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PRESS RELEASE

PRE-14-13 • 18 July 2014

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UNU Study Underpins Landmark Report on Privacy in the Digital Age

Report based on UN University research warns that State surveillance is becoming a 'dangerous habit', calls for reinforcement of safeguards

18 July 2014, Tokyo – A new report released by the Office of the United Nations High Commissioner for Human Rights (OHCHR) spotlights a “disturbing lack of governmental transparency” and “lack of accountability” in regard to digital surveillance policies, laws and practices — deficiencies which are severely inhibiting individuals’ right to privacy. The report, entitled “The Right to Privacy in the Digital Age”, draws on a research study conducted by the United Nations University (UNU) Office in New York, and acknowledges that study as a “major substantive contribution”.

Dr. David M. Malone, the Rector of the United Nations University, today welcomed the report’s release. “As this report recognizes, mass surveillance is emerging as a dangerous habit rather than an exceptional measure. We are delighted that the University could work with the Office of the High Commissioner to provide research support on this pressing global policy issue”, said Dr. Malone.

James Cockayne, Head of the UNU Office in New York, who served as coordinator and lead author of the research study on which the report draws, explained that UNU’s work looked at the application of international human rights law to existing digital surveillance regimes and practices on all continents. “Our research revealed a lack of adequate national legislation and/or enforcement, weak procedural safeguards, and ineffective oversight”, Cockayne said.

“UNU’s analysis, picked up by the Office of the High Commissioner for Human Rights, suggests that the technological platforms upon which global political, economic and social life are increasingly reliant are not only vulnerable to mass surveillance, they may actually facilitate it”, he said.

The OHCHR report finds that the very existence of a mass surveillance programme creates an interference with privacy. It concludes that the onus is on the State to demonstrate that such interference is neither arbitrary nor unlawful. This standard is reflected in Article 17 of the International Covenant on Civil and Political Rights, a binding treaty ratified by 168 States.

Drawing on the UNU study and other materials, including an OHCHR survey of national practices, the new report points out that: “Secret rules and secret interpretations — even secret judicial interpretations — of law do not have the necessary qualities of ‘law’... The secret nature of specific surveillance powers brings with it a greater risk of arbitrary exercise of discretion which, in turn, demands greater precision in the rule governing the exercise of discretion, and additional oversight.”

The UN University study examined both the legal oversight regimes and their implementation in more than 25 countries. James Cockayne noted that this research helped to underpin the OHCHR conclusion that while judicial involvement in oversight of State surveillance can help assess whether such surveillance meets the standards required by international human rights law, “judicial involvement in oversight should not be viewed as a panacea”. The OHCHR report concludes that, “In several countries, judicial warranting or review ... have amounted effectively to an exercise in rubber-stamping” and calls for States to establish independent institutions to monitor such surveillance.

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Drawing on the UN University study, the OHCHR report notes that attention is turning increasingly towards mixed models of administrative, judicial and parliamentary oversight. "The involvement of all branches of government in the oversight of surveillance programmes, as well as of an independent civilian oversight agency, is essential to ensure the effective protection of the law", states the report.

Cockayne noted that when conducted in compliance with the law, including international human rights law, surveillance of electronic communications data can be necessary and effective for legitimate law enforcement or intelligence purposes. "However", he cautioned, "as the Office of the High Commissioner report points out, 'the onus is on the Government to demonstrate that interference is both necessary and proportionate to the specific risk being addressed.'"

The OHCHR report is due to be presented by the High Commissioner for Human Rights, Navi Pillay, to the Human Rights Council at its next session in September, and to the General Assembly at its 69th session in October.

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Full report, "The Right to Privacy in the Digital Age":

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf

Opening remarks by High Commissioner Navi Pillay at the report press conference held in Geneva on Wednesday, 16 July 2014:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14874&LangID=E>

OHCHR webpage on the Right to Privacy in the Digital Age:

<http://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx>