



**APC**



**access**

## **Briefing note**

### **Human Rights Council 28th session**

Deniz D. Aydin (Access), Deborah Brown (APC)  
and Shawna Finnegan (APC)

*Association for Progressive Communications (APC)  
March 2015*

## **Table of contents**

1.Introduction.....	3
2.Resolution for a new Special Rapporteur on the Right to Privacy.....	3
3.New reports dealing with internet-related rights at HRC 28.....	4
4.Universal Periodic Review.....	7
5.Relevant side events.....	8

## 1. Introduction

The 28th session of the Human Rights Council is taking place in Geneva on 2-27 March 2015. At this session the Council will consider a number of internet-related issues, including a resolution to establish a new special mandate holder on the right to privacy, which is in response to wide public outrage about mass governmental surveillance of digital communications.

Other substantive debates will take place touching on internet issues, such as a report from the High Commissioner for Human Rights on countering terrorism, which examines broadening surveillance powers and data retention, expressing concern over the chilling effects on freedom of expression. The impact of technology and the internet will also be considered in an annual report of the Special Representative of the Secretary-General on Violence against Children. Internet-related rights issues have continued to be raised in the context of recommendations between states in the Universal Periodic Review (UPR) process.

You can follow the HRC session online. Plenary sessions will be [live streamed](#) and [archived](#). The Twitter hashtag for the session is [#HRC28](#).

## 2. Resolution for a new Special Rapporteur on the Right to Privacy

Following on two successful UN General Assembly resolutions on the Right to Privacy in the Digital Age, Brazil and Germany are proposing a resolution at the HRC calling for a new Special Rapporteur on the right to privacy at this session. This initiative picks up on a recommendation of the recent UNGA resolution, which encourages the Council to consider the possibility of establishing a special procedure on the right to privacy.

APC and Access have been contributing to the UN debate on privacy in the digital age and are among the 60+ NGOs from around the world that have [called on the HRC](#) to create a dedicated Special Rapporteur on the right to privacy. As we stated in our letter, a UN Special Rapporteur on the right to privacy would fill a significant institutional gap and enable the HRC to take a leading role in identifying and clarifying principles, standards and best practices regarding the promotion and protection of the right to privacy. The mandate holder would be able to systematically monitor and assess the impact of the right to privacy by state and non-state actors, as well the implementation of their obligations and responsibilities. He or she would also play a critical role in better articulating the content of the right to privacy and provide needed guidance to states and companies on its interpretation. Our preference is for a broad mandate, which would allow the Special Rapporteur to consider the pressing issue of how modern technologies are enabling interferences with privacy on an unprecedented scale, as well as the consistent and persistent violations of the right to privacy experienced by at-risk users and marginalised groups.

This is the second session in a row during which the Council has a focus on the right to privacy in the digital age. At the last session a panel was held to discuss the High Commissioner on Human Rights' [groundbreaking report](#) on the topic. A summary of that [panel](#) will be considered during this session.

### 3. New reports dealing with internet-related rights at HRC 28

#### Report of the UN High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism [A/HRC/28/28](#)

The OHCHR continues to address complex legal and policy challenges relating to new technologies directly relevant to states' efforts to counter terrorism. This new report from the High Commissioner expressed ongoing concern regarding the potential for arbitrary or unlawful interference of the right to privacy in the context of domestic and extraterritorial surveillance.

