

Workshop 155

Title: Human rights: a unifying approach for development, freedom, access and diversity?

List of panellists, chairs and moderators

Panellists: Anja Kovacs (India), Honey Tan (Empower, Malaysia), Shahzad Ahmad (Bytes for All, Pakistan), Bidi Bala (Fantsuam, Nigeria), Jeff Brueggeman (AT&T), Patrick Ryan (Google). Chairs: Joy Liddicoat (APC) and Johan Hallenborg (Swedish Foreign Ministry). Remote moderator: Henrik Almstrom (APC)

Brief Substantive Summary and Main Themes Raised

Workshop participants discussed examples of current internet related human rights violations, considered implications for development, freedom access and diversity, shared strategies for remedies and accountability against human rights violators, opportunities and challenges for seeking remedies, how human rights is a growing theme in the IGF, and the role of government, private sector and civil society in taking these issues forward together. Consensus emerged that multi-stakeholder discussions of human rights was key to unlocking difficult issues and working through these to multi-stakeholder options and solutions. Workshop participants endorsed the suggestion that human rights be a main theme of the IGF in 2012.

Participants shared a wide range of internet related human rights violations. Government monitoring of civil society activity was so widespread in Malaysia, for example, that it was not possible to know exactly how much surveillance there was. Monitoring is also being combined with old and new methods of surveillance and harassment. Examples included covert surveillance of email, hacking and interference with email accounts to prevent access, website attacks, and wire-tapping of telephones. Misuse of laws to stifle free expression was a common theme. In Pakistan, Argentina and many other countries, defamation laws (both civil and criminal) were being used to sue civil society groups publicising information about corruption or freely expressing their views about government economic management. New laws were being introduced in Mexico and Guatemala to counter spreading false rumours with disproportionately severe penalties for ICT users and media outlets. Faith based filtering, which involves the blocking of alleged blasphemous content but which disproportionately affects legitimate political discourse, appears to be common.

Another theme was the impact of diverse responses to national security issues on development, access and freedom. Participants highlighted the new requirements for registration of sim cards in Nigeria, the banning of the Bersih 2.0 group in Malaysia, and localised cell phone shutdowns in India in anticipation of possible community conflict. Private sector participants highlighted the impact on service delivery of government regulation and the need to engage with civil society and the technical community.

Strategies for accountability vary widely. In countries where there is no independent media, for example, strategies included the use of citizen reporting to monitor government activities, content creation (including use of video on various internet platforms), the use of alternative and new media and e-newspapers such as eNewspaper, Malaysia Kini, and the Malaysia Insider. The risks for journalists in Pakistan, were a serious concern in light of the high rates of murders. In this context, support from regional and international organisations and

networks was vital, but actions and strategies had to be based on local national contexts if governments were to listen and actions be meaningful.

In Pakistan and Malaysia, litigation was used in some cases, but was sometimes not effective due to out of date laws, lack of judicial capacity to deal with legal issues related to the internet, unwillingness of lawyers to take cases for fear of violence or retaliation, the costs and delays involved in taking legal cases, and the difficulty in getting meaningful redress. Whether fear of challenging Article 295 C of the Pakistan Constitution or delays in getting leave to review the government decision to ban Bersih 2.0.

From the private sector perspective AT&T highlighted the difficulties for internet intermediaries in being liable for content. Strategies for private sector included transparency in relation to actions and government requests, clear communication with customers and developing human rights policies which emphasise freedom of expression. New forms of documentation and monitoring were highlighted by reference to the Google Transparency report. Concerns were raised for small ISPs which may not have the resources to resist government pressure to monitor content and pass on data.

Governments highlighted the importance of an enabling human rights environment to create the foundations for accountability. This included in the international area, for example, to comment when other governments do not meet human rights standards, take difficult issues to the UN Human Rights Council, fund civil society participation and ensure multi-stakeholder processes for discussing human rights issues and responses. When considering the Article 19 test for limitations, participants considered that inadequate attention was paid to the need for limited and proportionate actions. Some considered that governments tend to go for blocking and filtering measures before trying other means of solving the problem, whether the problem is defamatory comments in a blog, violation of intellectual property or fighting terrorism.

Strategies for resisting violations and seeking accountability varied and there was consensus that strategies need to be grounded in local contexts and developed in light of local situations so that these are original, authentic and practical. The range of strategies included:

- monitoring and documentation through national and global research
- working with international partners
- engaging with the national human rights institutions, for example, Suhakam in Malaysia, which can play an important role in bringing government, judicial, legal and civil society groups together.
- the use of Parliamentary motions, for example, in Malaysia to highlight Police brutality in the Bersih 2.0 rally
- the use of peaceful civil action such as rallies and combining these with on-line campaigns
- capacity building for human rights defenders through secure online communication trainings
- greater collaboration between the technical community and human rights advocates
- reaching out to human rights friendly governments
- appeals to political leaders, including writing to the Prime Minister in Pakistan.
- building judicial capability to deal with issues including international judicial training exchanges

Participants considered how human rights can assist to work through difficult issues. For example, participants distinguished between content blocking and internet shutdowns and called for better dialogue on the human rights standards that should apply in each case. In relation to content blocking, participants generally agreed that Article 19 of the ICCPR offered a clear three point test for restrictions on freedom of expression. However, it was emphasised that it was for each community to negotiate its limits and the limits in India and Nigeria, for example, might be different.

Conclusions and Further Brief Comments

Participants concluded the discussion had been useful and highlighted:

- The importance, in future IGFs, of not scheduling multiple human rights workshops at the same time.
- That it would be useful to include law enforcement, police, prosecutors and judiciary in future workshops focussing on remedies and human rights
- Human rights as a main theme of the IGF in 2012

Joy Liddicoat