

DATE: September 6, 2019
TO: NSO Group
FROM: Paul Hastings LLP
SUBJECT: Assessment of NSO Group’s Human Rights Program

Paul Hastings LLP has been asked to provide an opinion as to whether the human rights program designed and adopted by OSY Technologies Sarl (together with its affiliates “NSO Group” or “the Company”) is consistent with the norms contemplated by the United Nations Guiding Principles on Business and Human Rights (“UNGP”). As explained in detail below, based on the policies, information and commitment provided to us by the Company, the human rights program designed by NSO Group is consistent with the core elements contemplated by the UNGPs and key relevant interpretive guidance materials. The design also addresses the recommendations contained in a report on Surveillance and Human Rights issued on May 28, 2019, by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (“Special Rapporteur Report” or “SRap. Rep.”).

I. MATERIALS REVIEWED BY PAUL HASTINGS

As part of our assessment, we have reviewed the following materials provided by the Company:

Document Date	Description/Title
August 2019	Internal Whistleblower Policy
August 2019	External Whistleblower Policy
August 2019	Transparency Statement of Principles
August 2019	Human Rights Policy
August 2019	Draft Charter of the Governance, Risk and Compliance Committee of the Board of Directors (“GRC”)
August 6, 2019	Draft Sales Process and Procedures
July 31, 2019	Application of the UNGPs to OSY Group of Companies
June 2019	Anti-bribery and Corruption Policy

April 16, 2019	NSO Group Background Paper
2019	Form Reseller Agreement
2019	Form End-User Agreement
September 5, 2019	Letter from the Board of Managers of OSY Technologies
	Edelman Intelligence UNGP Transparency Research: Company Benchmarks Prepared for Novalpina Capital LLP

We have also considered the following statements made by various civil society organizations:

Date	Publicly Available Statements
July 4, 2019	Open Follow-Up Letter to South Yorkshire Pensions Authority on Investment in Novalpina Capital and NSO Group from Citizen Lab ¹
June 18, 2019	Open Letter to Novalpina Capital re: Statement on UN Guiding Principles from The Citizen Lab ²
May 28, 2019	Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Surveillance and Human Rights (May 28, 2019) ³
May 24, 2019	Open Letter to South Yorkshire Pensions Authority on Novalpina Capital Investment Fund from The Citizen Lab ⁴
May 14, 2019	Open Letter to Nelly Koulia, Director of Trade, Ministry of Energy, Commerce and Industry (Cyprus) from AccessNow ⁵
May 14, 2019	Open Letter to Ivan Penchev, Director of the International Trade and Security Directorate, ITC Department, Ministry of Economy (Bulgaria) from AccessNow ⁶
May 14, 2019	Amnesty International Affidavit in Support of Israeli Petition ⁷

¹ Available at <https://citizenlab.ca/2019/05/letter-to-south-yorkshire-pensions-authority-on-novalpina-capital-investment-fund/>

² Available at <https://citizenlab.ca/2019/06/letter-to-novalpina-regarding-statement-on-un-guiding-principles/>

³ Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/148/76/PDF/G1914876.pdf?OpenElement>.

⁴ Available at <https://citizenlab.ca/2019/07/follow-up-letter-to-south-yorkshire-pensions-authority-on-investment-in-novalpina-capital-and-nso-group/>

⁵ Available at <https://www.accessnow.org/cms/assets/uploads/2019/05/Access-Now-letter-to-Cyprus-Government-on-NSO-Group-export-licence.pdf>

⁶ Available at <https://www.accessnow.org/cms/assets/uploads/2019/05/Access-Now-letter-to-Bulgaria-Government-on-NSO-Group-export-licence.pdf>

⁷ Available at <https://www.amnesty.org/download/Documents/ACT1003322019ENGLISH.pdf>

