



- Surveillance Technology in Repressive Regimes -

**OECD Complaint Filed Against European Surveillance Companies Trovicor GmbH
And Gamma International UK Ltd**

Berlin, February 2013

On 22 February 2013 the European Center for Constitutional and Human Rights (ECCHR), Reporters without Borders, Privacy International, Bahrain Watch and the Bahrain Center for Human Rights filed an OECD complaint against Trovicor, a German company which produces surveillance software, with the German National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises. ECCHR and its partner organizations also filed a parallel OECD complaint against the British software company Gamma International with the United Kingdom NCP. Individually, Gamma International's and Trovicor's products allow for in-depth and widespread monitoring of telecommunications, when used together their impact is intensified.

The complainants argue that Bahraini government agencies use surveillance technologies, like those supplied by Trovicor, to monitor political opponents, often leading to their arrest and subsequent maltreatment. It is alleged that these products and services like these are instrumental in multiple human rights abuses in Bahrain, including arbitrary detention and torture, as well as violations of the right to privacy, freedom of expression and freedom of association.

A spokesperson For Nokia Siemens Networks (NSN), Trovicor's predecessor, has confirmed that Trovicor has been maintaining surveillance technology for Bahraini security and law enforcement agencies since 2009. In the opinion of ECCHR and its partner organizations if it proved to be true that Trovicor is continuing to maintain this technology for the Bahraini government this would constitute a violation of the OECD Guidelines.

The Human Rights Situation in Bahrain

In recent years, particularly since 2011, the human rights situation in Bahrain has deteriorated significantly. Any critical reporting about the regime in traditional and modern media, as well as any publicly stated criticism against the present government, is criminalized. According to the Bahrain Independent Commission of Inquiry (BICI), an independent body set up to examine the suppression of protests in February and March 2011, dissidents are frequently tortured in custody.

The BICI and numerous Bahraini human rights organizations establish a clear connection between the suppression of free expression, systematic and wide-spread surveillance of telecommunications, and the arbitrary detention and torture of dissidents by the government of Bahrain.

Aided by surveillance technologies, Bahraini security agencies consistently monitor the communications of journalists, bloggers and demonstrators. Data obtained from this surveillance is used to identify and arrest dissidents, affected persons are often confronted with transcripts of their telecommunications as incriminating evidence. Security officers systematically maltreat detainees during and after their arrest, and officials regularly resort to torture to extract confessions from detainees.

The Role of Trovicor

An NSN spokesperson has confirmed that in 2009 Trovicor acquired the maintenance contracts of Siemens' surveillance technology, originally installed in 2006, in Bahrain. It

follows that, since its procurement of these contracts, Trovicor has maintained surveillance technology for the Bahraini government, at least until the interview with the NSN spokesperson in summer 2011. During this time Trovicor has ensured the continued functioning of its surveillance technologies in Bahrain.

The amount of publically available information on the human rights situation in Bahrain suggests that the management of Trovicor should have known that dissidents were at significant risk of being monitored, arrested and tortured by security agencies, and that its technology was likely to have been used in this process. Furthermore, NSN claims to have withdrawn from the business of developing these technologies because of the negative human rights impact associated with them.

It is unclear if Trovicor recognized or responded to this risk, the continued and widespread repression of Bahraini dissidents would suggest that it has not. Trovicor's code of conduct does not require it to undertake any form of risk analysis related to human rights.¹

Trovicor's potential violations of the OECD Guidelines

According to the OECD Guidelines, corporations are obliged to refrain from committing human rights abuses through their own activities. Beyond this, corporations should avoid causing or contributing to adverse impacts on human rights. Enterprises should also seek *"to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services by a business relationship, even if they do not contribute to those impacts."*² Furthermore, the OECD Guidelines ask that businesses carry out human rights due diligence to assess their actual and potential impact on human rights.

These standards and human rights due diligence obligations are also articulated in the UN Guiding Principles on Business and Human Rights,³ which were endorsed by the UN Human Rights Council in June 2011. According to the UN Guiding Principles corporations are obliged to take appropriate actions if their activities contribute to negative impacts on human rights and should use all means available to them to take corrective action against human rights risks arising from their activities. States are obliged to monitor corporation's compliance with such obligations. The UN Guiding Principles and the OECD Guidelines constitute international consensus on standards of corporate responsibility.

In the opinion of the complainants, the National Contact Point in Germany needs to assess whether According to common international theories, acting as accessory to a crime has a similar legal consequence to direct perpetration. Notwithstanding this, Trovicor's alleged maintenance of surveillance technologies for the Bahraini government possibly has contributed to, and probably exacerbated, the human rights violations perpetrated by the country's security agencies. Furthermore, it appears that Trovicor has failed to react adequately to the risks associated with its technology despite the wide spread public reports about the human rights situation in Bahrain. It also seems reasonable to question whether the company has developed appropriate mechanisms to carry out a human rights risk analysis that takes into account the high risks character of its technologies.

