

Society for Threatened Peoples (Complainant)

vs

UBS Group AG (Respondent)

Complaint submitted to:
National Contact Point of Switzerland
Staatssekretariat für Wirtschaft SECO

22/06/2020

Complaint Summary

The Society for Threatened Peoples Switzerland (STP) files this specific instance against UBS Group AG (UBS) under the OECD Guidelines for Multinational Enterprises on the grounds of its business relationship with Hangzhou Hikvision Digital Technology Co. Ltd. (Hikvision).

Surveillance and mass internment without charge or trial

The STP raises this complaint on the basis of Hikvision's role in the mass surveillance of the Uyghurs and other Turkic minorities living in the Xinjiang Uyghur Autonomous Region (Xinjiang, traditionally known by the Uyghurs as East Turkestan), a province in northwestern China. Forming the backbone of a gruellingly intrusive surveillance state, which the Chinese government has established in the region over the past few years, modern surveillance technologies have become all-pervasive: there are cameras at every street corner, every entrance to public buildings is monitored, "data doors" at many of the region's newly installed checkpoints extract identifying information from people's mobile phones and other electronic devices, while mobile spyware, which every resident is obliged to install, monitors online activity. This has greatly contributed to the growing oppression of the local Turkic

communities, whose every step and activity is tracked and minutely observed.¹ Moreover, the China Cables, published in November 2019, verify the existence of internment camps, in which more than a million Uyghurs, Kazakhs and Kyrgyz have been arbitrarily detained.² While the Chinese authorities refer to these facilities as “re-education centres”, inside, the detainees are subjected to political indoctrination and abuse.³ These camps too operate on the basis of total digital surveillance – they have been ordered to be free of “blind spots” – ,⁴ and seem to be part of a larger campaign to replace local languages, cultures and beliefs with secularism and political allegiance to the Chinese state.⁵ Additionally, more than 80,000 Uyghurs have been deported from the camps to other parts of China, where they have been forced to work in factories supplying international brands.⁶

Hikvision: the technology company supplying the digital police state

Hikvision, as a provider of modern surveillance technology, has played a key part in the development of the surveillance infrastructure in Xinjiang. Having signed contracts with the local security authorities worth close to US \$ 300 million between 2017 and 2018, the enterprise has installed mass surveillance systems in several cities and counties as well as provided the technology used in the surveillance of the camps.⁷ The company has also been directly involved in the *Integrated Joint Operations Platform*, a big-data based predictive policing programme that aggregates collected personal data and then uses these to compile lists of those to be more closely observed and/or detained.⁸ On the grounds of its involvement in the crackdown on ethnic minority communities in the region, Hikvision, together with 27 other entities, was blacklisted by the US in October 2019.⁹

¹ <https://www.youtube.com/watch?v=v7AYyUqrMuQ>; <https://www.nytimes.com/2019/05/22/world/asia/china-surveillance-xinjiang.html>; <https://www.hrw.org/news/2018/02/26/china-big-data-fuels-crackdown-minority-region>; <https://www.hrw.org/news/2019/08/16/data-leviathan-chinas-burgeoning-surveillance-state>; <https://www.hrw.org/report/2019/05/01/chinas-algorithms-repression/reverse-engineering-xinjiang-police-mass-surveillance>

² <https://www.icij.org/investigations/china-cables/>; <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html>

³ <https://www.hrw.org/news/2018/02/26/china-big-data-fuels-crackdown-minority-region>

⁴ <https://www.theguardian.com/world/2019/nov/24/china-cables-leak-no-escapes-reality-china-uyghur-prison-camp>; <https://www.bbc.com/news/world-asia-china-50511063>

⁵ <https://www.bbc.com/news/world-asia-china-50511063>; <https://www.sueddeutsche.de/politik/china-cables-uyghuren-peking-1.4801254>; https://www.amnesty.ch/de/laender/asien-pazifik/china/dok/2018/xinjiang-eine-million-menschen-in-lagern/1809_report_china_xinjiang.pdf

⁶ <https://www.aspi.org.au/report/uyghurs-sale>; <https://www.hrw.org/news/2018/02/26/china-big-data-fuels-crackdown-minority-region>

⁷ <https://ipvm.com/reports/xinjiang-dahua-hikvision>; <https://ipvm.com/reports/hikvision-xinjiang>; <https://www.reuters.com/article/us-hikvision-china-insight/hikvision-a-surveillance-powerhouse-walks-u-s-china-tightrope-idUSKCN1VJ05C>; <https://ipvm.com/reports/hikvision-bbc>

⁸ <https://ipvm.com/reports/hikvision-xinjiang>; <https://www.hrw.org/news/2018/02/26/china-big-data-fuels-crackdown-minority-region>