Date	Publicly Available Statements
April 15, 2019	Joint Open Letter to Novalpina Capital from Amnesty International ⁸
May 15, 2019	Response to Open Letter to Novalpina Capital on 15 April 2019 ⁹
March 6, 2019	Continued Correspondence with Novalpina on NSO Acquisition ¹⁰
February 18, 2019	Amnesty International Open Letter to Novalpina Capital ¹¹
February 18, 2019	Open Letter to Novalpina Capital on Involvement in the Purchase of NSO Group ¹²
March 1, 2019	Response to Open Letter to Novalpina Capital on 18 February 2019 ¹³
February 15, 2019	Citizen Lab Recommendations to the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression ¹⁴

We have considered the above materials against the following publicly available materials reflecting the UNGPs and their application:

Publicly Available Guidance Materials
The UNGPs ¹⁵
The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (published by the UN Office of the High Commissioner on Human Rights (“OHCHR”)) ¹⁶
Frequently Asked Questions about the Guiding Principles on Business and Human Rights (OHCHR) ¹⁷

⁸ Available at <https://www.hrw.org/news/2019/04/15/joint-open-letter-novalpina-capital-cc-nso-group-francisco-partners>

⁹ Available at <https://www.novalpina.pe/response-to-open-letter-to-novalpina-capital-on-15-april-2019/>

¹⁰ Available at <https://citizenlab.ca/2019/03/continued-correspondence-with-novalpina-on-nso-acquisition/>

¹¹ Available at <https://www.amnesty.org/en/latest/research/2019/02/open-letter-to-novalpina-capital-nso-group-and-francisco-partners/>

¹² Available at <https://citizenlab.ca/2019/02/open-letter-to-novalpina-capital-on-involvement-in-the-purchase-of-nso-group/>

¹³ Available at <https://www.novalpina.pe/response-to-open-letter-to-novalpina-capital-on-18-february-2019/>

¹⁴ Available at <https://citizenlab.ca/2019/02/citizen-lab-recommendations-united-nations-special-rapporteur-promotion-and-protection-right-to-freedom-opinion-and-expression/>

¹⁵ Available at https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf.

¹⁶ Available at https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

¹⁷ Available at https://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf

Publicly Available Guidance Materials
Shift's Human Rights Reporting and Assurance Frameworks Initiative ("RAFI") ¹⁸
Corporate Human Rights Benchmark ("CHRB") (a widely used framework for assessing human rights performance under the UNGPs) ¹⁹
OECD Guidelines for Multinational Enterprises ²⁰
OECD Due Diligence Guide for Responsible Business Conduct ²¹
Global Network Initiative Principles on Freedom of Expression and Privacy and Implementation Guidelines ²²
Wassenaar Arrangement and List of Advisory Questions for Industry ²³
Cyber Growth Partnership Industry Guidance, Assessing Cyber Security Export Risks ²⁴
ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights ²⁵

¹⁸ Available at <https://www.shiftproject.org/resources/publications/un-guiding-principles-reporting-framework/>.

¹⁹ Available at <https://www.corporatebenchmark.org/sites/default/files/CHRB%202019%20Methodology%20AGAPEX%2016Jan19.pdf>.

²⁰ Available at <http://www.oecd.org/daf/inv/mne/48004323.pdf>

²¹ Available at (<http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>).

²² Available at <https://globalnetworkinitiative.org/wp-content/uploads/2018/08/Implementation-Guidelines-for-the-GNI-Principles.pdf>

²³ Available at <https://www.wassenaar.org/app/uploads/2016/08/List-of-Advisory-Questions-for-Industry.pdf>

²⁴ Available at

https://www.techuk.org/images/CGP_Docs/Assessing_Cyber_Security_Export_Risks_website_FINAL_3.pdf

²⁵ Available at https://www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/ICT/EC-Guide_ICT.pdf

II. OVERVIEW OF RELEVANT HUMAN RIGHTS AUTHORITIES

There are several authoritative sources that guide the analysis of a human rights program. The most important source is the UNGPs, which were unanimously adopted in June 2011 by the UN Human Rights Council following a comprehensive multi-year review and consultation process. The UNGPs contain three pillars: (1) a pillar directed at governments and their obligation to protect human rights (“Pillar I”); (2) a pillar directed at companies and their responsibility to respect human rights (“Pillar II”); and (3) a pillar related to the right to remedy for negative human rights impacts (“Pillar III”).

