

Mandate of the Special Rapporteur on the right to privacy

REFERENCE:

17 July 2020

Dear Sir/Madam,

I have the honour to address you in my capacity as Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolution 37/2. In this regard, I have decided to examine the privacy rights of children and how this right interacts with the interests of other actors as the child develops the capacity for autonomy. This work falls under the thematic action stream ‘A Better Understanding of Privacy’.

Submissions are sought from all interested stakeholders in all regions in order to obtain a wide range of perspectives to inform the research and contribute to my upcoming thematic report to be considered at the 46th session of the Human Rights Council in March 2021.

The submissions should relate to the privacy rights of children (under the age of 18) and issues relating to their independence and autonomy in any of the following, or other relevant areas:

- Online and offline in the social, recreational, educational, justice and health spheres;
- Parental, familial, community, governmental, commercial and other interests that influence the development of the child and their autonomy;
- Evidence and/or ongoing research on autonomy of children in educational institutions such as schools taking into account situations including playground, classrooms etc. from age four onwards including impact on perspectives on privacy as expressed by the children themselves;
- Comparative analysis of autonomy and privacy in children taking into account cultural contexts and differences (if any) between attitudes towards and perceptions of autonomy and privacy that may be observed in different regions of the world or between various sub-groups including ethnic, racial and religious.
- Official identity recognition including but not limited to birth registration and other official identity papers;
- The development of personal identity (or ‘self’) including gender identity and expression;
- The sexual development of the child and the importance of private spaces for the child, both on-line and off-line in which one’s sexuality can be further explored;
- The strengths and challenges of ‘age based’ and ‘age verification’ approaches;
- Governmental or other structures including regulatory arrangements, established to advance the human rights of the child;

Civil Societies

- Children in vulnerable situations such as unaccompanied migration, violence, sexual exploitation, poverty and other economic, social, familial or physical circumstances;
- Programs, mechanisms and strategies that aid the positive development of the child by addressing their privacy needs and expectations.

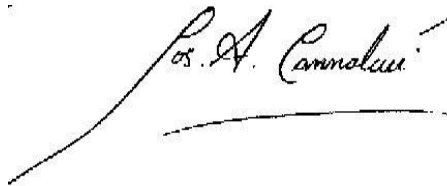
The focus of my report is on how privacy affects the evolving capacity of the child and the growth of autonomy, and what factors enhance or constrain this development. Attached is a background note about the project.

Written contributions should be sent electronically in word format to: ecoom02@sec.research.um.edu.mt and cc: jcannataci@sec.research.um.edu.mt and srprivacy@ohchr.org indicating “Submission – Privacy and the Child” in the subject heading.

Submissions should be received by 30 September 2020, at the latest. Written contributions are best submitted in English, if possible.

Kindly indicate if you consent to the submission being referenced in the report and/or posted on the mandate’s webpage.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read "J. A. Cannataci", with a long horizontal flourish underneath.

Joseph Cannataci
Special Rapporteur on the right to privacy

Background Note

‘A Better Understanding of Privacy: Children’s right to Privacy’

In 2016, the inaugural Special Rapporteur on the right to privacy established five thematic areas of work for his mandate. These broad strands were Big Data – Open Data; Health Related Data; Security and Surveillance; Corporations’ Use of Personal Data and ‘A Better Understanding of Privacy’. Recommendations, reports and ongoing activity in the thematic areas have had the benefit of the input and feedback from experts and interested individuals from all regions of the world. The work of each thematic strand has been informed by the research conducted by the other strands ensuring interconnections and common issues are recognised.

Amongst other dimensions, the thematic strand, ‘Better Understanding of Privacy’ also examines the right to privacy in the broader sense of the dignity of the individual. The work on gender perspectives of privacy for example, addressed not only the protection of information relating to gender, but issues concerning physical integrity and autonomy, as well as gender identity and sexual orientation. The thematic program of work also includes privacy within indigenous communities, and the right to privacy of children.

Privacy and children

Article 16 of the Convention on the Rights of the Child (1989) states:

- a. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
- b. The child has the right to the protection of the law against such interference or attacks.*

Article 40 of the Convention upholds the right of a child in the criminal justice system to have his or her privacy fully respected at all stages of the proceedings.

The Committee on the Convention of the Child is currently preparing a General Comment on children’s rights in relation to the digital environment. Discussions have been held with the Committee on the Convention of the Child regarding the scope of the right to privacy and its relevance to the evolving capacity of the child, particularly to autonomy and the ‘best interests of the child’. A key question concerns the evolving capacity of the child and the development of autonomy, and how promotion and protection of their right to privacy plays a role in this development.

The focus of the work of the mandate of the Special Rapporteur initially will be upon the collection of research and views on the areas outlined, before consulting on the necessary actions of States and other actors to meet their obligations to promote and protect children’s right to privacy.

Submissions are sought from all interested parties on relevant research reports; issues identified in work to date; findings from consultations with children; examples of mechanisms, laws, policies or programmes; or evidence of good practice.