PRIVACY INTERNATIONAL

HOW TO TALK ABOUT THE RIGHT TO PRIVACY AT THE UN

A Brief Guide



HOW TO TALK ABOUT THE RIGHT TO PRIVACY AT THE UN

A Brief Guide

March 2017

PRIVACY INTERNATIONAL

www.privacyinternational.org

Table of Contents

Introduction 5



The UN Special Rapporteur on the right to privacy 6



How NGOs can interact with the UN Special Rapporteur on the right to privacy



Other UN Special Rapporteurs 8



How NGOs can interact with other UN Special Rapporteurs



Human Rights Committee 11



How NGOs can interact with the Human Rights Committee



Universal Periodic Review 14



How NGOs can interact with the Universal Periodic Review

Introduction: The UN and the Right to Privacy

The right to privacy is included in the Universal Declaration of Human Rights (Article 12) and the International Covenant on Civil and Political Rights (Article 17).

UNIVERSAL DECLARATION OF HUMAN RIGHTS / ARTICLE 12

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS / ARTICLE 17

"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."

"2. Everyone has the right to the protection of the law against such interference or attacks."

Recently, the right to privacy has taken centre stage at the UN. Resolutions on the right to privacy in the digital age by the UN General Assembly in 2013 and 2014 led to the Human Rights Council establishing a dedicated mechanism to promote and protect the right to privacy, the UN Special Rapporteur on the Right to Privacy in 2015. In addition, other Special Rapporteurs have dedicated more attention to the implication of unlawful interference with privacy, particularly in the context of communications surveillance; the Human Rights Committee has increased its scrutiny of privacy among state parties to the International Covenant on Civil and Political Rights; and the Universal Periodic Review mechanism has begun to raise concerns about surveillance and human rights in its recommendations.

Privacy International and its partner organisations have been instrumental to these developments, feeding country and thematic briefings to these human rights bodies, and advocating for more attention on the right to privacy by the UN.

Engaging with the UN human rights mechanisms is not an end in itself: it serves to develop common understanding of the scope of the right to privacy, spells out the obligations of states to uphold the right, and the responsibilities of companies to respect the right. Very often, recommendations by the UN serve national advocacy strategy: the recommendations of these mechanisms can be fundamental to supporting national campaign for changes in laws and practices. Additionally, some UN bodies

can offer a mechanism of redress for victims of violations and act as an international 'watchdog', by, for example, raising concerns of individuals at risk or legislative proposals that could, if implemented, violate the right to privacy.

This briefing highlights opportunities for NGOs to raise issues related to the right to privacy before some selected UN human rights bodies that have the mandate and the capacity to monitor and provide recommendations and redress. The briefing provides some examples based on Privacy International's experience and points at additional resources and guides. While this guide focuses on the work of NGOs, information to UN human rights mechanisms can be sent by other civil society actors, as well as by individuals.



The Special Rapporteur on the Right to Privacy

The mandate of the UN Special Rapporteur on the right to privacy was created by the Human Rights Council in March 2015 with the adoption of Human Rights Council Resolution 28/16.

MORE INFORMATION ON THE MANDATE OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO PRIVACY

http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx

Professor Joseph Cannataci (biography here) was appointed Special Rapporteur in June 2015 for a term of 3 years (renewable once for another term.)

Among its main tasks, the Special Rapporteur is to:

- gather information and make recommendations to ensure the promotion and protection of the right to privacy, including in connection with the challenges arising from new technologies;
- report on alleged violations, wherever they may occur, of the right to privacy, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, including in connection with the challenges arising from new technologies;
- identify, exchange, and promote principles and best practices at the national, regional and international levels, and submit proposals and recommendations to the Human Rights Council;
- raise awareness concerning the importance of promoting and protecting the right to privacy.



Activities

The Special Rapporteur on the right to privacy activities include:

- **Communications to government.** The Special Rapporteur can send urgent appeals and letters of allegation to States on alleged violations of the right to privacy. These communications are not public, but a summary (including of any government's reply) will be included in the Communications Reports of the special rapporteurs.

- **Press releases and other public statements.** Throughout the year, the Special Rapporteur may issue press releases and statements addressing issues of concerns related to a particular country (like commenting on legislative and other developments or even a particular incident).
- **Carry out country visits.** The Special Rapporteur can carry out fact-finding visits to countries.
- **Submit thematic reports.** The annual reports to the Human Rights Council and the General Assembly are meant to cover the main activities of the Special Rapporteur, as well as to provide analysis and recommendations on thematic areas related to the right to privacy.