Since the adoption of the UNGPs, the OHCHR has published interpretative guides to the UNGPs and multiple formal opinions interpreting the UNGPs in specific contexts. Further, SHIFT, a non-profit organization headed by senior members of the team that created the UNGPs, has published the UN Guiding Principles Reporting Framework (“RAFI”), which identifies in detail key means of assessing a human rights program. In addition, the Corporate Human Rights Benchmark (“CHRB”) is a detailed framework created by leading business and human rights organizations, following extensive consultations, to assess company performance under the UNGPs.

These sources – the UNGPs, the OHCHR’s interpretive publications and decisions, RAFI, and CHRB – guide the assessment of any corporate human rights program.

Another potential source is the OECD Guidelines for Multinational Enterprises (“OECD Guidelines”). However, as the OECD Guidelines were modified several years ago for consistency with the UNGPs, and there is no sector-specific guidance for the information technology industry, they only provide marginal additional direction in assessing human rights programs. The OECD Due Diligence Guidance for Responsible Business Conduct, however, is a potentially useful source in assessing the approach to diligence activities as contemplated by the UNGPs.

In addition to these general resources, there are several sector-specific resources that may bear on the human rights program for a company in the cyber intelligence and security space. In May, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression issued a report on Surveillance and Human Rights. Also potentially relevant are the Global Network Initiative’s Principles on Freedom of Expression and Privacy, and Implementation Guidelines for the Principles on Freedom of Expression and Privacy. Materials from the Wassenaar Arrangement also have potential bearing, as do reports and commentaries from civil society organizations and others.

A. The United Nations Guiding Principles

The UNGPs identify several key components that should be part of a human rights program.

First, UNGP 12 summarizes the core human rights respected by a business enterprise's human rights program. The UNGP contemplates that it is a business enterprise's responsibility to respect internationally recognized human rights enumerated in the International Bill of Human Rights and the rights set forth in the International Labor Organization's Declaration on Fundamental Principles and Rights at Work.

Second, UNGP 15 creates a general framework for business enterprises to meet their responsibilities to respect human rights. In particular, UNGP 15 explains that a human rights program should have in place: (1) a policy commitment to meet their responsibilities; (2) a due diligence process to identify, mitigate, and account for how to address their impact on human rights; and (3) a remediation process to address any adverse human rights impacts.

Third, UNGP 16 is titled "Policy Commitment." Principle 16 provides that business enterprises should adopt a statement of policy that is "approved at the most senior level of the business enterprise," informed "by relevant internal and/or external expertise," identifies the entity's human rights expectations of its employees and entities in its value chain, is publicly available and communicated internally and externally, and is reflected in operational principles to embed it throughout the enterprise.

Fourth, UNGPs 17 and 18 define the parameters for human rights due diligence, identifying the scope of diligence, its variance by complexity and circumstances, the need to adjust to different situations and to remain dynamic, and the importance of meaningful consultation with affected groups or other relevant stakeholders. **UNGP 19** focuses on integrating findings from human rights assessments across relevant functions and processes. **UNGP 20** references the importance of a system to monitor the effectiveness of whether human rights impacts are being addressed by the enterprise, which should be included in reporting processes. Reporting is addressed in further detail in **UNGP 21**, which contemplates external reporting by businesses on their processes for addressing human rights impacts.

Fifth, UNGP 22 provides that when a business enterprise has caused or contributed to adverse impacts, the enterprise should have in place a tenable remediation process and cooperate in the necessary remediation.

Finally, UNGP 29 discusses operational grievance mechanisms to allow affected individuals to report human rights concerns to companies. To be effective, **UNGP 31** provides that grievance mechanisms should be "legitimate," "accessible," "predictable," "equitable," and transparent."

