



Inter-Parliamentary Union
For democracy. For everyone.

133rd IPU ASSEMBLY AND RELATED MEETINGS

Geneva, 17 – 21.10.2015

Standing Committee on
Democracy and Human Rights

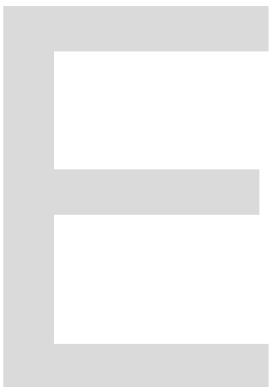
C-III/133/DR
2 September 2015

Democracy in the digital era and the threat to privacy and individual freedoms

***Draft resolution submitted by the co-Rapporteurs
Ms. B. Jónsdóttir (Iceland) and Mr. H.J. Jhun (Republic of Korea)***

The 133rd Assembly of the Inter-Parliamentary Union,

- (1) *Recalling* the resolution adopted by the 118th IPU Assembly (Cape Town, April 2008) on *The role of parliaments in striking a balance between national security, human security and individual freedoms, and in averting the threat to democracy*, and UN General Assembly Resolution 69/166 on *The right to privacy in the digital age*, as well as the report of the United Nations High Commissioner for Human Rights on the right to privacy in the digital age,
- (2) *Also recalling* the United Nations Guiding Principles on Business and Human Rights, and *bearing in mind* that civil society can play a central role in either enhancing or diminishing the enjoyment of human rights, especially the right to privacy and freedom of expression in the digital era,
- (3) *Acknowledging* the interdependence between democracy and the right to privacy, freedom of expression and information and an open and free Internet, and universal recognition of the right to privacy, its protection in international law and expectations of citizens around the world that the right to privacy is safeguarded both in law and in practice,
- (4) *Also acknowledging* that, in the area of digital surveillance, adequate national legislation and enforcement is lacking, procedural safeguards are sometimes weak and oversight ineffective,
- (5) *Expressing concern* that mass surveillance programmes regarding e-mail communications and other forms of digital expression constitute interference with individuals' right to privacy,
- (6) *Acknowledging* the need for the empowerment of individual parliamentarians when dealing with the protection of human rights and violations thereof,
- (7) *Affirming* the responsibility of parliaments to establish a comprehensive legal framework and exercise effective oversight of the actions of government agencies and/or surveillance agencies acting on their behalf, and to ensure accountability for all violations of human rights and individual freedoms,
- (8) *Expressing the need* to include and consult with both civil society groups and the private sector in policy-making related to the digital era,



(9) *Acknowledging* the importance and expertise of non-governmental organizations (NGOs) and human rights advocates and their role in oversight, consultation, policy-making and awareness-raising and *welcoming* greater cooperation between them, parliaments and parliamentarians worldwide,

(10) *Acknowledging with appreciation* the work and contribution of these entities, such as the International Principles on the Application of Human Rights to Communications Surveillance (the Necessary and Proportionate Principles), endorsed by more than 400 NGOs and the Global Network Initiative,

(11) *Affirming* the need for secure and uncompromised systems of communication for the public good and the protection of basic rights,

(12) *Considering* the findings of the report of the UN Special Rapporteur on the promotion and protection of the right to freedom of expression, on the use of encryption and anonymity,

(13) *Recognizing* the contribution of parliaments to, and their impact on, decisions promoting the national and international consensus needed for concerted and effective action on these issues,