⁹ <https://www.reuters.com/article/us-usa-trade-china-exclusive-idUSKBN1WM25M>

UBS maintains financial ties with Hikvision

UBS, against whom this complaint is raised, maintains financial ties with Hikvision (see figure below). Data available to the STP show that UBS is through its products and activities involved in Hikvision and that it has offered nominee shareholding services to a beneficiary owner since 2016,¹⁰ precisely the year when the Chinese authorities began to expedite the development of the digital police state in the region. Even though the human rights crisis in Xinjiang has been publicly known at least since 2018 and has been sharply and repeatedly criticized by the UN,¹¹ the bank still maintained products and activities to the value of US \$ 6.36 million (0.02%) at the end of 2019.¹² UBS has continued to invest in Hikvision through its products since, and even increased these positions in February of this year.¹³ On the basis of its nominee shares, UBS featured among Hikvision's top-ten shareholders from 2016 up until early 2019, and has been the only foreign bank to have consistently been listed as such.¹⁴ Being a well-known and highly regarded international brand as well as among the leading foreign banks in China,¹⁵ this has undoubtedly lent credibility to Hikvision and has, presumably, not been negligible in terms of attracting further investment, including from abroad.

¹⁰ Hikvision 2016 Annual Report; Refinitiv/Thomson EIKON

¹¹ [https://eu.usatoday.com/story/opinion/2018/07/24/defend-religious-freedom-global-attacks-mike-pompeo-column/818972002/;](https://eu.usatoday.com/story/opinion/2018/07/24/defend-religious-freedom-global-attacks-mike-pompeo-column/818972002/)
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslEE2YuVt8GA5WKG3GEX%2BZEXqjnsVnWP%2BkQ6f9cmzWcEPJYdFWEXvIFmDTE3WtKbIKZXAKr5OVtwnh86Q4GNZXSmrqMf55xyaMPMcFusW3o2;>
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23452&LangID=E>

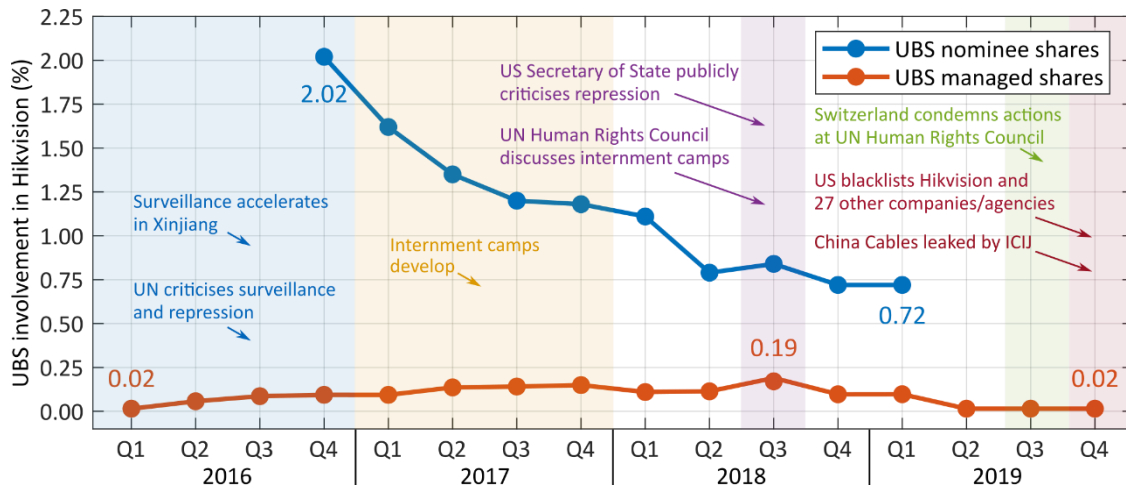
¹² Refinitiv/Thomson EIKON

¹³ Refinitiv/Thomson EIKON

¹⁴ Hikvision Annual and Quarterly Reports for 2016 – 2019.

After the first quarter of 2019, UBS was no longer listed in Hikvision's reports. This does not, however, preclude that UBS has continued to provide nominee shareholding services in relation to the technology company. Since Hikvision only discloses its top-ten shareholders, the number of shares represented by the bank may simply have been surpassed by those of other investors.

¹⁵ [https://www.ubs.com/global/en/media/display-page-ndp//en-20190103-gcc-shanghai.html;](https://www.ubs.com/global/en/media/display-page-ndp//en-20190103-gcc-shanghai.html)
<https://www.swissinfo.ch/eng/ubs-recovers-from-swinegate-with-record-china-event-turnout/45493916>



UBS involvement in Hikvision shown against key events in Xinjiang as well as instances of international condemnation of the repression and surveillance of the Uyghurs and other Turkic minorities.