B. RAFI, CHRB & GNI

1. RAFI

RAFI, created by former members of the team that created the UNGPs, provides specific guidance relevant to establishing a human rights program under the UNGPs. Part A of the

guidance covers Governance of Respect for Human Rights. The indicators for that section, which in turn are supported by numerous detailed subquestions, are:

- **Policy Commitment**

- *A1. What does the company say publicly about its commitment to respect human rights?*

- *A1.1 How has the public commitment been developed?*

- *A1.2 Whose human rights does the public commitment address?*

- *A1.3 How is the public commitment disseminated?*

- **Embedding Respect for Human Rights**

- *A2. How does the company demonstrate the importance it attaches to the implementation of its human rights commitment?*

- *A2.1 How is day-to-day responsibility for human rights performance organized within the company, and why?*

- *A2.2 What kinds of human rights issues are discussed by senior management and by the Board, and why?*

- *A2.3 How are employees and contract workers made aware of the ways in which respect for human rights should inform their decisions and actions?*

- *A2.4 How does the company make clear in its business relationships the importance it places on respect for human rights?*

RAFI also discusses in detail in Parts B and C the reporting of human rights risks and impacts, policies to address salient human rights issues, stakeholder engagement, integration of findings about human rights issues into decision-making, assessing whether human rights measures are effective, and enabling effective remedy for individuals harmed by its actions or decisions.

2. CHRB

CHRB, also an authoritative source for assessing human rights programs, contains a similar approach in its Parts A and B, referencing:

- A commitment that references specific human rights issues most relevant to the industry,
- A commitment to engage with affected stakeholders or their representatives,
- A commitment to provide remedy in appropriate instances,
- A commitment to respect the rights of human rights defenders,
- Approval of commitment by the board (or a board member or committee),
- Processes to discuss salient human rights issues at the board,
- Incentives for the board (or at least one member) linked to human rights performance,
- Identifying senior-level responsibility, as well as day-to-day oversight,
- Incentives to senior managers linked to implementation of the human rights policy commitments or targets,
- Integration into management systems,
- Communication of the human rights commitment to internal and external stakeholders, in particular potentially affected stakeholders and business relationships,
- Training on the company's human rights commitments,
- Monitoring implementation of its human rights commitments across its operations and business relationships and following up on corrective actions and necessary changes to policies or processes,
- Considering human rights when entering or terminating business relationships, and
- Developing and implementing an approach to engage with affected stakeholders and organizations representing them.

CHRB Part C references grievances and remediation, and Part D addresses responses to serious allegations.

In terms of diligence specifically, RAFI and CHRB both reference extensively human rights diligence and processes. The key areas of diligence can be summarized as: (1) assessing human rights risks on an ongoing basis, (2) prioritizing them according to the most salient risks, (3) integrating them into systems and processes by taking appropriate actions to prevent, mitigate or remediate salient human rights issues, (4) tracking and evaluating the effectiveness of actions taken in response to its human rights risks and impacts and describing how the company uses that information to improve processes and systems on an ongoing basis, and (5) communicating externally how the company addresses its human rights impacts. The OECD Due Diligence Guidance contains a similar framework.

a. Sector-Level Issues Associated with the Principles

In considering the above standards and their application to the industry, the UN Special Rapporteur Report focuses on surveillance and human rights, identifying several recommendations for companies operating in the surveillance sector to meet the UNGPs. It notes that companies in the sector should maintain appropriate policy commitments, due diligence processes, consultations with affected groups, ongoing evaluations of the effectiveness

of their programs, and effective grievance mechanisms for rights holders.²⁶ The report also discusses the importance of human rights diligence in sales, and that assessments should continue through the life-cycle of the product and in any contract for after-sales support. It also notes that companies should engineer their products to anticipate and prevent adverse impacts, and lists a detailed set of recommendations for companies:

