



Mr. Emilio Álvarez Icaza Longoria  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
1889 F. Street, N.W.  
Washington, D.C. 20006

August 16, 2013

**Re: Request for a thematic hearing on the human rights implications of communications surveillance in the US and other OAS Member States**

Dear Secretary Icaza:

Petitioners request a thematic hearing on the issue of State communications surveillance technologies and techniques and their impact on the rights to freedom of expression, privacy and to access information held by the State. Petitioners also seek to address a separate but related issue: the inadequacy of legal protections for national security whistleblowers in the region. In light of recent revelations that the United States is operating secret programs to conduct dragnet surveillance of U.S. and foreign nationals' telephonic and internet communications, ostensibly to protect national security, and its ongoing vilification of former government contractor, Edward Snowden, who exposed these programs, this request is both timely and urgent.

The surveillance, conducted by the U.S. National Security Agency, is unprecedented in scope, directly affecting at least hundreds of millions of people across the globe, and implicating the entire world. It involves a number of programs enabling surveillance of telephone calls and electronic communications both within and outside the United States. One of these programs allows the NSA to collect "telephony metadata" of every phone call made or received on United States networks. 'Metadata' refers to the transactional information generated from the use of a technology, such as the parties to a communication, the time and date of the activity, websites visited and parties' location.<sup>1</sup> The information gleaned from it may be highly intrusive; as a United States federal appellate court recently noted, with access to aggregated metadata about a particular individual, one "can deduce whether

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<sup>1</sup> Guardian US interactive team, *A Guardian guide to your metadata*, The Guardian (June 12, 2013), <http://www.theguardian.com/technology/interactive/2013/jun/12/what-is-metadata-nsa-surveillance>.

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he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups — and not just one such fact about a person, but all such facts.”<sup>2</sup> Another program allows the NSA to collect, store, and search through both the metadata and content of electronic communications made worldwide.

The United States has recently declassified these two programs and has vigorously defended its surveillance programs as critical tools in the fight against terrorism. The United States has repeatedly stated that its surveillance is consistent with the U.S. Constitution, authorized by law— in particular, recent amendments to the Foreign Intelligence Surveillance Act (FISA) — and supervised for abuse by an independent court, the Foreign Intelligence Surveillance Court (FISC), as well as special committees of the United States Congress. However, in a recent statement to The Washington Post, the chief judge of the FISC, U.S. District Judge Reggie B. Walton, said that:

“the court lacks the tools to independently verify how often the government’s surveillance breaks the court’s rules that aim to protect Americans’ privacy. Without taking drastic steps, it also cannot check the veracity of the government’s assertions that the violations its staff members report are unintentional mistakes.”<sup>3</sup>

The government’s claims as to the lawfulness of its programs are currently being litigated in federal court.

While the focus of this proposed hearing will be the surveillance practices of the United States, surveillance is not unique to the U.S. Nor are the human rights violations associated with such practices. In a recent Joint Statement on Surveillance Programs, the U.N. Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights identified the inadequate regulation of State surveillance technologies and its potential negative impact on human rights protections as issues for the majority of states in the region. According to the Rapporteurs, “other states in the Americas have also intercepted communications from private parties under intelligence laws or outside the bounds of existing legal regulations. The resulting information was in many cases used for political purposes, or even distributed broadly through state media without the authorization of the people affected by it.” In their statement, the Rapporteurs

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<sup>2</sup> *United States v. Maynard*, 615 F.3d 544, 562 (D.C. Cir. 2010) (discussing the privacy implications of aggregated location information).

<sup>3</sup> Carol D. Leonnig, *Court: Ability to Police U.S. Spying Program Limited*, Wash. Post, Aug. 15, 2013, available at [http://www.washingtonpost.com/politics/court-ability-to-police-us-spying-program-limited/2013/08/15/4a8c8c44-05cd-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/politics/court-ability-to-police-us-spying-program-limited/2013/08/15/4a8c8c44-05cd-11e3-a07f-49ddc7417125_story.html).

highlighted the need to impose limits on surveillance programs to ensure that they comply with relevant human rights standards; the affirmative obligation on states to improve mechanisms for transparency and public debate on such programs; and the requirement that states not penalize persons who divulge information on rights violations. *See* U.N. Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression, June 21, 2013.<sup>4</sup>

This proposed hearing would provide the Commission with information on the nature and scope of communications surveillance conducted by the U.S. (which could also, and might already, be employed by other states in the region), and the violations of human rights implicated by such programs. The hearing will also address the emerging international and regional human rights norms and national good practices concerning surveillance programs and protections for “whistleblowers” in the national security sector,<sup>5</sup> and the measures that the U.S. and other OAS member states need to adopt to ensure that their programs comply with these relevant norms.

Sincerely,



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<sup>4</sup> Available at <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=927&IID=1>.

<sup>5</sup> *See, e.g.*, Principles 10E, 40, 43 and 46 of the Global Principles on National Security and the Right to Information (“Tshwane Principles”), drafted by 22 civil society organizations and academic centers, endorsed by the Parliamentary Assembly of the Council of Europe (PACE) Legal Affairs and Human Rights Committee, and the special rapporteurs on freedom of expression of the Inter-American Commission on Human Rights, the UN, and the African Commission on Human and Peoples Rights among others. For the text of the Principles and the endorsements, see <http://www.right2info.org/exceptions-to-access/national-security>.