



SUBMISSION FOR THE STUDY ON THE SURVEILLANCE INDUSTRY AND HUMAN RIGHTS

The Case of Omar Abduaziz Alzahrani

To the attention of:
Mr. David Kaye,
United Nations Special Rapporteur on the Promotion and
Protection of the Right to Freedom of Opinion and Expression
Office of the High Commissioner for Human Rights

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The Human Rights Foundation Center for Law and Democracy (HRF-CLD) is a program of the Human Rights Foundation (HRF). HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law. HRF is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies.

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A. Description of Alleged Violation

a. Mandate of the U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

In accordance with the mandate of the U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (hereinafter “Special Rapporteur”), interested stakeholders may share submissions focused on one of more of the following:

- (1) information concerning the domestic regulatory frameworks that may be applicable to the development, marketing, export, deployment, and/or facilitation of surveillance technologies by private companies; and
- (2) information concerning the use of such surveillance technologies.¹

b. Standing of the Human Rights Foundation

This submission is filed by the Human Rights Foundation (hereinafter “HRF”), as part of its contribution to the Special Rapporteur’s *“Call for Submissions: The Surveillance Industry and Human Rights.”* Pursuant to the mandate of the Special Rapporteur, HRF, a nongovernmental human rights organization, can provide information on a specific emblematic human rights case of State use of private surveillance technology against individuals, or on a country’s laws and practices with human rights implications.

c. Confidentiality waiver

HRF waives its right to confidentiality and requests that its identity be revealed in the event that, as part of the procedure involving investigation of individual cases, an allegation letter is sent to the Kingdom of Saudi Arabia in connection with the information supplied herein.

d. Consent given by the victim

Omar Abduaziz Alzahrani, has authorized HRF to file this submission on his behalf, to the Special Rapporteur, and he explicitly agrees to having his identity disclosed to the relevant authorities and in the public report.

¹ *Call for Submissions: The Surveillance Industry and Human Rights*, Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, adopted by the U.N. Human Rights Special Procedures (2018).

B. Questionnaire

The focus of this submission is the infringement upon Omar Abduaziz Alzahrani's freedom of opinion and expression and right to privacy in retaliation for his peaceful exercise of his right to freedom of expression and opinion, as guaranteed by the UDHR and ICCPR.

a. Identity

Family name: Alzahrani

First name: Omar Abduaziz

Sex: Male

Birthdate: January 4, 1991

Nationality/Nationalities: Saudi Arabian

Profession: Human Rights Activist

Address of usual residence: Montréal, Canada

b. Circumstances of the alleged infringement²

i. Violation background

Authoritarian regimes around the world, such as China, Russia, and Saudi Arabia, are increasingly using technology—from basic phishing methods to sophisticated malware—to spy on dissidents and activists. This surveillance case of Omar Abduaziz Alzahrani, by the Saudi Arabian government, is just one example of this dangerous trend.

The alleged victim, Omar Abduaziz Alzahrani (“Alzahrani”), is a Saudi Arabian national male who currently resides in Montréal, Canada. Alzahrani is a human rights activist and a vocal critic of the Saudi regime's policies and human rights record. On June 23, 2018, Alzahrani's personal mobile phone was infected by NSO group's Pegasus³ spyware, monitored by a Saudi system operator. The spyware granted the Saudi government extensive access to Alzahrani's data, including contacts and encrypted messages, and allowed it to remotely turn on and monitor the phone's camera and microphone.

² Information obtained via conversations between HRF and Omar Abduaziz Alzahrani, as well as from Citizen Lab's 1 October 2018 report detailing Saudi digital espionage in Canada, *THE KINGDOM CAME TO CANADA: HOW SAUDI-LINKED DIGITAL ESPIONAGE REACHED CANADIAN SOIL* [hereinafter *THE KINGDOM CAME TO CANADA*], available at <https://citizenlab.ca/2018/10/the-kingdom-came-to-canada-how-saudi-linked-digital-espionage-reached-canadian-soil/>.

³ Pegasus is a mobile phone spyware suite, produced and sold by the Israel-based vendor NSO Group. See Thomas Brewster, *Everything We Know About NSO Group: The Professional Spies Who Hacked iPhones with a Single Text*, FORBES (25 Aug. 2016), <https://www.forbes.com/sites/thomasbrewster/2016/08/25/everything-we-know-about-nso-group-the-professional-spies-who-hacked-iphones-with-a-single-text/#6ece0a53997c>.

ii. Chronology of events

In 2009, Alzahrani arrived in Canada with an educational sponsorship from the Saudi Cultural Bureau to study English at McGill University. While studying, Alzahrani became active on social media and began voicing his criticism of the Saudi regime's policies and human rights abuses. Within a few years, he developed a large online following, including by Saudi public figures.

In 2013, Alzahrani was warned by the Saudi government to cease discussing and posting about the country's political and human rights issues, but Alzahrani ignored the warning. A few months later, the Saudi Cultural Bureau revoked Alzahrani's sponsorship and ordered him to return to Saudi Arabia. Alzahrani refused and instead sought political asylum in Canada, which he was granted in 2014.

In July 2014, Alzahrani launched a satirical YouTube show criticizing, *inter alia*, the Saudi regime's abuses perpetrated against human rights activists. The show was extremely popular and reached 50 million viewers. In 2016, Alzahrani ended the show due to lack of funding but continued to express his views on social media outlets such as Facebook and Twitter. In a 2015 report by the management consulting firm McKinsey & Company, Alzahrani was listed among the top three most influential critics of the Saudi regime.⁴

Since Mohammed bin Salman's (MbS) appointment as Crown Prince in 2017, his regime has engaged in a brutal crackdown against human rights activists. This crackdown has included an ongoing record of commercial spyware abuse: Saudi Arabia has employed spyware procured from foreign companies to direct cyberattacks targeting activists and dissenters around the world.⁵ Several Saudi government agencies are known customers of various commercial spyware companies such as Hacking Team, FinFisher, and NSO Group.⁶

In May 2018, two Saudi government representatives visited Alzahrani in Canada to deliver a message from MbS. They informed Alzahrani that MbS admires his work and asked Alzahrani to return to Saudi Arabia and contribute to MbS' so-called social reforms. Alzahrani refused, as he understood this offer as a ploy to arrest him.

⁴ See Katie Brenner et al., *Saudis' Image Makers: A Troll Army and a Twitter Insider*, NY TIMES (20 Oct. 2018), <https://www.nytimes.com/2018/10/20/us/politics/saudi-image-campaign-twitter.html>.

⁵ For example, in May and June 2018, respectively, Saudi dissident and human rights defender, Yahya Assiri, and an Amnesty International researcher were each targeted with NSO Group's Pegasus spyware when they received messages with malicious links intended to infect their devices. See Citizen Lab, *THE KINGDOM CAME TO CANADA*, *supra* note 2; *Amnesty International Among Targets of NSO-Powered Campaign*, AMNESTY INTERNATIONAL (1 Aug. 2018), <https://www.amnesty.org/en/latest/research/2018/08/amnesty-international-among-targets-of-nso-powered-campaign/>.

⁶ Citizen Lab, *THE KINGDOM CAME TO CANADA*, *supra* note 2.

On June 23, 2018, Alzahrani received a text message masquerading as a shipment notification for an online Amazon purchase he had made that day (see Figure 1). The text message's domain link—Sunday-deals[.]com—which Alzahrani clicked, was actually a malicious simulated exploit link with embedded spyware that Citizen Lab, an organization that investigates digital espionage against civil society, had previously identified as an exploit domain of the Pegasus spyware suite. Citizen Lab also recognised a system operator linked to Saudi Arabia that was suspected of monitoring devices infected by Pegasus spyware servers. This link, in turn, enabled the Saudi government to infect Alzahrani's mobile phone and receive extensive access to his personal data and the phone's camera and microphone.

Alzahrani was unaware that his phone was infected and that he was under constant surveillance, until he was contacted by Citizen Lab in August 2018. Further investigation, detailed in a forensic report⁷ published by Citizen Lab on October 1, 2018, confirmed that Alzahrani's mobile device had, in fact, been infected by the same spyware. The infection of Alzahrani's phone was reported to the Royal Canadian Mounted Police and is currently under investigation.

From June 2018 until August 2018, the Saudi government was spying on Alzahrani's communications and was therefore aware of all of Alzahrani's projects, collaborations, and communications with other activists in his network. Alzahrani was in daily contact with Jamal Khashoggi, a Saudi journalist who was brutally murdered by Saudi operatives on October 2, 2018. Alzahrani and Khashoggi were collaborating on several initiatives to counter MbS' crackdown on human rights activists, and the Saudi regime may have used Alzahrani's mobile phone to gather information on Khashoggi.⁸

Alzahrani has been constantly threatened and harassed by the Saudi government for his human rights work. In August 2018, Alzahrani's two brothers, who live in Saudi Arabia, were threatened with jail if Alzahrani did not cease his online activism. Alzahrani refused to give in. Shortly thereafter, Alzahrani's brothers and a group of his friends were arrested, and they remain in detention to date.

c. Indicate the precise reasons why you consider the use of surveillance in this case to be an infringement upon human rights and a violation of international law

The infection of Alzahrani's mobile phone by a Saudi system operator, is a violation of international human rights law that infringed upon Alzahrani's human rights

⁷ See generally Citizen Lab, *THE KINGDOM CAME TO CANADA*, *supra* note 2.

