NORWEGIAN HELSINKI COMMITTEE
DEN NORSKE HELSINGFORSKOMITE

Internet and mobile phone surveillance must be in compliance with human rights provisions on privacy

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To provide security for its citizens is among the state's primary objectives. However, as has been discussed extensively within the framework of the OSCE, a state's efforts to combat terrorism must be in compliance with international law, including international human rights standards. The OSCE consensus seems to be that not respecting human rights and rule of law in combatting terrorism results in undermining the efficiency and legitimacy of counter-terrorism efforts.

However, realities are far from this principle. Several OSCE participating States, including full-fledged democracies, have violated human rights by subjecting terrorism suspects to harsh interrogations techniques and prison conditions that amount to torture or inhuman treatment. In efforts to detect planning of acts of terrorism, they sometimes also fail to respect the right to privacy.

It is widely known that authoritarian regimes put as a condition for providing licenses to mobile telephone and internet providers that they get full access to content and meta-data of communications on the systems. The Norwegian Helsinki Committee has *inter alia* criticized the Swedish company Telia Sonera and the Russian company Vimpelcom (partly owned by the Norwegian company Telenor) for providing authorities in Uzbekistan and Belarus full access to their systems.

It has also been a widespread suspicion that security authorities in the United States and some other Western countries surveyed electronic communications widely; perhaps sometimes outside the perimeters of the law.

But it was only Edward Snowden who revealed the full extent of US and British online surveillance programs, and the fact that democratic oversight and control was weak. Snowden claimed that the US National Security Agency (NSA) runs the largest program of suspicious less surveillance in human history. After Snowden's leaks in May and June this year, international media disclosed that security agencies in France run similar programs although less extensive.

The leaks gave rise to strong negative reactions by US and European politicians. However, the extent of their own knowledge about the surveillance prior to Snowden's leaks remains uncertain.

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On this background, we recommend that:

- The OSCE engage in clarifying the framework of internet and mobile phone surveillance that fully respect human rights. ODIHR could be tasked to provide guidelines for the participating States. There is clearly a need for international standards that prevent surveillance of persons that are not under suspicion of any criminal act and which are not properly sanctioned by a court order;

- United States and other democratic states set standards that prevent development of a global online *Orwellian* surveillance society. The right to privacy should be respected when we communicate electronically. If democratic states do not abide by this principle, they risk undermining the global struggle to strengthen respect of fundamental freedoms.

The CSCE/OSCE was a pioneer in setting standards protecting human rights. The participating States reached a consensus in Moscow in 1991, reconfirming already at that time "the right to protection of private and family life, domicile, correspondence and electronic communications."

Technological developments have made the inclusion of "electronic communications" in paragraph 24 of the Document of the Moscow Meeting even more important than perceived in 1991.

- Now we need the OSCE to be a pioneer in setting standards detailing what it means for states to respect the right to privacy online.