The report considered the recent legislative developments around counterterrorism efforts in several states, raising serious concerns about their compliance with the right of individuals to be protected by law against arbitrary or unlawful interference in their privacy. In particular, the report highlighted concerns regarding legislation recently adopted in Australia that "has broadened surveillance powers by allowing for *surveillance of multiple computers, including whole networks, under a single warrant*; established harsher penalties for the disclosure of intelligence material; provided intelligence agents with legal immunity; and allowed for greater sharing of personal information between agencies, without either adequate safeguards or oversight, or recourse for individuals in cases where personal information has been subsequently misused or released without authorization."<sup>1</sup>

The report also drew attention to the situation in Canada, where draft legislation is under consideration that would allow for the *outsourcing of surveillance* on nationals abroad to allied foreign intelligence services, in spite of a federal court decision admonishing the intelligence service for such practices.<sup>2</sup> Regarding the situation in the UK, the report noted the recently adopted emergency surveillance legislation that allows the government to require telephone companies and internet providers in the country and abroad to collect and store metadata of communications for a period of up to 12 months. It noted concerns that have been expressed that "such *blanket data retention* may allow for the monitoring of communications of persons, even those outside of the State's jurisdiction and those not suspected of any illegal activity."<sup>3</sup>

*This report was presented Thursday, 5 March at 12:00-15:00 in Geneva.*

---

<sup>1</sup>See Parliament of Australia, National Security Legislation Amendment Bill (No.1) 2014, available from [www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1415a/15bd019](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1415a/15bd019). See also Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Intelligence and Security, Inquiry into the National Security Legislation Amendment Bill (No. 1) 2014, 21 August 2014.

<sup>2</sup>See Parliament of Canada, House of Commons, Bill C-44, An Act to amend the Canadian Security Intelligence Service Act and other Acts, 27 October 2014, and Federal Court Decisions, X (Re), CSIS-30-08, 22 November 2013.

<sup>3</sup>See [legislation.gov.uk](http://legislation.gov.uk), Data Retention, and Investigatory Powers Act 2014 and House of Commons, Oral Answers to Questions, 10 July 2014, Communications Data and Interception, available from [www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140710/debtext/140710-0001.htm#14071054000003](http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140710/debtext/140710-0001.htm#14071054000003)

## Annual report of the Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais [A/HRC/28/55](#)

The annual report of the Special Representative of the Secretary-General on Violence against Children contains a section devoted to “Information and communication technologies and violence against children” (Section IV).

The report includes sub-themes on the factors associated with online violence against children, children’s rights online, and working towards a safe, inclusive and empowering digital agenda for children. Looking at the opportunities and risks posed by the internet, the report suggests:

Today’s children tend to shift easily between “real” and “virtual” worlds and regard the online/offline distinction as increasingly less relevant. ICTs are contributing to the *breakdown of traditional boundaries of privacy*, creating situations in which children engage in “chats” in apparently private settings while in fact potentially exposing themselves to a wide and unknown audience. Sharing personal information, and not recognizing online dangers or warning signals, may lead to multiple risks for children.

The report outlines some surprising factors in violence against children, including a gender dimension. In Europe, research studies suggest that while teenage girls are more likely to receive harmful messages online, boys appear more bothered by online violence. Boys continue to have greater access to the internet.<sup>4</sup>

Looking at a safe, inclusive and empowering digital agenda for children, the report outlines principles for children’s online empowerment:

Offline and online, States are required to ensure that all measures, including legislative, policy and educational initiatives, are guided by the best interests of the child; respect and support children’s growing autonomy and agency; protect children from violence and safeguard them from the risk of discrimination, including when associated with a gender, social and economic *digital divide*. Those principles lay the foundation for children’s online empowerment; promote children’s learning and freedom of expression; support them in accessing, receiving and imparting information; and secure their protection from harmful materials and information, from unlawful interference with their privacy or correspondence, and from situations in which their image, honour and reputation may be at risk.

It is critical to raise children’s awareness of online risks and provide guidance on ways of addressing them when they occur. However, children need, and want, to develop their capacities as digital citizens and to learn solid values and life skills, including a strong sense of responsibility, respect and concern for others. Rather than curtailing children’s natural curiosity and sense of innovation, initiatives should tap into their resourcefulness and enhance their resilience.

---

<sup>4</sup>[A/HRC/28/55](#), para. 67-68.

The report notes the importance of joining efforts with civil society, through information, capacity-building and research initiatives, operating helplines and providing support to child victims, and through support to policy and legislative reforms.