How NGOs can interact with the UN Special Rapporteur on the right to privacy

The Special Rapporteur has listed the topics of his future annual reports: http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/ThematicReports.aspx and encouraged all stakeholders including NGOs, to contribute.

Information prior to a country visit – NGOs may submit relevant information in advance of a country visit that may contribute to the success of the visit, including by providing the Rapporteur with analysis of relevant legislation, information on role of main government and other actors relevant to privacy (structure of the intelligence services; surveillance and law enforcement agencies; etc.) and areas of concerns.

Information on individual cases of alleged violations of the right to privacy – NGOs may raise individual cases of alleged violations.

How To Submit Complaints – More details can be found here: http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/Howtosubmitcomplaints.aspx

Participate in the inter-active dialogue with the Special Rapporteur on the right to privacy

The Special Rapporteur presents his annual report at the March session of the Human Rights Council. During the session, NGOs with ECOSOC status can deliver an oral statement raising concerns about privacy and/or asking specific questions to the Rapporteur.

For an example of such oral statement, see Privacy International's intervention at the 2016 March session of the Council.

How to submit information

Confidential correspondence to the Special Rapporteur may be sent to:
srprivacy@ohchr.org

Or by fax/post to: Office of the High Commissioner for Human Rights, Palais Wilson, Rue des Paquis, 52; 1201 Geneva, Switzerland
Fax: +41 22 917 90 06

In June 2016 the OHCHR has also launched an online mechanism for submission of information to all Special Rapporteurs, available here.



Other UN Special Rapporteurs

As of February 2017, there are 43 thematic and 14 country mandates, all reporting to the UN Human Rights Council. Some of them have raised issues related to privacy, surveillance, and data protection as they pertain to their mandate.

Special Rapporteur of particular relevance to privacy issues:

THE SPECIAL RAPPORTEUR ON THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

The Special Rapporteur on the right to freedom of opinion and expression http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx :

Since 2011, the Special Rapporteur on freedom of expression has dedicated a number of reports at the issue of freedom of expression in the digital age, with significant analysis on the interplay between freedom of expression and the right to privacy.

Of particular interest:

- 2013: the implications of States' surveillance of communications on the exercise of the human rights to privacy and to freedom of opinion and expression:
- 2015: the use of encryption and anonymity to exercise the rights to freedom of opinion and expression in the digital age:
- 2016: Freedom of expression and the private sector in the digital age:

THE SPECIAL RAPPORTEUR ON COUNTER TERRORISM AND HUMAN RIGHTS

The Special Rapporteur on counter terrorism and human rights . In particular:

- 2009: report focussed on the right to privacy in the fights against terrorism
- 2014: report focussed on mass digital surveillance and human rights

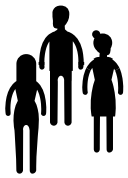
Other thematic and country rapporteurs have also dedicated some attention to right to privacy and surveillance, including:

- The Special Rapporteur on the situation of human rights defenders
- The Special Rapporteur on the rights to freedom of peaceful assembly and association
- UN Special Rapporteur on the situation of human rights in Myanmar



How NGOs can interact with the other UN Special Rapporteurs

Check their respective websites for details. The activities and working methods of these Special Rapporteurs differ greatly.



The Human Rights Committee

The International Covenant on Civil and Political Rights establishes the Human Rights Committee, to monitor states parties compliance with the provisions of the Covenant.

Only states that have ratified the Covenant are bound by its provisions. You can find if a country has ratified here.

The Human Rights Committee provided its authoritative interpretation of Article 17 in its General Comment No. 16 adopted in 1988. While almost 30 years old, this general comment offers important guidance and clarification on the scope of the right to privacy and of the obligations for states to respect and protect it.

The Committee is composed of 18 independent experts (biographies here). They are nominated and elected by states parties to the ICCPR, but they act in their personal capacity (i.e. they do not represent their government and refrain from taking part in considering state reports or cases related to their country of nationality.) The Committee meets three times a year (March, July, and October) in Geneva. Each session lasts three weeks.

The Committee's monitor compliance of states parties' human rights record through:

- the consideration of state periodic report;
- the consideration of individual communications (only for states that are party to the ICCPR First Optional Protocol); and
- the consideration of inter-state complaints (a mechanism which has not been used so far)

For the purpose of this guide, it will focus on the role NGOs can play in the consideration of state reports.



State Reports

All states party to the ICCPR must submit periodic reports to the Human Rights Committee detailing the steps they have taken to implement the ICCPR.

To find out if a country is due for consideration by the Committee, check here.