Failure to conduct appropriate due diligence: UBS in breach of OECD Guidelines

In view of the circumstances in Xinjiang, UBS has, in the opinion of the STP, failed to fulfil its corporate social responsibility. By maintaining a business relationship with a company supplying the tools necessary to develop and operate the surveillance apparatus established by the Chinese authorities in the region, the STP considers UBS to have neither complied with the OECD Guidelines for Multinational Enterprises (Guidelines) and other international principles on business and human rights nor with its own policies and commitments.

With regard to the OECD Guidelines, the STP deems the bank to have breached several of the General Principles (Chapter 2) of the Guidelines, particularly Articles 2, 10 and 12, as well as the corresponding articles in Chapter 4 on Human Rights (Articles 1, 3 and 5). By having entered and subsequently maintained a business relationship with Hikvision, UBS has, in the view of the STP, neither fulfilled its duties regarding due diligence, i.e. avoided infringing on the rights of the Uyghurs and other Turkic minorities living in Xinjiang, nor sought ways to prevent or mitigate, i.e. address, the adverse human rights impacts despite being directly linked to them through its products and services. While the Guidelines clearly state that “the nature and extent of due diligence depend on the circumstances of a particular situation,”¹⁶ the gravity of the current human rights crisis in northwest China should inarguably have prompted a timely and appropriate response by the bank.

¹⁶ OECD (2011), OECD Guidelines for Multinational Enterprises, Chapter 2, Article 10

Regarding UBS's own policies and commitments, of note is especially its code of conduct. This *inter alia* requires that the bank is "constantly looking for better ways to do business in an environmentally sound and socially responsible manner. That includes monitoring, managing and reducing any negative impact we might have on the environment and on human rights. It means managing social and environmental risks that our clients' and our own assets are exposed to [...]." ¹⁷ In the view of the STP, the financial ties UBS maintains with Hikvision represent a stark deviation from this code, a standard of ethics that UBS has set for itself and that is to be upheld "at all times, with no exception." ¹⁸

Previous engagement with UBS unsatisfactory: request for NCP mediation

On the initiative of the STP, an initial meeting between the STP, the World Uyghur Congress (WUC) and UBS was held on 28 January 2020 to discuss the human rights situation in Xinjiang and, relatedly, UBS's business relationship with Hikvision. Overall, the STP remained disappointed with UBS's engagement in this specific case and its reluctance to take up the issues that were raised. It therefore requests the Swiss National Contact Point to facilitate a mediation process between the STP and UBS so as to allow the parties to formally and constructively address the bank's breaches of the Guidelines based on its financial ties with Hikvision.

¹⁷ UBS (2020), The way we do business: our code of conduct and ethics, p.16

¹⁸ UBS (2020), The way we do business: our code of conduct and ethics, p.18

As part of the requested proceedings, the STP **submits the following requests to UBS:**

1. To withdraw from all financial transactions, products and services that include or relate to Hikvision.
2. To adapt its internal policies:
 - a. To ensure that its entire equity business is covered by the bank's human rights due diligence processes in order to pre-empt the bank's involvement in adverse human rights impacts in the future.
 - b. To incorporate clear exit clauses in its contractual agreements so as to allow the bank to withdraw from business relationships at any point should these directly link UBS to adverse human rights impacts in the future.
3. Especially with regard to passive investments, to adjust its due diligence mechanisms, both prior and ongoing, by improving the prioritisation of cases and sectors for risk assessment as well as by establishing procedures to verify that due diligence processes have been implemented.
4. To increase transparency by accounting for how the adverse human rights impacts, both potential and actual, to which UBS is linked are addressed by the bank, at the relevant level of detail.

STP anticipates improved policies and greater transparency

The STP hopes that an independent mediation process will create insight within UBS that the bank is directly linked to the adverse human rights impacts contributed to by Hikvision through its products and services and that this will in turn effect a change in UBS' position and business conduct as well as an improvement in its policies so as to prevent such harm in the future. The STP also anticipates that the NCP proceedings will help to encourage UBS to enhance transparency with regard to its financial transactions, products and services more generally. Finally, the STP also hopes that the present case may serve as a basis for a debate on the applicability of the Guidelines specifically to institutional investors holding nominee shares and be utile in reaching a conclusive interpretation.

The complaint is based on several in-depth reports by human rights organisations, media documentation of the leaks published inter alia by the International Consortium of Investigative Journalists (ICJ) as well as other news articles with general relevance to the current circumstances in Xinjiang, articles published by IPVM¹⁹ and statements by representatives of the Uyghur community. Additionally, the complaint also draws on information obtained during the above-mentioned meeting, UBS policy documents, the quarterly and annual reports of Hikvision and data from Refinitiv/Thomson EIKON.

By submitting this specific instance, the STP commits to engaging in the mediation process in good faith. While it will inform publicly about the progress of the complaint and may also respond to unsolicited enquiries from the media, it will respect the confidentiality of the proceedings when doing so and not publish information beyond this summary.

¹⁹ IP Video Market (IPVM) is a US publication that reports on the video surveillance industry.