*This report was presented Wednesday, 11 March at 15:00-18:00 in Geneva.*

### **Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Maud De Boer-Buquicchio [A/HRC/28/56](#)**

This report features a thematic study on the issue of information and communication technologies and the sale and sexual exploitation of children. Providing an overview of issues and trends, the report suggests a number of strategies, including legislative reform, detection and reporting through helplines, rehabilitation programmes for victims, and filtering technologies:

*Filtering technologies* are another example of the opportunities offered by the Internet to combat child sexual abuse and exploitation. Their purpose is to prevent child abuse content from being accessed. A popular method is the use of the INTERPOL “worst-of” list, a directory of known sites that host child sexual abuse content.

*This report was presented Wednesday, 11 March at 12:00-15:00 in Geneva.*

### **Copyright policy and the right to science and culture: report of the Special Rapporteur in the field of cultural rights, Farida Shaheed [A/HRC/28/57](#)**

This report of the Special Rapporteur examines copyright law and policy from the perspective of the right to science and culture. Emphasising both the need for protection of authorship and expanding opportunities for participation in cultural life, the Special Rapporteur includes in her proposals the promotion of “cultural and scientific participation by encouraging the use of *open licences*, such as those offered by Creative Commons”:

The Special Rapporteur received a number of contributions, which expressed the concerns of copyright holders about the threat cultural industries face due to digital piracy enabled by evolving digital technologies. Proposals to address that situation as related to the Internet include website blocking, content filtering and other limits on access to content subject to copyright, as well as the liability imposed on intermediaries for infringing content disseminated by users. In the view of the Special Rapporteur, such measures could result in restrictions that are not compatible with the right to freedom of expression and the right to science and culture. Additional concern is expressed over the deployment of aggressive means of combating digital piracy, including denial of Internet access, high statutory damages or fines and criminal sanctions for non-commercial infringement. There are also issues of piracy unrelated to the Internet. In the Special Rapporteur’s opinion, that important topic requires additional study from a human rights perspective.

*This report will be presented Wednesday, 11 March at 12:00-15:00 in Geneva.*

## **Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst [A/HRC/28/63](#)**

This is the first report by the new Special Rapporteur on the situation of human rights defenders, and includes his strategic work plan. The Special Rapporteur recalls the vital role played by the media and social media in promoting the effective protection of defenders:

Numerous cases of journalists who have reported on or written articles about human rights violations, and also cases of whistle-blowers and bloggers, have come to the attention of the Special Rapporteur, who considers them to be human rights defenders, in that they meet the criteria set out in the Declaration on Human Rights Defenders.

The Special Rapporteur intends to extend and strengthen his cooperation with the media as part of the implementation of his mandate. Under wider dissemination of good practices, the report describes how forums and other forms of consultation have been organised on every continent to train human rights defenders, to teach them protection techniques and to protect their means of communication against surveillance risks.

*This report was presented Monday, 9 March at 15:00-18:00/Tuesday, 10 March 9:00-12:00 in Geneva.*

### **4. Universal Periodic Review**

HRC28 will adopt UPR reports on states reviewed at the UPR session in October and November of 2014. While only a few countries received recommendations specifically mentioning the internet, almost all countries received recommendations relating to media freedom and protection of journalists. These recommendations are useful to civil society groups engaging in the UPR process, to understand the types of recommendations that are made by and to different countries.

#### **Bosnia and Herzegovina**

107.112 Take steps to further ensure freedom of speech and freedom of access to information both online and offline (Latvia).

107.113 Take immediate steps to ensure that allegations of threats and intimidation against journalists and the media are fully investigated (Australia).

107.114 Ensure the protection of journalists, media personnel and human rights defenders against any attacks, investigate and prosecute such attacks and bring those responsible to justice (Estonia).

