO Group from answering the above questions, please provide the specific legal or contractual provisions to the contrary. Additionally, will NSO Group share any details of remedial action it undertakes?
- What steps will NSO Group take to ensure the confidentiality and security of the data shared for the purpose of the investigation? What, if any, information from submitting parties will be shared with state authorities or made public by NSO Group, and what measures are in place to mitigate against potential reprisals by the authorities against the HRD? Will NSO Group provide a written privacy policy detailing its approach?
- Can NSO confirm that seeking or obtaining remedy through the company's grievance mechanism would not preclude HRDs' ability to access remedy through judicial and other state-based mechanisms - for example through the use of legal waivers?
- What specific restrictions will NSO Group seek to impose on submitting parties regarding information shared with them by NSO Group? Please note that, for HRDs who are put under surveillance in violation of their internationally recognized human rights, imposition by NSO Group of restrictions on their ability to publicly acknowledge or seek further remedy for such violation undermines autonomy and compounds the harms suffered.
- We understand NSO Group has the capacity to prevent its technology from targeting devices with certain specified technical criteria.² Will NSO Group commit to establishing a "protected list" of the mobile numbers, IP addresses, etc. utilized by HRDs submitting these details, which NSO Group will prevent its

² Declaration of Shalev Hudio in Support of Defendants' Motion to Dismiss, *WhatsApp Inc. v. NSO Group Technologies Limited*, <https://www.courtlistener.com/docket/16395340/45/11/whatsapp-inc-v-nso-group-technologies-limited/>, para. 13; see also, Technology Review (August 2020): <https://www.technologyreview.com/2020/08/19/1007337/shalev-hudio-nso-group-spyware-interview/>

technology from targeting in the future?

Please note that we may reflect any information we receive from you in our published materials as appropriate. This may include quoting your responses verbatim.

We look forward to receiving your response at your earliest convenience or latest by 6pm on 9 October 2020, by e-mail to Ms. Danna Ingleton ([REDACTED]).

Sincerely,

Danna Ingleton

Acting Co-Director- Amnesty Tech