

19 November 2013

To the Co-Chairs of the Open Government Partnership

Mr. Kuntoro Mangkusubroto
Mr. Julián Alfonso Olivas Ugalde
Mr. Rakesh Rajani

Statement of Concern on Disproportionate Surveillance

We, the undersigned civil society organisations, affirm our deep commitment to the goals of the Open Government Partnership, which in its declaration endorsed “more transparent, accountable, responsive and effective government,” founded on the principles of the Universal Declaration of Human Rights.

We join other civil society organisations, human rights groups, academics and ordinary citizens in expressing our grave concern over allegations that governments around the world, including many OGP members, have been routinely intercepting and retaining the private communications of entire populations, in secret, without particularised warrants and with little or no meaningful oversight. Such practices allegedly include the routine exchange of “foreign” surveillance data, bypassing domestic laws that restrict governments’ ability to spy on their own citizens.

These practices erode the checks and balances on which accountability depends, and have a deeply chilling effect on freedom of expression, information and association, without which the ideals of open government have no meaning.

As Brazil’s President, Dilma Rousseff, recently said at the United Nations, “*In the absence of the right to privacy, there can be no true freedom of expression and opinion, and therefore no effective democracy.*”

Activities that restrict the right to privacy, including communications surveillance, can only be justified when they are prescribed by law, are necessary to achieve a legitimate aim, and are proportionate to the aim pursued.¹ Without firm legislative and judicial checks on the surveillance powers of the executive branch, and robust protections for the media and public interest whistleblowers, as outlined in the Tshwane Principles², abuses can and will occur.

We call on all governments, and specifically OGP members, to:

- recognise the need to update understandings of existing privacy and human rights law to reflect modern surveillance technologies and techniques.

¹ International Principles on the Application of Human Rights to Communications Surveillance (<https://en.necessaryandproportionate.org/text>).

² Tshwane Principles on National Security and the Right to Information (<http://www.opensocietyfoundations.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles> - <http://www.opensocietyfoundations.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>).

- commit in their OGP Action Plans to complete by October 2014 a review of national laws, with the aim of defining reforms needed to regulate necessary, legitimate and proportional State involvement in communications surveillance; to guarantee freedom of the press; and to protect whistleblowers who lawfully reveal abuses of state power.
- commit in their OGP Action Plans to transparency on the mechanisms for surveillance, on exports of surveillance technologies, aid directed towards implementation of surveillance technologies, and agreements to share citizen data among states.

SIGNED:

International and regional organisations

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| 1. ACCESS Info Europe | 7. CIVICUS World Alliance for Citizen Participation |
| 2. Africa Freedom of Information Centre | 8. Global Integrity |
| 3. Alianza Regional por la Libre Expresión e Información | 9. Global Network Initiative |
| 4. ARTICLE 19, Global Campaign for Free Expression | 10. HIVOS |
| 5. Centre for Law and Democracy | 11. Oxfam International |
| 6. Commonwealth Human Rights Initiative (CHRI) | 12. Privacy International |
| | 13. World Wide Web Foundation |

National organisations

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| 1. Acción Ciudadana, Guatemala | 17. Civil Society Legislative Advocacy Centre (CISLAC), Nigeria |
| 2. ActiveCitizen, Ireland | 18. Citizens for Responsibility and Ethics in Washington (CREW), USA |
| 3. Africa Center for Open Governance, Kenya | 19. Corruption Watch, UK |
| 4. Aktion Freiheit statt Angst e.V. (Freedom Not Fear), Germany | 20. Defending Dissent Foundation, USA |
| 5. Anti-Corruption Trust of Southern Africa, South Africa | 21. Democracy Watch, Canada |
| 6. Association EPAS, Romania | 22. Digital Courage, Germany |
| 7. Asociación para una Sociedad Más Justa, Honduras | 23. Digital Rights Foundation, Pakistan |
| 8. Bolo Bhi, Paikstan | 24. Diritto Di Sapere, Italy |
| 9. Center for Effective Government, USA | 25. e-Governance Academy, Estonia |
| 10. Center for Independent Journalism, Romania | 26. East European Development Institute, Poland |
| 11. Center for Peace Studies, Croatia | 27. Economic Research Center, Azerbaijan |
| 12. Center for Public Interest Advocacy, Bosnia Herzegovina | 28. Federal Accountability Initiative For Reform, Canada |
| 13. Centro Internacional para Investigaciones en Derechos Humanos, Guatemala | 29. Freedom of Information Center, Armenia |
| 14. Centro for Public Integrity, Mozambique | 30. Freedom of Information Forum, Austria (FOIAustria) |
| 15. Centrum Cyfrowe Projekt, Poland | 31. Freedom of Information Foundation, Russia |
| 16. Charity & Security Network, USA | |

32. Fundar, Center for Research and Analysis, Mexico
33. GESOC, Mexico
34. Global Human Rights Communications, India
35. GodlyGlobal.org, Switzerland
36. GONG, Croatia
37. Hong Kong In-Media, Hong Kong
38. Hungarian Civil Liberties Union
39. Independent Journalism Center, Moldova
40. INESC, Brazil
41. Initiative für Netzfreiheit, Austria
42. Institute for Development of Freedom of Information, Georgia
43. Instituto Mexicano para la Competitividad A.C., Mexico
44. International Records Management Trust, UK
45. Integrity Action, UK
46. IT for Change, India
47. Iuridicum Remedium, Czech Republic
48. Media Rights Agenda, Nigeria
49. Mazdoor Kisan Shakti Sangathan (Association for the Empowerment of Workers and Peasants), India
50. NATO Watch, UK
51. Obong Denis Udo-Inyang Foundation, Nigeria
52. OneWorld – Platform for Southeast Europe (OWPSEE), Europe
53. openDemocracy.net, UK
54. Open Democracy Advice Centre, South Africa
55. Open Australia Foundation
56. Open Government Institute, Moldova
57. Open the Government.org, USA
58. Open Knowledge Foundation, UK
59. Open Knowledge Foundation Ireland
60. Open Rights Group, UK
61. Paradigm Initiative, Nigeria
62. Paraguayan Association of Information Technology Law, Paraguay
63. Philippines Internet Freedom Alliance
64. Privacy and Access Council of Canada – Conseil du Canada de l'Accès et la vie Privée
65. PRO Media, Macedonia
66. PROETICA PERU
67. Project On Government Oversight, USA
68. Public Concern at Work, UK
69. Public Virtue Institute, Indonesia
70. Publish What You Pay Indonesia
71. Request Initiative, UK
72. Sahkar Social Welfare Association, Pakistan
73. Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC), University of Ottawa
74. Shaaub for Democracy Culture Foundation, Iraq
75. Social Research and Development Center, Yemen
76. Soros Foundation Romania, Romania
77. TEDIC, Paraguay
78. Transparencia por Colombia
79. Transparency International Armenia
80. Transparency International Bosnia and Herzegovina
81. Transparency International Indonesia
82. Transparency International Ireland
83. Transparency International Macedonia
84. Transparency International Mongolia
85. Transparency International Switzerland
86. Unwanted Witness, Uganda
87. Water Governance Institute (WGI), Uganda
88. Whistleblowers Network, Germany
89. Youth Advocate Program International, Inc, USA.
90. Zenu Network, Cameroon

Individuals

1. Aruna Roy, Founder, MKSS India and member of India's National Advisory Council
2. Tim Berners-Lee
3. Vinod Rai, Former Comptroller and Auditor General, India
4. Rebecca MacKinnon
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