107.117 Use international good practices as specific benchmarks for progress to improve the situation of the media community, as proposed by the media freedom representative of the Organization for Security and Cooperation in Europe, Dunja Mijatović (Lithuania).

## Egypt

Crackdowns on journalists and bloggers in Egypt are ongoing and formed the basis of many recommendations at the review in November:

166.206 Strengthen the freedom of expression and the media so that all journalists can carry out their activities freely and without intimidation and those imprisoned in connection with their work can be released without delay (Czech Republic).

166.207 Stop limits on Constitutional rights of peaceful assembly and freedom of expression and release all those imprisoned for exercising their constitutional rights, including media representatives (Estonia).

166.216 Release and drop charges against all journalists and media workers arrested in the context of performing their duties (Austria).

166.217 Immediately release all imprisoned journalists, prisoners of conscience and human rights defenders (Norway).

166.218 Take all the necessary measures to protect journalists and human rights defenders from threats and attacks, and ensure that the perpetrators of such violence are brought to justice (Luxembourg).

166.219 Ensure that freedom of expression is safeguarded in all its forms, including artistic expressions (Norway).

During the review, the delegation from Egypt stated: "The Constitution and laws do not impose any limitations on access by bloggers or the public to the Internet. Presidents of national newspapers are appointed upon nominations by the newspapers themselves. The ministry of information has been abolished. Steps are under way for establishing a council for media regulation in accordance with the Constitution."

## Iraq

On media freedom, the delegation stated that there were vibrant local media and that criticism of government policies was common. The 2008 Press Freedom Law together with other legislation guaranteed the balanced practical exercise of the right.

## Slovenia

*115.45 Step up efforts to prevent or limit hatred, racist and xenophobic acts and speeches, including on the Internet (Malaysia).*

## 5. Relevant side events

- Defending artistic expression. Friday 6 March, 10:00-12:00 at Palais des Nations in Geneva in Room XXIII. Organised by Article 19, International Centre Against Censorship.
- Screening of Citizen Four. Friday 6 March, 13:00-15:00 at Palais des Nations in Geneva in Room XXI. Organised by Amnesty International, Access, APC, and others.



- A call for an empowering, inclusive and safe digital environment for children. Monday 9 March, 12:00-14:30 at Palais des Nations in Geneva in Room XXI. Organised by the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Representative of the UN Secretary-General on Violence against children, the United Kingdom and Costa Rica
- Women Human Rights Defenders. Monday 9 March, 13:00-15:00 at Palais des Nations in Geneva in Room XXIII. Organised by the Permanent Mission of Norway, the Office of the High Commissioner on Human Rights, ISHR and the Women Human Rights Defenders International Coalition.
- Human Rights Defenders and National Security. Tuesday 10 March, 15:00-16:30 at Palais des Nations in Geneva in Room XI. Organised by ISHR, FIDH, ICJ, Article 19 and OMCT.
- Freedom of expression and freedom of religion. Tuesday 10 March, 16:00-18:00 at Palais des Nations in Geneva in Room XXII. Organised by the International Federation for Human Rights Leagues.
- Freedom of religion or belief. Tuesday 10 March, 15:00-18:00 at Palais des Nations in Geneva in Room XXIII. Organised by the Permanent delegation of the European Union.
- Human rights protection of artists. Friday 13 March, 15:00-17:00 at Palais des Nations in Geneva in Room XXIII. Organised by Cairo Institute for Human Rights Studies.
- Legally binding instrument on business and human rights: EU Perspective. Thursday 19 March, 12:00-14:00 at Palais des Nations in Geneva in Room XXVII. Organised by Franciscans International.
- UPR for Egypt, 19 March, 15:00-18:00 at Palais des Nations in Geneva in Room XXII. Organised by Cairo Institute for Human Rights Studies.
- Media at the Human Rights Council. Thursday 19 March, 16:00-18:00 at Palais des Nations in Geneva in Room XXI. Organised by the Conference of NGOs in Consultative Relationship with the United Nations.