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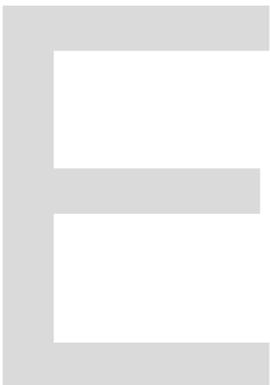
Standing Committee on
Democracy and Human Rights

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Democracy in the digital era and the threat to privacy and individual freedoms

***Explanatory memorandum submitted by the co-Rapporteurs
Ms. B. Jónsdóttir (Iceland) and Mr. H.J. Jhun (Republic of Korea)***

1. What the world has seen, post-Snowden revelations, is that mass surveillance of citizens and the interception of personal data is a reality and that national parliaments and international bodies have not been able to swiftly and properly combat major violations of the internationally and constitutionally protected rights of citizens around the world. The objective and scope of the draft resolution is to empower democracy in the digital age, protecting individual freedoms and ensuring respect for and the protection of human liberty and dignity, as specified by law.
2. In preparation for the draft resolution, observations were submitted by various IPU Member Parliaments, as well as the Forum of Young Parliamentarians of the IPU. Many observations are very relevant and helpful in efforts to combat violations of internationally and constitutionally protected civil and human rights.
3. The observations emphasize that while the Internet provides enormous opportunities for increased public participation, transparency and strengthening democracy, it also presents new challenges. A major concern, in particular, is the mass undermining of human liberty and human dignity, through means such as mass surveillance, sometimes referred to as “bulk collection of data”, violating individuals’ right to privacy and other human rights. Democracy is jeopardized when government agencies and/or surveillance agencies acting on their behalf overstep their remit in the absence of proper safeguards and democratic oversight mechanisms. There is a real need to empower parliaments and parliamentarians in their efforts to safeguard citizens’ rights. The observations recommend stronger oversight mechanisms with adequate resources, while the draft resolution urges parliaments to improve and implement such instruments, which are of vital importance to any meaningful democracy.
4. Arbitrary surveillance in violation of human rights, including the right to privacy, and in violation of the principle of proportionality, also hinders freedom of expression, stifles journalism, with its chilling effects, and subsequently hampers access to information, leading to a less informed public space and less reliable journalism, both of which are fundamental to a well-functioning democracy. Furthermore, the observations submitted and remarks by panellists at the 132nd IPU Assembly in Hanoi repeatedly highlight UN General Assembly resolutions 68/167 and 69/166 on the right to privacy, expressing grave concerns at the detrimental effects that mass surveillance and interception of personal data, including metadata, can have on the enjoyment of human rights. Constitutionally and internationally recognized and protected human rights need to be ensured and respected both online and offline by national parliaments and governments, including national security agencies for which parliaments and governments are accountable, and awareness needs to be raised of online rights. Citizens must enjoy human rights online as well as offline for their human dignity and liberty to be ensured.



5. It is the role of democratically elected parliaments to monitor any invasive conduct carried out by government agencies and/or surveillance agencies acting on their behalf. It is also the role of parliaments to balance national security with protection of and respect for human rights. The IPU is an ideal platform to engage on these issues, address the present situation and prepare for the future. Democratically elected parliaments are accountable for any violations by their respective States of fundamental human rights, including the right to privacy, as well as for upholding the rule of law, including due process and the principle of proportionality. In order for parliaments to safeguard human rights both online and offline, parliaments need to have clear oversight of surveillance and interception of data, as well as relevant instruments to use when interception, surveillance and/or other invasive conduct violates citizens' rights. Such instruments may include budgetary restrictions, the revocation of warrants and cancellation of authorizations, inter alia. To this end, it is of paramount importance that parliaments, parliamentarians and parliamentary committees, tasked with the democratic oversight of government agencies and/or surveillance agencies acting on their behalf, be well-informed, on the basis of transparency and secure access to information. Highly relevant to this end is the protection of journalistic sources and whistleblowers who, more than ever before, are integral to a well-informed public space and a proper-functioning media, and without whom this global debate would not have taken place. The draft resolution strongly recommends that parliaments adopt whistleblower-protection laws, with the aim of encouraging transparency, accountability and access to information, all of which are fundamental to any meaningful democracy.

