

**Mandate of the Special Rapporteur on the situation of human rights defenders**

REFERENCE: AL  
USA 19/2015:

14 October 2015

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 25/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the criminal complaint filed against **Mr. Edward Snowden**, the revocation of his passport and interference with his attempts to seek political asylum.

Mr. Edward Snowden is a technologist, former CIA officer and NSA contractor, and a human rights activist advocating for the right to privacy. Mr. Snowden has received various awards for his human rights work, including the Swedish Right Livelihood Award, the Norwegian Bjornson Peace Prize, the German Stuttgart Peace Prize, and the Carl von Ossietzky Medal awarded by the German League of Human Rights.

According to the information received:

In March 2013, Mr. Edward Snowden began to work as an Infrastructure Analyst for the consulting firm Booz Allen Hamilton (Booz Allen) inside the National Security Center (NSA) in Hawaii. In the course of this employment, Mr. Snowden was subject to a security clearance by the US-government, and gained authorized access to classified defense information. While working for Booz Allen, Mr. Snowden discovered classified evidence proving that the Government of the United States was allegedly secretly operating a global system of mass surveillance in violation of human rights standards and international law.

On 20 May 2013, Mr. Snowden travelled from Hawaii to Hong Kong, where he shared with American journalists documents regarding some of the US Government's most highly classified programmes. These secret documents

revealed the massive and widespread surveillance of the public, institutions and high State representatives inside and outside of the United States.

In early June 2013, Mr. Snowden met a journalist and a filmmaker for an interview in Hong Kong. Shortly afterwards, between 5 and 9 June 2013, classified NSA information was published online and in different print media, among them The Washington Post and The Guardian. Mr. Snowden's identity was initially kept confidential. However, on 9 June 2013, Mr. Snowden went public via a video interview with The Guardian.

On 14 June 2013, a criminal complaint was filed against Mr. Snowden with the District Court for the Eastern District of Virginia by the Federal Bureau of Investigations. In the complaint, Mr. Snowden was accused of the following offenses:

- 1) Theft of Government Property (18 US Code § 641)
- 2) Unauthorized Communication of National Defense Information (18 US Code § 793 (d))
- 3) Willful Communication of Classified Communications Intelligence Information to an Unauthorized Person (18 US Code 798 (a)(3)) The latter two criminal offenses were introduced by the US Espionage Acts from 1917 and are part of chapter 17 ("Espionage and Censorship") of the 18 US Code.

On the base of this criminal complaint, an arrest warrant was issued in the USA and several provisional extradition requests were sent to different countries. The charges against Mr. Snowden provide for an extensive prison sentence of up to 35 years.

Mr. Snowden left Hong Kong for Ecuador on 23 June 2013. Prior to landing at Sheremetyevo International Airport in Moscow, Mr. Snowden's passport was revoked by the United States authorities, which forced him to stay in the territory of the Russian Federation.

On 26 June 2013, the Russian Government declared that the Russian Federation would not comply with the request by the United States government to extradite Mr. Snowden.

On 30 June 2013, Mr. Snowden formally applied for political asylum in 21 countries in response to the nature of the Espionage Act charges sought by the government, which afford no public interest defense and do not require the prosecution to demonstrate any intention to harm. Whistleblowers previously charged under this statute have reportedly been limited in the arguments and evidence they are allowed to present at trial.

Between 25 June 2013 and 1 July 2013, attempts were allegedly made by United States authorities to interfere with Mr. Snowden's application for political asylum in at least three countries. This attempted interference is alleged to have included, inter alia, threats of the revocation of trade protections; threats of halting the sharing of intelligence related to terrorist plots; and the closure of international airspace to a diplomatic aircraft, forcing it to land to be searched .

On 5 July 2013, when it became clear that flight over many countries would not be possible without interference, Mr. Snowden submitted asylum requests to an additional six other countries, including the Russian Federation. However, most of the countries denied Mr. Snowden's applications for asylum because of various reasons.

On 1 August 2013, Mr. Snowden was granted a temporary residence permit in Russia for one year by the Russian authorities. Upon the expiry of that permit, Mr. Snowden was later granted an additional three years residency in the Russian Federation until August 2017.

Grave concern is expressed at what appears to be retaliation for Mr. Snowden's actions in defence of the right to privacy and to freedom of expression. In this context, concern is expressed regarding the nature and grounds of filing a criminal complaint against Mr. Snowden under the Espionage Act and the subsequent revocation of his passport. Concern is also expressed at the risk facing Mr. Snowden of disproportionate prosecution and life imprisonment in the United States due to his revelations of massive state surveillance undertaken by the NSA. Further concern is expressed at the alleged interference by the Government with Mr. Snowden's efforts to seek political asylum in third countries.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information confirming the legal grounds for the charges against Mr. Snowden; for the revocation of his passport; and for the interference with his

attempts to seek political asylum in third countries; and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

I would appreciate receiving a response within 60 days.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Michel Forst  
Special Rapporteur on the situation of human rights defenders

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, I would like to refer your Excellency's Government to the articles 19 of the International Covenant on Civil and Political Rights, ratified by the United States on 8 June 1992, which guarantees the rights to freedom of opinion and expression. General comment No. 34 of the Human Rights Committee on article 19 provides that freedoms of opinion and expression extends to information held by all public bodies, whether legislative, executive or judicial, and it applies to other entities when they are carrying out public functions (paras. 7 and 18.)

The right to privacy is enshrined by the Universal Declaration of Human Rights (art. 12) and the International Covenant on Civil and Political Rights (art. 17).

I would also like to bring your Excellency's attention to the principle enunciated, *inter alia*, by the Human Rights Council in its resolution 12/16, which calls upon all States to refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law. In this context, I recall the principle of proportionality and the notion that criminal sanctions, particularly imprisonment, for libel and defamation are not deemed proportional with an effective exercise of the right to freedom of opinion and expression.

Furthermore, I wish to draw attention to the principle expressed in Article 5 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information of 1996 (as endorsed in E/CN.4/1996/39), which states that no one may be subjected to any sort of restraint, disadvantage or sanction because of his or her opinion or beliefs. Accordingly, the principles in this instrument also affirm that no one may be punished for criticizing or insulting the nation, the State or its symbols, Government, agency or public official unless the criticism for insult was intended and likely to incite imminent violence.

I would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, I would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, I wish to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders: article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; and article 6 points b) and c), which provides

for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.