- 1) Customer policies that unequivocally affirm the responsibility of companies to respect freedom of expression, privacy and related human rights throughout their operations, and that client compliance with international human rights law is a condition for the approval and completion of a sale, transfer or contract of support;
- 2) Human rights due diligence processes (such as human rights impact assessments) that are triggered when companies engage in activities that have a bearing on freedom of expression and privacy, such as the design, sale, transfer and servicing of surveillance products and services;
- 3) Internal policies and standard contractual clauses that establish clear and specific prohibitions on product customization, targeting, servicing or assistance that violates international human rights law;
- 4) Internal processes that ensure design and engineering choices incorporate human rights safeguards, such as flagging systems that detect misuse and kill switches that are triggered in the event of misuse;
- 5) Regular programmes of audits and human rights verification processes to ensure that use of their products and services comply with international human rights law, including a commitment to publicly disclose key findings from these audits and verification processes;
- 6) Notification processes that promptly report misuses of their tools to the relevant government oversight bodies (such as national human rights institutions) or intergovernmental bodies (such as special procedures complaints mechanisms);
- 7) Transparency reporting that discloses the potential uses and capabilities of their products and the types of after-sales support provided, incidents of misuse and data concerning the number and type of sales to law enforcement, intelligence or other government agencies or their agents;
- 8) Regular consultations with affected rights holders, civil society groups and digital rights organizations about the ongoing or potential impacts of their products and services and the human rights safeguards required to prevent or mitigate these impacts, with particular

²⁶ Rep. of the Rapporteur, at 10, ¶30 U.N. Doc. A/HRC/41/35 (2019).

emphasis on engaging those at risk of surveillance-based discrimination or repression, such as racial and ethnic minorities and historically marginalized groups;

- 9) Grievance mechanisms that enable individuals to submit complaints concerning human rights abuses facilitated by company products and services, and provide for independent assessment of those complaints and meaningful follow-up;
- 10) Remedial mechanisms that enable complainants to seek compensation, apologies and other forms of redress, as appropriate, in cases in which complaints are independently verified.

Finally, the approach outlined in GNI's Implementation Guidelines for the Principles on Freedom of Expression and Privacy are substantially similar to the UNGPs, CHRB and RAFL. Accordingly, while they are industry-specific principles, they will not be separately addressed.

III. APPLICATION OF PRINCIPLES AND ANALYSIS

Based on our review of the documentation provided by the Company, the human rights program designed by NSO Group is generally consistent with the core elements contemplated by the UNGPs and the key relevant interpretive guidance materials discussed above. The design also is consistent with the recommendations in the Special Rapporteur Report.

- The Company has vested oversight of its human rights program in the Governance, Risk and Compliance Committee of the Board of Directors ("GRC"). The Committee's charter expressly includes a human rights mandate, and the charter covers monitoring adherence to and effectiveness of the Human Rights Policy and diligence procedures.
- The charter also includes a detailed reference to decisions on sales, as well as management requirements for diligence and risk analyses. The materials provided also identify a multi-step process for sales to be reviewed and approved, considering relevant human rights risks.
- The Company has vested the incoming General Counsel with authority to oversee the human rights program.
- It is developing with input from a range of stakeholders a detailed Human Rights Policy that identifies the company's salient risks to rights-holders that will be made public, and is applicable to the entire organization and entities in its value chain. *See* UNGP 16 & Commentary. Specifically, the Company's Human Rights Policy:
 - acknowledges its responsibility to respect human rights (UNGP 11);

- states its commitment to seeking to prevent or mitigate negative human rights impacts from third party users of its products (UNGP 13);
- states the Company's commitment to key international human rights instruments and norms, with guidance from the UNGPs (UNGP 12, SRap. Rep. Recommendation 1);
- commits to integrating rights diligence procedures into business processes, and conducting enhanced diligence where risks are identified (UNGP 15, 16, 18 – 23, SRap. Rep. Recommendation 2);
- has been approved at the most senior level of the organization (UNGP 16);
- identifies the expectations of employees, business partners and other parties directly linked to its services (UNGP 16);
- commits to appropriate training for directors, managers, employees and other stakeholders on the Human Rights Policy and relevant procedures (UNGP 16 & Commentary);
- identifies where the greatest risk of a negative impact may exist to rights-holders and how negative impacts may occur, and further acknowledges that certain vulnerable groups may be at elevated risks (UNGP 18, SRap. Rep. Recommendation 8);
- commits to engaging in dialogue with relevant stakeholders, including civil society (UNGP 18, 20, SRap. Rep. Recommendation 8);
- states that there are escalating steps involving third party users in cases of misuse (UNGP 19);
- states that human rights provisions are included in contracts with third parties, and that they will notify the company of potential actual or potential misuses (UNGP 19, SRap. Rep. Recommendation 3, 6);
- states that the products are technically designed to support effective governance of use and prevent misuse (UNGP 19, SRap. Rep. Recommendation 4);
- commits to improving performance by engaging with others in the field, subjecting the policy and system to expert review, tracking key performance indicators, and benchmarking against others (UNGP 19-20);