6. The draft resolution seeks to identify weaknesses and areas that need to be strengthened or addressed regarding the democratic process and citizens' rights. It seeks to recommend where and how parliaments and parliamentarians need to be further empowered and informed so as to act accordingly. Access to information is a prerequisite for any meaningful democracy, where policymakers, legislators and the public alike are well-informed. A parliament that does not have extensive knowledge of the methods and policies used by national security agencies cannot adequately safeguard that sector of government, nor can it hold decision-makers and actors within national security agencies to account.

7. Another topic referred to in the submitted observations is Net neutrality or equal access to the Internet. The draft resolution urges parliaments to ensure equal access to the Internet and freedom of the Net, thus securing freedom of expression and opinion, democratic participation and oversight, and greater transparency.

8. Not included in the draft resolution are observations on subjects that have already been dealt with by the IPU in other resolutions, such as hate speech and cultural tolerance. One example is the resolution adopted by the 128th IPU Assembly on *The use of media, including social media, to enhance citizen engagement and democracy*.

***Explanatory Memorandum: Supporting document
Statement by Ms. B. Jónsdóttir (Iceland)***

We are living in times where democracy, like all other known systems, is in transition because of the information revolution and heightened awareness across the globe. People all over the world are interconnected, locally and globally, and through this interconnectivity they are sharing knowledge and know-how about systems and their expectations of how they would like these systems to work for them. There is growing distrust of politicians and the democratic process because people often rightfully feel that their interests are not always placed at the heart of policy-making or the choices made by those they entrust to look after their interests, in any given country. The last time such a divide existed between parliaments and the general public, it was a prelude to World War II. This time around we must learn from history and follow a different path. Through the information revolution people have come to understand that there are tools that can enable them to participate in taking more responsibility for and shaping their societies. We are also witnessing a justified demand for greater access to decision-making and oversight. Democracy in the digital era provides opportunities for greater involvement and participation by citizens, increased opportunities to collect, receive and impart information and ideas, more possibilities for civilian oversight, for electronic and direct participation and various new forms of political participation.

To make this possible, we need to recognize the relevance of individual freedoms and the right to privacy to parliaments given their importance for representative democracy and citizens' ability to participate fully in political life. It is equally important to express our profound concern about human rights violations, including surveillance and interception of data impinging on individual rights and freedoms. We must recognize that democracy is adversely affected worldwide by mass surveillance, restrictions on free speech and the increased "commodification" of personal information. It is important to recall the purposes and principles enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights, in particular freedom of expression and the right to privacy. The same applies for the International Covenant on Civil and Political Rights, in particular the right to privacy and the right to be protected by law. The same rights people have offline must also be protected online, including the right to privacy.

Individuals have a right to universal suffrage through secret ballot. They also have a right to attorney-client privilege and doctor-patient confidentiality, also applicable to other healthcare staff. Journalists' sources have a right to anonymity and their communications should remain private. Many national laws, policies and practices fail to respect these human rights. The mass interception, collection and analysis of citizens' metadata undermine liberty and human dignity. Our physical person has a digital shadow; it follows us everywhere we go and unlike our normal offline shadow, it can be captured, changed, shared and/or sold.

Technology is advancing rapidly, along with citizen interactions. The process of legal change is, however, too slow, making citizens vulnerable to abuse by both the corporate sector and surveillance agencies. Furthermore, many States are attempting to limit individuals' ability to benefit from technologies, such as strong encryption and anonymity tools, that enable them to exercise their rights to privacy and freedom of expression online. It is worth noting that the findings of the report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, submitted in accordance with the Human Rights Council Resolution 25/2, argued for, not against, encryption and anonymity to safeguard freedom of expression and freedom of opinion.

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