The Committee has developed guidelines for such reports. It has also developed alternative procedures to deal with states that fail to submit their reports. Further, to

focus their analysis, the Committee adopts list of issues, requesting the concerned states to provide additional information on particular aspects of their laws, policies, and practices. During the public session, the state is invited to present its report and additional information and then to respond to questions by Committee members. The main aim of the whole process is to enable the Committee to assess states' compliance with the ICCPR. That assessment is contained in the Committee's concluding observations, a public set of concerns and recommendations adopted by the Committee for each state coming under consideration.

An example of a Human Rights Committee's concluding observations on right to privacy issue:

SOUTH AFRICA, MARCH 2016 - Right to privacy and interception of private communications

43. The State party should take all necessary measures to ensure that its surveillance activities conform to its obligations under the Covenant, including article 17, and that any interference with the right to privacy complies with the principles of legality, necessity and proportionality. The State party should refrain from engaging in mass surveillance of private communications without prior judicial authorization and consider revoking or limiting the requirement for mandatory retention of data by third parties. It should also ensure that interception of communications by law enforcement and security services is carried out only on the basis of the law and under judicial supervision. The State party should increase the transparency of its surveillance policy and speedily establish independent oversight mechanisms to prevent abuses and ensure that individuals have access to effective remedies."

(Full text here)



How NGOs can interact with the Human Rights Committee

Written submissions

The Committee welcomes NGOs' written submissions on state reports to be considered.

Written submissions can be sent:

- in advance of the adoption of the list of issues, to inform the Committee of specific concerns and request for clarification by the state concerned;
- in advance of the public session when the state is scheduled to present its report.

There is no given format for these briefings. There are deadlines for submitting written briefing: around 10 weeks for submissions in advance of the adoption of the list of issues; and around 4 weeks for submissions in advance of the public consideration of state reports.

Examples of country briefings submitted by PI and partners:

- Colombia – Joint submission before the adoption of the list of issues by Dejusticia, Karisma and Privacy International
- South Africa – Joint submission by Privacy International, Right2Know and Association for Progressive Communications before public session on South Africa report
- All of Privacy International's submissions to the UN are here

Oral briefings:

At each session, the Committee holds formal meetings with NGOs to provide oral briefing on state reports to be considered. Only NGOs that have submitted written briefings can participate. Further informal lunchtime meetings between interested Committee members and NGOs are often organized.

NGOs representative planning to attend the sessions must register in advance.

How to submit information to the Committee:

- by e-mail to the Committee Secretary, Kate Fox, (kfox@ohchr.org) and copied to Sindu Thodiyil (sthodiyil@ohchr.org)

By subscribing to the newsletter of the NGO Centre for Civil and Political Rights (CPPR Centre) you can receive information on forthcoming session and calls for NGOs contribution.

The Universal Periodic Review

The Universal Periodic Review (UPR) is a unique mechanism of the Human Rights Council to review the human rights record of each UN Member State every 4.5 years.

It works in cycles, each cycle reviewing all 193 UN Member States. Since its inception in 2006, the second cycle of the UPR concluded at the end of 2016. The third cycle will start in April/May 2017 and run until the end of 2021. The full schedule of the third cycle is contained here.

The UPR process

The Universal Periodic Review (UPR) can assess the whole range of human rights: i.e. how each state respect their human rights obligations under the UN Charter, the Universal Declaration of Human Rights, human rights treaties ratified by the state, as well as voluntary pledges and commitments.

Unlike the Human Rights Committee or the special procedures, the UPR is a government-led human rights mechanism. The review is carried out by the UPR Working Group, composed of all 47 members of the Human Rights Council and open to the participation of all UN Member States. The UPR Working Group meets in Geneva for three sessions a year with each session lasting two weeks.

Each review is based on:

- the National Report compiled by the state concerned;
- a compilation of information prepared by the Office of the High Commissioner for Human Rights with extracts of information from treaty bodies (such as the Human Rights Committee) and special procedures (such as the Special Rapporteur on the right to privacy); and
- a summary (by the Office of the High Commissioner for Human Rights) of information received from NGOs ("other stakeholders")

Government delegations can submit questions and make recommendations to the State under review. The "Outcome Report" that follows each state review contains a summary of the discussion, including the recommendations raised and which recommendations have been accepted, rejected, or noted by the state under review. The Outcome Report is adopted at the next plenary session of the Human Rights Council. Examples of UPR recommendations related to the right to privacy:

RECOMMENDATIONS MADE TO AUSTRALIA (by India and Brazil):