¹ <http://trovicor.com/en/company-en/social-responsibility-en.html>.

² OECD Guidelines for Multinational Companies, Chapter IV. 3.

³ UN Doc A/HRC/17/31

Political Context

There have been important discussions regarding surveillance technologies at the European and international level, as well as within Germany. This debate shows that various political institutions acknowledge the high risk associated with surveillance technologies similar to those provided Trovicor.

On 18 January 2012 an EU regulation introduced sanctions on technologies exported to Syria. The technologies addressed by this regulation are similar to those that have given cause for this complaint.⁴ Furthermore, the current foreign minister of Germany emphasized problems regarding the dual-use character of surveillance technology, publicly stating that 'these regimes should not get the technical instruments to spy on their own citizens.'⁵

Nevertheless these technologies are subject to little oversight. The EU regulation No. 428/2009⁶ and the Wassenaar Arrangement⁷ are harshly criticized because they do not include surveillance technology in the list of dual-use goods. So far, surveillance technology produced for law enforcement agencies is not subject to any export regulations.

The OECD complaints aim to also contribute to the discussion about the need for better regulation of surveillance technologies, since it demonstrates that there is another important standards on corporate human rights responsibilities which needs to be respected and taken into consideration.

The Complainants

The **European Centre for Constitutional and Human Rights** e.V. (ECCHR) is an independent, non-profit human rights organization dedicated to protecting civil and human rights throughout the world. ECCHR was founded in 2007, its council is Michael Ratner, Lotte Leicht and Dieter Hummel, and they are represented by the Secretary General, Wolfgang Kaleck. In the field of Business and Human Rights, ECCHR uses judicial and quasi-judicial mechanisms to hold European corporations accountable for the impact they have on human rights. ECCHR has a history of working with victims of grave human rights abuses in Bahrain and other oppressive countries. As a result, ECCHR is targeting European corporations who facilitate, or are complicit in, human rights abuses by these countries' governments.

Reporters Without Borders is an international non-governmental organization that advocates freedom of the press and freedom of information. The organization aims to:

- continuously monitor attacks on freedom of information worldwide;

⁴ Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011.

⁵ Guido Westerwell, conference on human rights in the internet, cited in:

<http://www.zeit.de/digital/internet/2012-09/exportverbot-ueberwachung-westerwelle>.

⁶ Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

⁷Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technology.

- denounce any such attacks in the media;
- act in cooperation with governments to fight censorship and laws aimed at restricting freedom of information;
- morally and financially assist persecuted journalists, as well as their families.
- offer material assistance to war correspondents in order to enhance their safety.

Together with the international secretariat in Paris, Reporters Without Borders Germany documents violations of press freedom and coordinates international campaigns and actions. Since 2001 Reporters Without Borders has annually published a report titled “Enemies of the Internet” highlighting the extent to which governments monitor internet communication.

Bahrain Watch is an independent research and advocacy organisation that seek to promote effective, transparent and accountable governance in Bahrain. Bahrain Watch was formed in February 2012 by a group of researchers and activists with personal and academic ties to the country. The organisation aims to assess the progress of human rights, democratic, and other governance reforms in Bahrain making information available in a digestible format to the public. Bahrain Watch also engages with journalists and NGOs to ensure they are receiving accurate information regarding the situation in the country. Their Spy Watch programme explores ongoing electronic attacks on activists and journalists across the Middle East, and exposes the companies that sell this technology. A key member of Bahrain Watch, Ala’a Shehabi, has been a victim of the spy software allegedly used by the Bahrain Government.

Privacy International's mission is to defend the right to privacy across the world, and to fight unlawful surveillance and other intrusions into private life by governments and corporations. They aim to:

- research and raise awareness about threats to privacy
- monitor and report on surveillance methods and tactics
- work at national and international levels to ensure strong legal protections for privacy
- seek ways to protect privacy through the use of technology

Privacy International was founded in 1990 and was the first organization to campaign at an international level on privacy issues. They have advised and reported to international organizations like the Council of Europe, the European Parliament, the Organization for Economic Cooperation and Development and the UN Refugee Agency. Privacy International has researched the international surveillance technology business for a extensively publishing major reports on this issue.

The **Bahrain Center for Human Rights (BCHR)** is a non-profit, non-governmental organization, registered with the Bahraini Ministry of Labor and Social Services since July 2002. Despite an order by the authorities in November 2004 to close its organization, the

BCHR is still functioning due to wide internal and external support for its struggle to promote human rights in Bahrain. Their vision is to promote a prosperous democratic country free of discrimination and other violations of human rights. BCHR aim to encourage and support individuals and groups who are proactive in the protection of their own rights and the rights of others. BCHR want to promote freedoms and basic rights, combat racial discrimination, disseminate a human rights culture and support and protect victims and vulnerable persons.