

38th INTERNATIONAL CONFERENCE OF
DATA PROTECTION AND PRIVACY COMMISSIONERS

Marrakesh, 18 October 2016

Resolution on Human Rights Defenders

The 38th International Conference of Data Protection and Privacy Commissioners:

Noting that:

- (a) Everyone has the right, individually and in association with others, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national, regional and international levels:
- (b) Ensuring that the proper respect, protection and fulfilment of the right to privacy and to the protection of personal data is a shared responsibility that cannot solely be left to data protection authorities but requires vigilance and action by many actors within government, business and civil society:
- (c) The United Nations General Assembly adopted in 1999 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 (more commonly called the Declaration on Human Rights Defenders):¹
- (d) The Special Rapporteur on the situation of human rights defenders has observed that the Declaration is not yet sufficiently well-known and that further efforts are needed to improve understanding by governments of their responsibilities:
- (e) At domestic level in most countries, and increasingly also at global level, there are privacy and data protection advocates and activists who would be considered ‘Human rights defenders’ (simply being people who, individually or with others, act to promote or protect human rights):
- (f) The creation by states of independent national institutions for the promotion and protection of human rights and fundamental freedoms, whether they be ombudsmen, human rights commissions or any other form of national institution [is rising and] should be supported:²
- (g) The United Nations Human Rights Council adopted in 2016 the Resolution on the promotion, protection and enjoyment of human rights on the Internet which, amongst other things;³

¹ Available in multiple languages at: <http://tinyurl.com/HRDefenders>.

² See Principles relating to the Status of National Institutions (The Paris Principles) <http://tinyurl.com/parisprinciples>.

³ Available in UN official languages at: <http://tinyurl.com/humanightsinternet>.

- a. Condemns all human rights violations and abuses committed against persons for exercising their human rights and fundamental freedoms on the Internet and calling on all States to ensure accountability in this regard; and
 - b. Condemns measures to intentionally prevent or disrupt, in violation of international human rights law, access to or dissemination of information online and calling on all States to refrain from and cease such measures:
- (h) Acts of violence and other attacks perpetrated against human rights defenders can undermine the fundamental role that human rights defenders play in society and leave all those for whom they fight defenceless:
- (i) Businesses have responsibilities to ensure that their actions do not contribute to human rights abuses or obstruct the legitimate and peaceful activities of human rights defenders:⁴

Therefore resolves to:

1. Acknowledge that the work of human rights defenders is important to building a solid, lasting democratic society, and that rights defenders play a significant role in the process of fully achieving the rule of law and the strengthening of democracy:
2. Promote a greater awareness of the Declaration on Human Rights Defenders:
3. Encourage governments to give better effect to the Declaration domestically:
4. Continue to promote transparency and independent supervision in areas of government surveillance to support democratic institutions and an informed civil society:
5. Encourage governments to provide and promote safe and effective channels for individuals to report poor privacy practices, to seek redress for breach of data protection rules, or disproportionate action against the rights to privacy and data protection:
6. Acknowledge that independent and sufficiently empowered privacy and data protection authorities are essential to protect human rights defenders.
7. Support efforts by the UN Human Rights Council and the UN Special Rapporteur on the right to privacy concerning the promotion, protection and enjoyment of human rights, in particular on the Internet:
8. Promote cooperation between privacy and data protection authorities and International, Regional and National Human Rights Institutions:⁵

⁴ See UN Guiding Principles on Business and Human Rights (2011) at <http://tinyurl.com/hrbusinessprinciples> and the work of the UN Special Representative on human rights and transnational corporations and other business enterprises <http://tinyurl.com/SRHRbusiness>.

⁵ At international level Human Rights Defenders working in humanitarian organisations face risks. The explanatory note to the Resolution on Privacy and Humanitarian Action adopted at the 37th Conference noted that “Humanitarian organizations not benefiting from Privileges and Immunities may come under pressure to provide data collected for humanitarian purposes to authorities wishing to use such data for other purposes (for example control of migration flows and the fight against terrorism). The risk of misuse of data may have a serious impact on data protection rights of displaced persons and can be a detriment to their safety, as well as to humanitarian action more generally.”

9. Undertakes to further consider the issues affecting human rights defenders in the context of privacy and data protection in future conferences.

EXPLANATORY NOTE

Privacy advocates and activists are an essential feature of an informed and active civil society. Such people may, for example, spread knowledge of data protection rights and privacy issues through the populace. They take cases of violations to data protection authorities or the courts and may petition legislatures to reform laws or protest intrusive state or company practices. In human rights terminology such people are increasingly known as ‘human rights defenders’.

The United Nations has adopted a declaration on human rights defenders which has been further elaborated by guidance issued by the UN High Commissioner for Human Rights⁶ and the Special Rapporteur on the situation of human rights defenders.⁷ Other regional groupings have also issued supporting guidance.⁸

The UN Declaration and related guidance seeks appropriately to acknowledge the worth of, and provide protection to, the work of human rights defenders. The Conference resolution seeks to start to build on that earlier human rights work specifically in the context of privacy and data protection.

The resolution also highlights the roles of various stakeholders and institutions. It emphasises the responsibilities of business and governments to respect human rights. The resolution encourages data protection authorities to cooperate with national human rights institutions to help promote and protect human rights defenders.

Note: The Resolution on Specific privacy and security risks are identified, including the potential for development of monitoring systems, which could be increased by technologies such as management information systems and electronic transfers; digital identity registration and biometrics, mobile phones but also drones. Humanitarian organizations not benefiting from Privileges and Immunities may come under pressure to provide data collected for humanitarian purposes to authorities wishing to use such data for other purposes (for example control of migration flows and the fight against terrorism). The risk of misuse of data may have a serious impact on data protection rights of displaced persons and can be a detriment to their safety, as well as to humanitarian action more generally.

The U.S. Federal Trade Commission abstains from this resolution, which relates to matters outside its jurisdiction.

⁶ For example, see <http://tinyurl.com/UNHCRHRdefenders>.

⁷ For example, see <http://tinyurl.com/OHCHRHRDCommentary>.

⁸ For example, see <http://tinyurl.com/EUHRDguidelines> and <http://tinyurl.com/COEHRdefenders>.