



Call on the government of South Africa to support the creation of a UN Special Rapporteur on the right to privacy, 23 March 2015

This week the UN Human Rights Council is expected to consider establishing a Special Rapporteur on the right to privacy. As a member of the Human Rights Council, and a state that has frequently provided positive leadership through its commitment to human rights, the South African government has a unique opportunity to support this initiative and thereby ensure that the right to privacy is accorded the international recognition and protection it deserves.

The UN General Assembly, the UN High Commissioner for Human Rights and existing mandate holders (Special Rapporteurs) have all recognised the pressing need to provide continuous, systematic and authoritative guidance on the scope and content of the right to privacy as enshrined in article 12 of the Universal Declaration of Human Rights, and article 17 of the International Covenant on Civil and Political Rights. Protection of the right to privacy is particularly pressing in the light of challenges presented by the internet, as recognised by South Africa and other BRICS states in paragraph 49 of the Fortaleza Declaration from the Sixth BRICS Summit:¹ “We strongly condemn acts of mass electronic surveillance and data collection of individuals all over the world, as well as violation of the sovereignty of States and of human rights, in particular the right to privacy.”

However, it is important to note that privacy needs to be protected not just on the internet, but also in the offline world. Both government and private actors are increasingly collecting and processing personal information in the course of their daily activities and, as stated in the preamble of the South African Act on the Protection of Personal Information, it is has become necessary to “regulate, in harmony with international standards, the processing of personal information by public and private bodies in a manner that gives effect to the right to privacy subject to justifiable limitations that are aimed at protecting other rights and important interests” (Act No. 4 of 2013).²

The creation of a mandate of Special Rapporteur on the right to privacy would address these urgent needs and fill a significant gap in the conceptual and practical understanding of the right to privacy. It would help in developing common understandings on the right to privacy; monitoring and reporting on its implementation; and making recommendations and providing authoritative guidance to states and non-state actors, particularly business, to strengthen the protection of individuals’ right to privacy.

Within the UN system, a Special Rapporteur would make an essential contribution to the development of a coherent and complementary approach to the interaction between privacy, freedom of expression and other human rights. It would be a logical, incremental step to the Council's engagement on this issue. A Special Rapporteur on the right to privacy would enable the Council to take a leading role in identifying and clarifying principles, standards and best practices regarding the promotion and protection of the right to privacy.

To effectively fulfill this role, a Special Rapporteur on the right to privacy should be able to perform all the functions usually envisaged by the Council for other existing thematic special procedures, such as documenting best practices; receiving and seeking information from states, businesses and other actors; carrying out country visits; leading and participating in consultations with relevant stakeholders; making recommendations to states on the implementation and realisation of right to privacy; and reporting periodically to the Council and the General Assembly.

South Africa is among the first countries to take the important step of adopting a data protection law, the Protection of Personal Information Act of 2013. Supporting the current initiative by the Human Rights Council to create a Special Rapporteur on privacy would be an important reaffirmation of the South African government’s commitment to protecting the right to privacy.

*Issued by the Association for Progressive Communications - www.apc.org
To express your support for this letter contact Yolanda Mlonzi yolanda@apc.org
by 10h00 UTC+2 on 26 March 2015*

1 www.treasury.gov.za/brics/News/Sixth%20BRICS%20Summit%20Fortaleza%20Declaration.pdf

2 www.justice.gov.za/legislation/acts/2013-004.pdf