1. *Calls on* parliaments to review their national frameworks and State practices with a view to promoting and increasing the possibilities for civilian participation in the digital era, free exchange of information and ideas and equal access to the Internet and, with a view to enhancing democracy in the 21st century, *encourages* parliaments to remove all legal limitations on free speech and flow of information and to uphold the principle of Net neutrality;
2. *Urges* parliaments to carefully review national laws and the practices of government agencies and/or surveillance organizations acting on their behalf so as to make sure they comply with international law and human rights, especially as they relate to the right to privacy, and *calls on* parliaments to guarantee, as part of that review, that private companies will not be forced to collaborate with the authorities on practices that impair their customers' human rights;
3. *Calls on* parliaments to ensure that the national legal frameworks comply fully with international human rights law when applied to interception, analysis, collection and commercial use of data and to share reviews and information from individual States and the IPU on related cases;
4. *Urges* parliaments to prohibit the interception, collection or analysis of personal data without the informed consent of the individuals concerned or a valid order granted by an independent court on grounds of reasonable suspicion of the targets' involvement in criminal activity;
5. *Underscores* that privacy protections must be consistent across domestic and international borders and *calls on* parliaments to make sure that privacy protections in national law cannot be bypassed by reliance on secretive and informal data-sharing agreements with foreign States or multinationals;
6. *Calls on* parliaments to enact comprehensive legislation on data protection, for both the public and private sector, providing, at the minimum, for strict conditions for permission to intercept, collect and analyse data, clear and precise limitations on the use of intercepted and collected data and security measures for the safest possible preservation, anonymity and proper and permanent destruction of data; and *recommends* the establishment of independent and effective national data-protection bodies with the necessary power to review practices and address complaints, while further urging parliaments to ensure that their national legal frameworks on data protection are in full compliance with international law and human rights, making sure that the same rights apply to both offline and online activities;

7. *Also calls on* parliaments to ensure through legal means that both voluntary and forced collaboration on various surveillance programmes between governments and private companies is made public and transparent; *also calls on* national parliaments and governments to encourage the private technology sector to honour its obligations to respect human rights, bearing in mind the Guiding Principles on Human Rights and Business, as customers of these companies must be fully informed of how their data is being gathered, stored, used and shared with others, and *further calls on* parliaments to promote global norms on user agreements and further development of user-friendly data-protection techniques countering all threats to Internet security;
8. *Underscores* that all legislation in the field of surveillance, privacy and personal data must be based on the principles of legality, transparency, proportionality, necessity and the rule of law;
9. *Anticipates* that parliaments will play a key role in specifying, in relative detail, the circumstances under which any interference with the right to privacy may be permitted and in establishing strict judicial procedures to authorize communications surveillance and to monitor their implementation, limits on the duration of surveillance, security and storage of the data collected and safeguards against abuse;
10. *Emphasizes* that while national security arguments will invariably be advanced that diverse digital technology tools may threaten the security and well-being of a State, parliaments need to review their capacity to oversee all executive action and ensure that a balance is struck between national security and individual freedoms so as to ensure that measures taken in the name of national security and counter-terrorism comply strictly with human rights, and avert any threats to democracy and human rights;
11. *Strongly urges* parliaments to review and establish new, comprehensive and independent oversight mechanisms where needed and include them in the legal framework; *stresses* that parliaments must investigate any shortcomings in their oversight function and the reasons behind them, making sure that their oversight bodies, such as parliamentary committees and parliamentary ombudsmen, have sufficient resources, proper authorizations and the requisite authority to review and publicly report on the actions of government agencies and/or surveillance agencies acting on their behalf;
12. *Calls on* parliaments to acknowledge that civil society can play a vital role in overseeing the executive branch and *encourages* parliaments and parliamentarians to promote and engage in consultation and to welcome assistance from civil society, NGOs and human rights advocates, in their oversight, policy-making and policy implementation efforts;
13. *Strongly recommends* that parliaments, as part of their oversight function, enact coherent and comprehensive legislation on the protection of whistleblowers in line with international standards and best practices;
14. *Calls on* parliaments to uphold both governmental and corporate accountability for violations of human rights, such as the right to privacy, freedom of expression and other individual freedoms, whereby such accountability includes adequate sanctions to ensure justice and act as a deterrent, including criminal prosecution, administrative fines, suspension or withdrawal of business licences, and the payment of reparation to individuals for harm caused;
15. *Underscores* the right to effective remedy for victims of violations of the right to privacy and other individual freedoms and *calls on* parliaments to ensure procedural safeguards in law, thereby facilitating access to duly implemented remedies;
16. *Welcomes* the appointment of the UN Special Rapporteur on the right to privacy and *calls on* the IPU to initiate a dialogue with him as well as the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and to work with them to produce a compilation of best legislative practices in this field.