"Review the extent and scope of laws governing secret surveillance and moderate the powers and discretion conferred on authorities in this regard (India); Take concrete measures in order to ensure that any interference with the right to privacy comply with the principles of legality, proportionality and necessity, regardless of the nationality or location of the individuals affected (Brazil);" (Full report)

RECOMMENDATION MADE TO KENYA (by Liechtenstein):

"Review its national laws and policies in order to ensure that surveillance of digital communications is consistent with its international human rights obligations and is conducted on the basis of a legal framework which is publicly accessible, clear, precise and non-discriminatory (Liechtenstein);" (Full report)

RECOMMENDATION MADE TO SWEDEN (by the Netherlands):

"Keep monitoring the application of the 2008 Surveillance Act to prevent interference with the right to privacy and to implement reforms to comply with its obligations under EU law as set out in the International Principles on the Application of Human Rights to Communications Surveillance (the Netherlands)". (Full report)



How NGOs can interact with the Universal Periodic Review

There are various opportunities for NGOs to engage in the UPR process.

Before the review

Submit a stakeholder report

NGOs can submit written information ("stakeholder reports") ahead of the review. Stakeholder reports play an essential role in providing Member States with relevant, up-to-date, and timely information on the human rights situation in the country being reviewed.

The information provided in the stakeholder reports will be included in the consolidated document by OHCHR (a summary of the various issues submitted by NGOs.)

Stakeholder reports are due about six to eight months prior the official review session. The deadlines for the third cycle are available here – by country and by session.

There are strict conditions, deadlines, and procedures to submit written information

for the UPR process, including a maximum length. Refer carefully to the Guidelines provided by OHCHR. Organisations must register online to be able to submit a stakeholder report.

Advocacy

NGOs can reach out to representatives of Members States by presenting the key issues of concern included in their stakeholder report, and advocating for Member States to submit key questions prior to the review and/or recommendations during the official review.

Each Member State delegation can submit up to 3-4 recommendations per country, and it is thus very important to brief them in detail so they are well informed to decide which issues to raise during the review.

There are various ways to undertake this process:

- NGOs can meet in-person with Member States Permanent Missions in Geneva in order to present the key concerns their stakeholder report outlined and advocate for suggested advance questions and recommendations;
- NGOs can meet with members of foreign delegation represented in their country (Embassy or Consulate), in particular if they have a Human Rights or Political Affairs desk;
- NGOs can share by email their stakeholder report, accompanied with a summary presenting their key concerns, suggested advance questions and recommendations;
- NGOs can register to take part in the pre-session organised by UPR-Info, a Geneva-based NGO, and if selected, NGOs can deliver an oral statement. The pre-sessions are informal, non-UN events, but they are widely attended by Permanent Missions, and provide a unique opportunity to interact with delegates in Geneva. For more information on the pre-session, please visit the website of UPR-Info.

PRIVACY INTERNATIONAL SUBMISSIONS

All of the submissions submitted by Privacy International, individually or with others, can be found on the PI website. Examples include:

- Uganda – submission by Privacy International (PI), Unwanted Witness Uganda, the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) and the East and Horn of Africa Human Rights Defenders Project (EHAHRDP)
- Hungary – submission by Privacy International and the Hungarian Civil Liberties Union (HCLU)

During the review

NGOs with ECOSOC consultative status can attend the UPR Working Group's session in Geneva, although they cannot take the floor.

NGOs can also take the opportunity to organise a side event as way of debriefing on how the review went and raising awareness of the human rights situation in a particular country.

NGOs may also want to hold various events in-country around the review, and brief journalists in advance.

After review and before adoption of the report by the Human Rights Council

NGOs can undertake further advocacy to ensure the State under Review accepts the recommendations that have been made. This can be done through the Permanent Mission in Geneva, or by liaising with the members of the government assigned to working on the UPR in the country.

During the adoption of the report at the Human Rights Council

NGOs with ECOSOC consultative status can attend the session of the Human Rights Council during which the report will be adopted and make an oral statement.

Following the review and in between reviews

NGOs can disseminate widely the outcome of the review, in particular highlighting which issues were raised by Permanent States, and which recommendations the State under Review has either accepted, rejected, or noted. This information is important to monitor the implementation, as well as prepare the mid-term report, and to undertake various activities on these issues more generally.

MAIN LINKS ON THE UPR, INCLUDING HOW TO SUBMIT INFORMATION

- OHCHR UPR
- OHCHR UPR – NGOs and human right institutions
- UPR info

This guide is available online at https://privacyinternational.org