

Spyware: activists tortured (Bahrain)

Sector: Surveillance software and technology

Issues: Targeting human rights defenders, surveillance leading to serious human rights abuses

The companies: **Gamma Group** is an Anglo-German company, registered in the UK, which produces surveillance technology including FinFisher software.¹ This software can access documents, emails and messages stored in computers and other devices, view web browsing history and access a computer's camera and microphone.² **Trovicor** is a German company which sells internet monitoring and mass surveillance products.³

Affected rights holders: Surveillance technologies such as FinFisher have been used as a means to exercise political control and to spy on activists, human rights defenders, journalists and dissidents to stifle political opposition and undermine democratic development.⁴

Details:

The development of the global private surveillance industry has precipitated a range of human rights abuses as it supplies advanced surveillance technologies to countries around the world without adequate safeguards for their use.⁵ Surveillance technologies inhibit freedom of expression and have a chilling effect on freedom of assembly and association.⁶

On 1 February 2013, Privacy International and a number of other organisations filed complaints with the German and UK NCPs against Gamma and Trovicor.⁷ The complaints alleged that Gamma and Trovicor sold intrusive surveillance technology and provided training to the Bahraini Government which used it to target human rights activists. Allegations against the companies included aiding and abetting the Bahraini Government in perpetrating human rights abuses including violations of the rights to privacy, freedom of expression, freedom of association, and arbitrary arrest and torture.

The German NCP offered mediation relating to Trovicor's management system but held that the allegations were unsubstantiated and closed the case. The UK NCP accepted the complaint, and although it found that the complainants had failed to provide evidence of Gamma's supply of surveillance technology within the timeframe during which the OECD Guidelines for Multinational Enterprises applied, it confirmed many of the allegations raised⁸

In its final statement of December 2014, it found that the company did not have human rights policies and due diligence processes in place that would prevent abusive use of its products, while acknowledging the company's response on the development of a code of conduct relevant to human rights obligations.⁹ The NCP concluded that Gamma's approach was not consistent with its general obligations to respect human rights under the OECD Guidelines and criticised the company for its failure to engage properly with the process.

In February 2023, the UK High Court ruled that the Kingdom of Bahrain does not have immunity in relation to its alleged use of FinFisher surveillance software to infiltrate the computers of two Bahraini dissidents who now live in the UK.¹⁰

How could a UK Business, Human Rights and Environment Act have made a difference?

In our assessment, under a UK Business, Human Rights and Environment Act, Gamma would have been legally required to conduct an adequate due diligence process on its downstream value chain to identify the risk of its products being used to abuse human rights.

Given the nature and profile of its client in this case, an adequate risk identification process would likely have concluded that the risk of human rights violations was both foreseeable and high. Gamma might have decided not to supply surveillance technology and training to the Bahraini Government. Had the sale gone ahead without any credible and effective safeguards to prevent illegitimate or abusive use of its products by the Bahraini Government, a UK court would likely have found Gamma liable for failing to prevent foreseeable violations.

Unlike the NCP procedure, Gamma would have had to respond to a legal claim against it before a UK court. Under the UK Business, Human Rights and Environment Act, Gamma would have had to provide evidence to demonstrate the adequacy of its due diligence policies and procedures, including the nature of its contractual relationship with the Bahraini Government and the existence of any conditions, safeguards or restrictions on the use of its products. This would have significantly alleviated the burden on the claimants to come up with evidence typically in the hands of the defendant to substantiate their claim.

Endnotes

- 1 The Guardian (11 October 2018), "[Bahraini Arab spring dissidents sue UK spyware maker](#)"; Companies House, "[Gamma Group Ltd](#)". Accessed 9 February 2022.
- 2 Leigh Day (20 February 2022), "[Kingdom of Bahrain accused of using FinFisher spyware on UK-based dissidents](#)".
- 3 Privacy International (20 December 2013), "[German OECD NCP unwilling to investigate role of German company in human rights violations in Bahrain](#)".
- 4 Privacy International, "[Challenging the Drivers of Surveillance](#)". Accessed 7 December 2022.
- 5 Privacy International. Accessed 7 December 2022.
- 6 Privacy International, "[Protest Surveillance](#)". Accessed 10 February 2023.
- 7 OECD Watch (1 February 2013), "[Privacy International et al. vs. Gamma International](#)".
- 8 UK National Contact Point for the OECD Guidelines for Multinational Enterprises (December 2014), "[Privacy International & Gamma International UK Ltd: Final Statement After Examination of Complaint](#)".
- 9 UK National Contact Point for the OECD Guidelines for Multinational Enterprises (December 2014).
- 10 Leigh Day (20 February 2022); Leigh Day (8 February 2023), "[High Court rules dissidents can bring FinFisher spyware claims against Kingdom of Bahrain in the UK](#)".