

May 5th, 2015

Omar Fabián Salvioli
Chairperson of the UN Human Rights Committee
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Dear Mr. Salvioli,

We, the undersigned human rights and civil liberties organizations from around the world, members of the International Network of Civil Liberties Organizations (INCLO), write to you in your capacity as the Chair of the Human Rights Committee to urge the Committee to consider revising General Comment 16, the general comment on the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

We believe a revision of General Comment 16 is urgently required to provide guidance on state obligations under the ICCPR with respect to informational privacy, an element of the Article 17 right to privacy that has taken on enormous new significance since the Committee published General Comment 16 in 1988.

While other important elements of the right to privacy should also be addressed in any revision of General Comment 16—such as LGBT issues, reproductive freedom, and other facets of family life—developments since 1988 have radically changed the landscape for informational privacy in particular. The Committee holds the power to ensure that an update to General Comment 16 adequately reflects this situation.

Over the last three decades, much of the world has come to rely heavily on digital technologies. The Internet was in its infancy when the Committee published General Comment 16, but now over 2.8 billion people are Internet users. The use of cell phones has grown even faster over the same period; today, six billion people have access to cell phones.

Human rights standards have not evolved to accommodate the rapid pace of these developments, and both states and corporations have taken advantage in gaps in the law to intrude massively on the privacy and security of personal data. Most significantly, many states now have and use the capacity to conduct electronic surveillance on an enormous scale, including the power to monitor entire populations at once. Corporations have assisted states with these surveillance programs, and use technological advances to generate profit from harvesting and aggregating personal electronic data.

These problems exist around the world, including in the countries where our organizations are based.

Argentina

Despite a new intelligence law aimed at improving the functioning of the intelligence services, transparency and oversight remain limited. This is especially worrisome because the budget for the intelligence has continued to increase annually, suggesting the intelligence services remain very active.

Hungary

Hungarian surveillance laws, which permit warrantless surveillance for criminal and non-criminal investigatory purposes, are being considered by the European Court of Human Rights under Article 8 (right to privacy) of the European Convention.

Kenya

In recent months, Kenya has suffered a number of attacks from Somali terror group Al Shabab. To counter this national security threat, the Kenyan government has recently expanded its surveillance powers. Media reports indicate that these powers have been abused and used, instead, to target investigative journalists and bloggers who are critical of the government's security operations and other policy decisions.

India

Although little is publicly known about the country's surveillance apparatus, it is suspected that the government uses surveillance to target human rights and political activists. Reports also indicate that the government shares personal data acquired with the United States, and vice versa, with few privacy safeguards, if any. Secret surveillance sharing agreements of this sort implicate concerns about the extent to which states can sidestep their own human rights obligations by outsourcing impermissible surveillance.

Israel

Israeli law authorizes the General Security Service to secure permits from the prime minister to wiretap conversations and it is believed that the GSS has broad access to metadata and communications content. Many in Israel believe state surveillance is discriminatory, disproportionately targeting Arabs citizens.

South Africa

As in many other countries, secrecy continues to impede public understanding of government surveillance in South Africa, where leaked information has revealed the surveillance of journalists and political opponents.

United States

Laws, policies and practices enable the government to scoop up metadata and communications content of hundreds of millions (or even billions) of people around the world—all with limited oversight and no meaningful access to redress. Beyond their direct threat to privacy rights, the very existence of these once-secret mass surveillance programs has already significantly undermined the work of domestic journalists and lawyers.

These limited examples only scratch the surface of the myriad problems arising from unlawful and arbitrary interferences with privacy rights in the digital age, but they serve to highlight why the Committee should consider revising and updating its standards on informational privacy.

To facilitate the revision process, we enclose a recent report prepared by the American Civil Liberties Union entitled “Informational Privacy in the Digital Age.” This report collects and distills human rights principles as they relate to informational privacy, deriving its analysis most fundamentally from the work of the Committee—including General Comment 16, other general comments on related ICCPR rights (such as General Comment 34 on freedom of expression and opinion), and the Committee's Concluding Observations on country reports and individual petitions.

The report also draws on recent submissions of U.N. special rapporteurs that have addressed digital privacy issues in their annual reports; a report on digital privacy standards from the Office of the High Commissioner for Human Rights published in April of 2013; and jurisprudence from regional human rights bodies, including the Inter-American Commission on Human Rights, the European Court of Human Rights, the European Court of Justice, and the Council of Europe.

The principles identified in the report accurately reflect the growing international consensus on the nature and scope of the right to informational privacy—principles that we believe are also encompassed by Article 17. Because it is the role of the Committee to make such determinations authoritatively, however, we offer our report merely as a resource to aid the Committee in its task of interpreting the contours of Article 17’s protections in a revised general comment.

The Committee is the only relevant U.N. human rights body, to date, not to have taken steps to address digital privacy rights (and state obligations to protect them) in a systematic and comprehensive manner. The U.N. General Assembly has passed two resolutions on privacy in the digital age; the Office of the High Commissioner for Human Rights has issued a report on the same topic; and the Human Rights Council just last month established a mandate for a special rapporteur on the right to privacy, with a focus on informational privacy concerns.

The Committee’s voice on informational privacy is indispensable at this critical time. Through the process of revising General Comment 16, the Committee will have the opportunity to reestablish itself as a leading body in the protection of what is now recognized as one of the world’s most widely violated human rights. Specifically, the Committee can eliminate ambiguities in the present standards that many states use to justify practices with far-reaching implications for privacy rights. By contrast, in the absence of input from the Committee, states will continue to rely on dated standards both when reporting to the Committee on compliance with the ICCPR and in defending individual petitions, thereby undermining the proper development of international law.

The general comment revision process—and the revised general comment that results—will also assist other U.N. and regional bodies, as well as national legislatures and courts, as they formulate laws, policies and practices that embrace relevant ICCPR privacy standards.

Once again, we therefore urge the Committee to address informational privacy promptly by revising General Comment 16. We welcome the opportunity to provide additional information or support to the Committee as it considers this suggestion, or during the revision process itself. Please contact Steven Watt of the American Civil Liberties Union (swatt@aclu.org) with any questions or concerns.

Sincerely,

American Civil Liberties Union (ACLU)

Association for Civil Rights in Israel (ACRI)

Canadian Civil Liberties Association (CCLA)

Centro de Estudios Legales y Sociales (CELS, Argentina)

Egyptian Initiative for Personal Rights (EIPR)

Human Rights Law Network (HRLN, India)

Hungarian Civil Liberties Union (HCLU)

Kenya Human Rights Commission (KHRC)

Legal Resources Centre (LRC, South Africa)

Liberty (United Kingdom)