

Internet Governance Forum 2015

Joint open forum OHCHR/CoE on the right to privacy in the digital age
11 November 2015, 16:30-17:30, Venue: Room 3

Estimated number of participants: 40

Moderators: Hernan Vales (OHCHR) and Lee Hibbard (CoE)

Rapporteur: Lorena Jaume-Palasi, European Dialogue on Internet Governance (EuroDIG)

Speakers: Joe Cannataci, UN Special Rapporteur on the right to privacy; Alexandre Ghisleni, Ministry of Foreign Affairs, Brazil; Carly Nyst, Independent Human Rights Consultant; Günter Schirmer, Parliamentary Assembly of the Council of Europe; Gbenga Sesan, Paradigm Initiative, Nigeria

Summary of discussions and main issues:

Mass surveillance continues to be a serious problem. Concern was raised about national initiatives which support mass surveillance. It was suggested that the risks of mass surveillance necessitate greater public awareness (media and digital literacy) and “mass encryption” possibilities for those who use mobile phones and SMS to communicate.

Mr. Cannataci, UN Special Rapporteur on the right to privacy, referred to a 10-point plan of action that could guide his future work:

1. Working towards a global definition of privacy in view of the fact that there was no universal understanding of the right to privacy;
2. Building public awareness of privacy and mass surveillance;
3. The need for a more structured and on-going dialogue among stakeholders;
4. More effective safeguards to prevent infringements of privacy and mass surveillance; and more effective sanctions when infringements occur;
5. More effective technical safeguards, including encryption;
6. More effective dialogue with the corporate world.;
7. Recognising the value of regional and national developments in privacy protection mechanisms (evaluate the impact of those regional solutions such as Convention 108 or the EU Directive);
8. Harness the energy and influence of civil society;
9. Highlight the differences between law enforcement and national security (only a minority of countries perform mass surveillance);
10. Work towards the further development of international law);

Mr. Schirmer, referred to the Report on Mass Surveillance by the Parliamentarian, Peter Omzigt, of the Parliamentary Assembly of the Council of Europe. In particular, Mr Schermer underlined:

- Freedom of expression and freedom of equal treatment before the law;
- Reference to multilateral intelligence codex i.e. mutual engagement to apply the same rules to the citizens from fellow signatory countries. No surveillance for political, diplomatic purposes;
- The need for whistle-blower protection, including the granting of asylum
- Opposition in the Parliamentary Assembly of the Council of Europe to “Backdoors” (since they are also a security threat);
- The importance of parliamentary and judiciary oversight
- The promotion of self-encryption is an informational self-defence. “Mass encryption in response to mass surveillance” could be a way forward.

- The Parliamentary Assembly of the Council of Europe referred to mass surveillance as a danger to several human rights, not just the right to privacy.

Mr. Ghisleni, Ministry of Foreign Affairs of Brazil, stated that a solid foundation was needed to tackle privacy challenges in the longer term. He recalled that the right to privacy was recognised in binding international law, including the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. He considered that it was an achievement to have put the right to privacy at the centre of global debate. He underscored the importance of consensus and involvement of all stakeholders in discussions on privacy in the digital age.

Ms Nyst, an independent consultant on human rights, expressed concern about recent national initiatives to legitimise mass surveillance. Offensive tactics were needed to prevent States from justifying mass surveillance on the basis of international law. She argued that the public at large did not have enough information to grasp of the problem. She underscored that mass surveillance could never be considered a proportionate measure.

Mr Sesan from the Paradigm Initiative in Nigeria stated that countries in his region were “making up laws on mass surveillance as they go”. In the case of one country, he said that there were seven government agencies collecting personal data but that there was no personal data protection law. He referred to the need to have a personal data digital rights bill.

Outcomes, recommendations and possible next steps:

There was agreement on the need for action on different levels: government actor level; regulatory level (international common understanding of privacy / harmonisation of safeguards on privacy regulation / a multilateral surveillance codex); enforcement level (oversight / accountability mechanisms); civil society level (awareness raising and media literacy). There is also a need for more dialogue between all stakeholders on the notion of privacy and its components, on what constitutes legitimate security concerns, as well as a need for adequate and effective oversight and safeguards