

GLOBAL PARTNERS DIGITAL

# Advocacy Bytes

| The UNHRC 38th Session



| Aug 2018

# 1 Snapshot

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## Dates covered by this case study

18 June – 06 July 2018

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## Type of mechanism

The 38th Regular Session of the UN Human Rights Council (UNHRC).

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## Background

The UNHRC was established in 2006 by the United Nations General Assembly (UNGA) to replace another body, the UN Commission on Human Rights. It has two broad mandates:

- To be “responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner”; and
- To “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon”.

The UNHRC also has a number of more specific mandates, including to serve as a forum for dialogue on thematic issues on all human rights and to make recommendations to UNGA for the further development of international law in the field of human rights.

## Structure and decisionmaking processes

The UNHRC is made up of 47 UN member states, with each UN geographical region (Africa, Asia, Latin America and the Caribbean, Eastern Europe, and Western Europe) allocated a proportion of seats. Each member state is elected by UNGA for a period of three years, and can serve for up to two consecutive terms.

The UNHRC meets three times a year in “regular sessions”, usually in March, June, and September, for a period of around three weeks. In these sessions, it adopts resolutions and considers reports from its various subsidiary bodies, among other things.

The Council can adopt a resolution either by consensus or by a vote, which means that it doesn't enjoy the support of the entire Council. Resolutions are revised through open consultation processes called "informal negotiations". Following these negotiations, states can continue to suggest changes to the text in bilateral meetings and even up to adoption of the text in the last week of the Council session.

For a more comprehensive overview of the forum, see our dedicated guide, [\*\*Navigating Human Rights in the Digital Environment: the UNHRC.\*\*](#)

## Remit

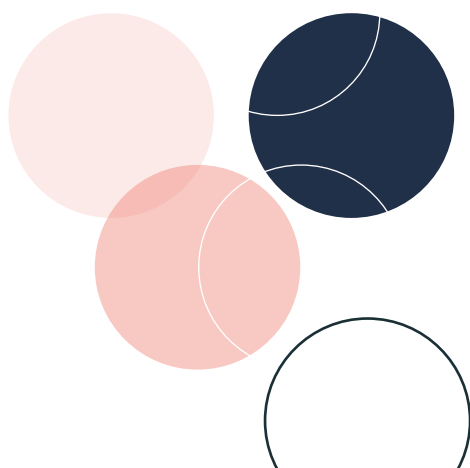
At the 38th session, along with other resolutions and decisions which the Council makes at regular sessions, the "resolution on the promotion, protection and enjoyment of human rights on the Internet" ("the Internet resolution") was due to be revised and adopted. The Internet resolution was first adopted in 2012, and has been renewed biannually since.

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## 2 What was at stake

The Internet resolution is an important norm-setting document and advocacy tool for human rights defenders. Adopted by consensus in 2012, it confirms and reiterates state obligations to promote human rights on the Internet. At this session, human rights defenders were looking out for two things in particular:

- **Changes to the text.** Human rights defenders were hoping for more robust language on a range of issues (for example, in support of encryption technologies) but were also aware of potential threats in new additions to the resolution; for example, from states with poor human rights records looking to justify controls on Internet activity.
- **Fracturing consensus.** Much of the strength of the resolution comes from the consensus around it at the UNHRC. At this session, it was rumoured that certain states would instead call for a vote on the revised resolution, which would weaken its significance and power as an advocacy tool.



## 3 Challenges for civil society engagement

- **Lack of formal process for civil society engagement.** At the UNHRC, all decisions are ultimately made by government missions in Geneva. Although some of the negotiations are open to civil society attendance, and in some cases allow for civil society to speak, most negotiations take place behind closed doors between governments.
  - **Jargon and complicated decisionmaking procedures.** From “hostile amendments” to “informals”, from “co-sponsors”, and “PPs” to “OPs”, the process of drafting and adoption of a UN resolution is full of jargon, rules and procedures that can be overwhelming for someone new to the process.
  - **Practical barriers to entry.** The UNHRC is notably exclusive when it comes to the civil society it admits. Only groups accredited by the United Nations Economic and Social Council (ECOSOC) can attend the session. This accreditation is not always difficult to get (another ECOSOC-accredited NGO can do it for you), but it requires good networks and contacts and – coupled with the high costs of travelling to and staying in Geneva – means that usually only a small group of NGOs are able to engage around resolutions.
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## 4 What happened

### → BEFORE THE SESSION

A few weeks before the 38th session, civil society groups sent suggested text edits to the previous resolution to the governments that were leading the drafting of the resolution (in this case Sweden and Brazil). Each suggested edit was accompanied by a rationale, including references to previous resolutions and other UNHRC texts.

Around the same time, a civil society meeting was organised on the fringe of RightsCon 2018 in Toronto to discuss a range of subjects, from respective priorities to intelligence gleaned from governments on the drafting process, and strategies for engagement. At this meeting, an email thread was created to continue sharing information ahead of the event, while civil society groups reached out individually to representatives of the UN missions in Geneva to schedule meetings for the first week of the session.

