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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Revised version of the guidelines for the regulation of computerized
personal data files prepared by Mr. Louis Joinet, Special Rapporteur

I. INTRODUCTION

1. At its forty-fourth session, the General Assembly adopted resolution 44/132, on 15 December 1989, entitled "Guidelines for the regulation of computerized personal data files" by which it invited the Sub-Commission's Special Rapporteur, Mr. Louis Joinet, to submit to the Commission, at its forty-sixth session, a revised version of the draft guidelines, taking into account the comments and suggestions submitted by eight Governments (A/44/606 and Add.1), some of which had supplemented or confirmed the comments communicated earlier to the Special Rapporteur and which he had already taken into consideration.

2. This document, prepared pursuant to General Assembly resolution 44/132, contains the revised version of the guidelines for the regulation of computerized personal data files prepared by the Special Rapporteur, Mr. Louis Joinet.

II. GUIDELINES CONCERNING COMPUTERIZED PERSONAL DATA FILES

The procedures for implementing regulations concerning computerized personal data files are left to the initiative of each State subject to the following orientations:

A. Principles concerning the minimum guarantees that should be provided in national legislations

1. PRINCIPLE OF LAWFULNESS AND FAIRNESS

Information about persons should not be collected or processed in unfair or unlawful ways, nor should it be used for ends contrary to the purposes and principles of the Charter of the United Nations.

2. PRINCIPLE OF ACCURACY

Persons responsible for the compilation of files or those responsible for keeping them have an obligation to conduct regular checks on the accuracy and relevance of the data recorded and to ensure that they are kept as complete as possible in order to avoid errors of omission and that they are kept up to date regularly or when the information contained in a file is used, as long as they are being processed.

3. PRINCIPLE OF THE PURPOSE-SPECIFICATION

The purpose which a file is to serve and its utilization in terms of that purpose should be specified, legitimate and, when it is established, receive a certain amount of publicity or be brought to the attention of the person concerned, in order to make it possible subsequently to ensure that:

(a) All the personal data collected and recorded remain relevant and adequate to the purposes so specified;

(b) None of the said personal data is used or disclosed, except with the consent of the person concerned, for purposes incompatible with those specified;

(c) The period for which the personal data are kept does not exceed that which would enable the achievement of the purpose so specified.

4. PRINCIPLE OF INTERESTED-PERSON ACCESS

Everyone who offers proof of identity has the right to know whether information concerning him is being processed and to obtain it in an intelligible form, without undue delay or expense, and to have appropriate rectifications or erasures made in the case of unlawful, unnecessary or inaccurate entries and, when it is being communicated, to be informed of the addressees. Provision should be made for a remedy, if need be with the supervisory authority specified in principle 8 below. The cost of any rectification shall be borne by the person responsible for the file. It is desirable that the provisions of this principle should apply to everyone, irrespective of nationality or place of residence.

5. PRINCIPAL OF NON-DISCRIMINATION

Subject to cases of exceptions restrictively envisaged under principle 6, data likely to give rise to unlawful or arbitrary discrimination, including information on racial or ethnic origin, colour, sex life, political opinions, religious, philosophical and other beliefs as well as membership of an association or trade union, should not be compiled.

6. POWER TO MAKE EXCEPTIONS

Departures from principles 1 to 4 may be authorized only if they are necessary to protect national security, public order, public health or morality, as well as, inter alia, the rights and freedoms of others, especially persons being persecuted (humanitarian clause) provided that such departures are expressly specified in a law or equivalent regulation promulgated in accordance with the internal legal system which expressly states their limits and sets forth appropriate safeguards.

Exceptions to principle 5 relating to the prohibition of discrimination, in addition to being subject to the same safeguards as those prescribed for exceptions to principles 1 and 4, may be authorized only within the limits prescribed by the International Bill of Human Rights and the other relevant instruments in the field of protection of human rights and the prevention of discrimination.

7. PRINCIPLE OF SECURITY

Appropriate measures should be taken to protect the files against both natural dangers, such as accidental loss or destruction and human dangers, such as unauthorized access, fraudulent misuse of data or contamination by computer viruses.

8. SUPERVISION AND SANCTIONS

The law of every country shall designate the authority which, in accordance with its domestic legal system, is to be responsible for supervising observance of the principles set forth above. This authority shall offer guarantees of impartiality, independence vis-à-vis persons or agencies responsible for processing and establishing data, and technical competence. In the event of violation of the provisions of the national law implementing the aforementioned principles, criminal or other penalties should be envisaged together with the appropriate individual remedies.

9. TRANSBORDER DATA FLOWS

When the legislation of two or more countries concerned by a transborder data flow offers comparable safeguards for the protection of privacy, information should be able to circulate as freely as inside each of the territories concerned. If there are no reciprocal safeguards, limitations on such circulation may not be imposed unduly and only in so far as the protection of privacy demands.

10. FIELD OF APPLICATION

The present principles should be made applicable, in the first instance, to all public and private computerized files as well as, by means of optional extension and subject to appropriate adjustments, to manual files. Special provision, also optional, might be made to extend all or part of the principles to files on legal persons particularly when they contain some information on individuals.

B. Application of the guidelines to personal data files kept by governmental international organizations

The present guidelines should apply to personal data files kept by governmental international organizations, subject to any adjustments required to take account of any differences that might exist between files for internal purposes such as those that concern personnel management and files for external purposes concerning third parties having relations with the organization.

Each organization should designate the authority statutorily competent to supervise the observance of these guidelines.

Humanitarian clause: a derogation from these principles may be specifically provided for when the purpose of the file is the protection of human rights and fundamental freedoms of the individual concerned or humanitarian assistance.

A similar derogation should be provided in national legislation for governmental international organizations whose headquarters agreement does not preclude the implementation of the said national legislation as well as for non-governmental international organizations to which this law is applicable.

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