

February 24, 2014

Ms. Navanethem Pillay
United Nations High Commissioner for Human Rights
Office of the High Commissioner for Human Rights (OHCHR)
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Protecting and Advancing
Freedom of Expression and
Privacy in Information and
Communications Technologies

CC: Permanent Missions of Austria, Brazil, Germany, Liechtenstein, Mexico, Norway, and Switzerland to the United Nations in Geneva

Re: National security surveillance and protecting privacy in the digital age

Dear High Commissioner:

The report requested by the UN General Assembly on the right to privacy in the context of domestic and extraterritorial surveillance, interception of digital communications, and the mass collection of personal data offers a unique opportunity to ground the emerging global debate on these issues in a framework of international human rights law.

The Global Network Initiative (GNI) brings together ICT companies with civil society organizations, investors, and academics to forge a common approach to protecting and advancing free expression and privacy online. On the occasion of the expert seminar organized with the Geneva Academy of International Humanitarian Law and Human Rights, we write to share initial views and recommendations regarding the substance and process of this report.

Substantive Recommendations

GNI recommends that the High Commissioner include the following issues in her report:

Extraterritorial privacy rights

International human rights law sets standards that protect the freedom of expression and privacy rights of users from all countries. GNI has urged the United States to recognize the right to privacy of non-U.S. persons and to strengthen reforms to effectively protect this right. We urge other governments to do the same, and the High Commissioner's report provides an opportunity to set forth best practices from legal frameworks around the world that should be adopted by all governments.

Bulk collection of communications content and metadata

Bulk collection of communications data—both content and metadata—threatens privacy and freedom of expression rights and undermines trust in the security of electronic communications services provided by companies. This includes bulk collection by governments, and mandates to companies or other third parties to store data that they would otherwise not retain.

Responsibilities of governments and businesses to protect and respect privacy

The UN Guiding Principles on Business and Human Rights define the respective roles of the public and private sector as the state duty to protect and the corporate responsibility to respect human rights. Companies should engage in human rights due diligence to “know and show” that they are addressing potential human rights impacts. The [GNI](#)

[Principles](#) provide focused guidance on how ICT companies can respond to government requests implicating privacy in ways that respect the rights of users, backed by the independent assessment of company implementation. However, the first assessments of our founding companies Google, Microsoft, and Yahoo have pointed to the difficulties that can arise when governments impose secrecy requirements on companies who receive national security surveillance requests, limiting their ability to be transparent about the steps they take to minimize risks to the privacy of their users.

Transparency

Transparency reforms are a necessary first steps in examining whether domestic laws adequately protect rights to privacy and freedom of expression. The report should identify increased transparency by governments and companies as a key building block to ensure that communications surveillance regimes are consistent with human rights standards.

Procedural Recommendations

Broad-based consultation

We recommend that the High Commissioner first develop a broadly inclusive process of consultation and engagement to inform the development of the report. There have been a plethora of high-level commissions, panels, and gatherings seeking to address Internet governance following the national security surveillance revelations of 2013, but none possess the global legitimacy of the UN General Assembly and Human Rights Council. We therefore urge the High Commissioner to consult both with governments — particularly the intelligence and security agencies that conduct surveillance, as well as a wide array of non-governmental voices, including civil society and the private sector.

Special Rapporteur on the right to privacy in the digital age

Given the urgency and complexity of this topic, we recommend that a Special Rapporteur on the right to privacy in the digital age be established with a mandate to address this issue holistically. Although Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, and on the promotion and protection of human rights while countering terrorism, Ben Emmerson, have addressed these issues in reports and briefings, the gravity and pervasiveness of concerns regarding this issue demand sustained attention at the global level. Reporting by a special rapporteur on privacy could highlight specific areas of concern and best practices at the national level and help lay the groundwork for future international action on this topic.

Sincerely yours,



Jermyn Brooks
Independent Chair
Global Network Initiative



Susan Morgan
Executive Director
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