- states that adherence to the human rights program will be assessed through internal audits and independent experts, and evaluated with key metrics and indicators (UNGP 20, SRap. Rep. Recommendation 2, 5);
 - commits to reporting publicly on the program and related procedures, including program effectiveness (UNGP 20-21, SRap. Rep. Recommendation 7);
 - states that it will investigate credible reports of unlawful conduct, cooperate with investigations by competent state authorities, and take appropriate steps as warranted (UNGP 22, 31, SRap. Rep. Recommendation 10);
 - provides that potential violations of the policy shall be reported to the Chief Compliance Officer, with disciplinary consequences as appropriate (UNGP FAQ No. 73); and
 - states that it operates a whistleblowing framework, which is available to third parties to lodge grievances (UNGP 29, SRap. Rep. Recommendation 9-10).
- We understand the Company is in the process of developing a more detailed procedural framework to support the policy, although some of those procedures exist in draft or outline form. Specifically,
 - A Transparency Statement of Principles covers the contemplated external reporting of information regarding the implementation and effectiveness of the human rights program, including expert reviews. (UNGP 17, 21, SRap. Rep. Recommendation 7).
 - Whistleblower Policies cover internal and external reporting and investigations, noting that investigations may be conducted using independent resources. (UNGP 20, 29, SRap. Rep. Recommendation 9).
 - A detailed draft Sales Process and Procedures standard enumerates an initial and subsequent risk assessment process. (UNGP 15, SRap. Rep. Recommendation 1-3). The sales process is accompanied by procedures assessing risks and potential adverse human rights impact of sales opportunities throughout the process, and operates in three phases. In the first phase, risks associated with a particular partner or customers are assessed and addressed through procedures determined by the General Counsel and approved by the GRC. Phase two focuses on the products to be sold and key commercial terms, with specific product-related risks added to the risk assessment. Phase three involves finalization of the sale after all external and internal approvals and licenses have been obtained. Management summarizes all identified risks, the steps taken to mitigate those risks, and the residual risks, and GRC Committee approval is required in cases of elevated risk.

Integrated into the process are standard and enhanced diligence, depending on risk levels.

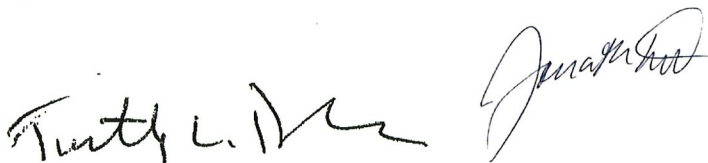
- As noted in the Human Rights Policy, the company's form end-user and reseller agreements contain a representation from the end-user that the system will only be used for preventing and investigating criminal activities and that the user will ensure that it will not be used for human rights violations. The user also agrees to notify the Company of any actual or potential misuse that may result in human rights violations. (SRap. Rep. Recommendation 3).

IV. OPINION AND PRELIMINARY RECOMMENDATIONS

Based on a review of the materials we have been provided, we conclude that the Company's program design – including the steps that the Company has taken, is taking, and has pledged to take – aligns with the core elements of a human rights program as identified by the UNGPs and relevant interpretive materials. Likewise, the design of the Company's human rights program is consistent with the recommendations in the Special Rapporteur Report.

Given the current status of the program, some of which is still in development, our preliminary evaluation is unable to assess the extent to which any aspect of the current framework will be implemented as designed, implemented in a manner consistent with the UNGPs, or otherwise effective. Nonetheless, based on our review of the materials provided to us, and following discussions with key members of the Board of Managers of OSY Technologies and those tasked with implementing the program, we note that the company is undertaking a serious commitment to implement the human rights program, and to allocating sufficient resources and funding to carry out its responsibility to respect human rights.

By:



Paul Hastings LLP