## → AT THE SESSION

Civil society groups first met with delegations at the UNHRC, including those states that were in the drafting group, “sympathetic” states with a good record of supporting rights-respecting language in the resolution, and previous co-sponsors of the resolution. After the first draft was released, groups convened a joint meeting to exchange views, to share information from their conversations with other delegations, and to set up a WhatsApp group to coordinate during the session.

In the first and second week of the Council session, civil society attended the “informal negotiations” which are organised by the group of states leading the drafting of the resolution (“core drafting group”), and where members of the core drafting group present the latest draft of the resolution, and states can voice support or suggest changes for the text. In these negotiations, civil society groups took the floor to make interventions in line with their agreed priorities; for example, in support of the text on private actor responsibilities and on encryption and anonymity. (Note: at the UNHRC, these interventions need the permission of the core drafting group, which is not guaranteed). Coordination in-person and through the WhatsApp group meant that the points made by different civil society representatives were complementary.

After the second draft of the resolution had been shared, civil society set up a meeting with the core drafters of the resolution to exchange views on the progress of the negotiations, and to get information.

Throughout the negotiation process, civil society groups provided feedback on new drafts of the text as they were released, including by suggesting changes to the text and providing a rationale for each change. Although there was no joint input by civil society groups, the WhatsApp group and email thread ensured that interventions made by civil society, whether in writing or on the floor during negotiations, were aligned.

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## 5 Outcomes

The main aim of civil society engagement in this session was that the text include elements that reflect the evolving importance of the Internet for the exercise of human rights online and offline. In this regard, there were some good outcomes, which improved on the three previous versions of the resolution in 2012, 2014 and 2016:

- **Stronger recognition of the responsibilities of companies and states towards human rights on the Internet.** This included a call for states to ensure effective remedies

for Internet-related human rights violations in accordance with their international obligations, and a recognition that “international human rights law should guide private sector actors and be the basis for their policies”.

- **A more comprehensive acknowledgment of the digital divide, including on the basis of gender.** The new resolution calls for gender equality in the “design and implementation” of ICTs and in the policy decisions and frameworks regulating them, as well as “enabling environments” for the exercise of human rights online. It also condemns “unequivocally” online attacks against women, in particular those targeting women who engage in public debates.
- **Recognition of the importance of anonymity and encryption:** For the first time, the resolution acknowledges that encryption and other technical anonymity measures “can be important to ensure the enjoyment of human rights,” and calls on governments not to interfere with the usage of these measures, specifically highlighting the importance of allowing journalists to secure their communications and protect the confidentiality of their sources. This is a significant and welcome intervention, especially given the often negative, securitised framing of the encryption debate.

In addition, the new resolution makes an important reaffirmation of state obligations on freedom of expression by condemning all undue restrictions on freedom of opinion and expression, and includes improved language on Internet shutdowns.

However, the resolution also missed opportunities to strengthen the text on freedom of expression during negotiations, by, for example, making reference to specific measures to restrict online expression – like laws relating to criminal defamation and sedition, terrorism, and hate speech. There was also a last minute inclusion of language on “terrorists and their supporters”, an example of how a resolution can be co-opted by governments to attempt to justify restrictions on human rights.

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## 6 Lessons learned

- **Identify the key players early on.** The key players are the people who are able to make the final decisions. In this particular case, this was the drafters of the resolution text, with the representatives of the HRC member states that have previously sponsored the resolution also playing an important role in influencing the development of the text. At this session, groups made sure to reach out to these stakeholders well ahead of the event to let them know they were planning to engage. This helped them gain a good sense of the priorities of different states, and to ascertain how receptive they would be to their priorities.

- **Have clear aims in mind.** A big reason why civil society interventions at this session were successful was that the text changes sought were concrete and specific. Groups made it as easy as possible for the governments involved by providing an annotated text well ahead of the session in question, including citations of other resolutions and a list of key priorities or messages (with a rationale for each of them).
- **Have friends in the right places.** At an exclusive forum like the UNHRC, building relationships with the main stakeholder group (in this case, the mission representatives) proved absolutely key. If you're new to a forum, it's also worth finding out whether there are civil society groups with an established presence already engaging. Working with them means you won't have to reinvent the wheel, and will help avoid disagreements and conflicting messaging among groups. At this particular session, groups found it useful to set up WhatsApp and email threads to share information as discussions progressed.
- **Presence matters.** Being in the room when negotiations and discussions take place enabled civil groups at this session to understand precisely what the main points of contention were, the motives and intentions of the stakeholders (in this case, the different governments) and – when the key resolution was being amended – the specific details of changes to the text. Groups also made sure to be alert and primed for rapid response by having the contact details of the drafting group close at hand, as well as a list of sympathetic missions.