⁸ Avi Asher-Schapiro, *How the Saudis May Have Spied on Jamal Khashoggi*, COMMITTEE TO PROTECT JOURNALISTS (31 Oct. 2018), <https://cpi.org/blog/2018/10/how-the-saudis-may-have-spied-on-jamal-khashoggi.php>.

because it: (1) explicitly interfered with Alzahrani's right to freedom of opinion and expression, enshrined in Article 19 of the UDHR⁹ and Article 19(1) of the ICCPR,¹⁰ and (2) deprived Alzahrani of his right to privacy as guaranteed by Article 12 of the Universal Declaration of Human Rights (UDHR)¹¹ and Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR).¹² ICCPR Articles 17 and 19 are closely related, as the right to privacy is indispensable for the realization of one's freedom of expression. While Saudi Arabia is not a party to the ICCPR, it is nonetheless bound by the customary international law provisions of the UDHR. The civil and political freedoms provided for in the ICCPR, are inspired by these UDHR provisions and are basic fundamental rights that Saudi Arabia is obliged to respect by virtue of its United Nations membership and the universal nature of such rights.

Article 19 of the UDHR and Article 19 of the ICCPR hold that all individuals have the right to freedom of expression and to possess opinions without interference. Here, the Saudi Arabian government maliciously infected Alzahrani's mobile phone to conduct illegal and unlawful surveillance activities, gather information on Alzahrani, his work as an activist, and on other activists in his network, in an attempt to block future criticism by Alzahrani of the authoritarian Saudi regime. Alzahrani was thus unequivocally targeted for the peaceful public expression of his pro-democracy opinions and human rights activism, as part of the ruthless crackdown on activists initiated by MbS.

Additionally, Article 12 of the UDHR and Article 17(1) of the ICCPR call for the protection of individuals against unlawful or arbitrary interference with one's privacy and correspondence. Here, the Saudi government violated Alzahrani's right to know how information collected about him would be used, and it was not legally authorized to conduct surveillance activities with any precise and legitimate purpose that could not otherwise have been pursued less invasively.

Therefore, the Saudi Arabian government violated Alzahrani's freedom of expression and opinion and his right to privacy, recognized under international human rights law.

⁹ Universal Declaration of Human Rights, art. 19, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) [hereinafter UDHR], available at <http://www.un.org/en/universal-declaration-human-rights/> ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.").

¹⁰ International Covenant on Civil and Political Rights, art. 19(1), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 Mar. 1976 [hereinafter ICCPR], available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> ("Everyone shall have the right to hold opinions without interference.").

¹¹ UDHR, *supra* note 9, art. 12 ("No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.").

¹² ICCPR, *supra* note 10, art. 17(1) ("No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.").

C. Identity of the stakeholder submitting the case

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5. Please state whether you want your identity to be kept confidential: As stated above, the victim waives its right to confidentiality.

D. Recommendations

In accordance with the mandate of the Special Rapporteur, HRF hereby presents this submission, and respectfully calls on the Special Rapporteur to initiate the procedure involving the investigation of individual cases toward reaching an opinion declaring the infection of Omar Abduaziz Alzahrani's mobile phone by a Saudi system operation, to be in violation of international law. Specifically, HRF calls on the Special Rapporteur to:

- a. Initiate a procedure involving the investigation of Omar Abduaziz Alzahrani's case, and send an allegation letter to the Kingdom of Saudi Arabia inquiring about the case generally, and specifically about the legal basis for the infection of his mobile phone with spyware, which is in violation of international law;
- b. Issue an opinion declaring that Omar Abduaziz Alzahrani's deprivation of his right to freedom of opinion and expression and his right to privacy, was in violation of international law; and
- c. Ask the Kingdom of Saudi Arabia to take measures to guarantee that Omar Abduaziz Alzahrani and his family and network will not be further subjected to threats or violations on their right to freedom of expression and to possess opinions without interference, or any other measure as a result of Alzahrani's exercise of the rights to freedom of expression and opinion, as guaranteed under international law.

Figure 1:

