State of Surveillance Briefing guidelines

Introductory questions

Communications landscape:

Are there national statistics on the means of communications used in your country? How prevalent is internet use in the country? How prevalent is cell phone use? Is there statistical data on numbers of users of specific types of social media or webmail?

Civil society landscape:

How many civil society groups work on privacy issues? Who are they?

What are their primary concerns (surveillance? site blocking? freedom of speech? online harrassment?)?

Has the government engaged in any debates or conducted any consultations relating to privacy?

Legal context

International conventions on Privacy and human rights in general:

Is the country signatory to international treaties that recognise privacy as a fundamental human right, including:

- Universal Declaration on Human Rights (Article 12)
- International Convention on Civil and Political Rights (Article 17)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Article 14)
- Arab Charter of Human Rights (Article 21),
- African Charter on the Rights and Welfare of the Child (Article 10)
- American Convention on Human Rights (Article 11)
- ASEAN Human Rights Declaration (Article 21)
- Other international or regional instruments?

Domestic regulatory framework:

Constitution

- What Articles, if any, exist on privacy and/or data protection in the country's constitution?
- If constitutionally recognised, is the right to privacy subject to any restrictions or exceptions?
- Are there any interesting cases where courts have ruled on privacy in the context of the constitution?

Statutory law:

- What form of law is there that regulates state surveillance?
    - Are there laws/legal provisions specifically addressing the surveillance of communications – digital and/or telephonic? If yes, please describe.
    - Are there laws/legal provisions addressing Data Protection? If yes, do these contain provisions relating to access and disclosure of data to law enforcement or authorized authorities?
    - Are there laws/legal provisions addressing cyber crimes? If yes, do these contain provisions allowing access and collection of data by law enforcement/authorized authorities?

- Does the government issue operating licenses for Internet Service Providers and Telecommunications Service Providers? If yes, do these contain security requirements i.e technical requirements for the installation of monitoring systems, retention mandates, real ID mandates etc.
- Are there directives/orders from the executive (president, royalty, prime minister) authorising interception or access by law enforcement or authorized authorities? Under what circumstances can these powers be used?
- Are there laws/ legal provisions that empower government agencies to monitor communications? If so, which agencies are legally empowered to do so?
- Are there laws/ legal provisions that empower law enforcement to access stored data ?
- Are there laws/legal provisions requiring the collection and/or retention of communications metadata? If there is a retention policy, how long are communications providers required to retain this data?
- Are there any laws/legal provisions requiring service providers to collect specific types of data on their users? What types of data?
- Are there any bills that are being currently considered that would have an effect on privacy and surveillance (for example, expanding the investigative powers of various government agencies?

If yes to any of the above:

- Are there any checks and balances mentioned in the text of the laws? Namely:
  - under what circumstances can surveillance take place?
  - Is there a body or authority responsible for authorizing surveillance? Is there a reporting procedure that this body/authority must comply with?
  - Is there a body or authority responsible for overseeing surveillance? Is there a reporting procedure that this body/authority must comply with?
  - Are security agencies and/or service providers required to implement procedural safeguards while implementing surveillance?
  - Is unlawful surveillance by service providers penalized? By security agencies?
  - Are service providers allowed to disclose surveillance orders in the aggregate form?
  - Is information collected through surveillance permitted to be used as evidence in a court of law? Are there circumstances under which information collected through surveillance would not be permitted to be used as evidence in a court of law?
  - Are individuals provided a right of redress?
  - Are their limitations on what techniques people can use to protect themselves? e.g. encryption, foreign providers, etc.

Regulatory actors

- Are there regulatory actors/departments related to IT and communications? (i.e Department of IT, Department of Telecom, Telecommunications Spectrum Regulator) If so, what are their mandates with respect to communications surveillance?
- Are there regulatory actors/department related to data protection and privacy? If so, what are there mandates?
- Are there regulatory actors/departments related to national security and/or cyber security? (i.e Department of Home) If so, what are their mandates?

Freedom of Information

- Are there any laws or processes by which ordinary citizens can obtain information from the government (eg. a Freedom of Information law)?
- What are the 'exceptions' if any to this law (for example 'national security' or 'company confidentiality') that the government can cite to refuse to publish information?
- Do you know of any cases in which activists or journalists or others have tried to legally obtain information from the government regarding surveillance? Was there any success?

Security and law enforcement landscape

Intelligence agencies

- What are the main intelligence agencies in the country?
  - When were they established?
  - Is there any information regarding their size (staffing, budget)?
  - What are their mandates? Is there a legal basis for their powers?
  - How are they structured -- centralized? At what level are they decentralized?
- Is there any information on how these intelligence agencies share information with other agencies, in country and internationally? Are there any intelligence sharing protocols between them and can they be accessed?
- Is there any oversight mechanism for them?
  - Who do they report to (president, justice minister, intelligence minister, parliament, etc...)?
  - Is there an independent commission or judicial authority who audits their work on a regular basis?

Other government agencies:

Are there other government actors who are involved in communications surveillance? These might include the police, anti-corruption agencies, the Ministry of ICT, the Foreign affairs agency, the military.

Telecommunications companies

- What is the landscape of telecommunications and internet service providers in your country? Are there multiple companies that provide access to telephones, internet, or mobile, or is there convergence where one company would provide multiple services?
- Is the domestic market dominated by large companies or is it a diverse market of many companies? If there are fewer players, please identify the key companies.
- Are any of the key providers government-owned? Fully? Partially? Are there any relationships
- How many foreign telecommunication companies operate in your country? Are any of these fully or partially owned by larger parent companies such as Vodafone, O2, or Orange?
- On their boards of directors, are there any government officials? From which departments?
- Are there any news reports about telecommunications companies providing surveillance solutions to government agencies?
- Are there any news reports about telecommunications companies being required to give government agencies access to their customers' data?

Internet infrastructure

- Is there an 'internet exchange' in your country?
- If so, where is it housed?
- Who runs it?

- Who manages the fiber optic cables (internet transmission lines) that lead into your country?

Other actors

- Have you heard any reports that there are non-state actors using surveillance technologies? These might include militant/rebel groups, drugs cartels, aid groups or others?

Technologies in place (basic categories)

Monitoring Centres

- Has the government ever pledged to build a monitoring centre (ie. something like this: https://www.privacyinternational.org/blog/monitoring-centres-force-multipliers-from-the-surveillance-industry)
- If so, which agency was it?
  - Who is funding it?
  - What kind of capacities might it have?
  - Where will it be housed? In which ministry or departments?

National databases

- Is there a national database or national ID card system in the country?
- Is there a biometric border system in place?

Within each of these databases:

- How many people are enrolled in it?
- When was it established?
- What kind of data does it collect?
- Which agency is responsible for managing it and storing it?
- What can you find out about the software and hardware that is used for it?

Identification and Registration for communications

- Are there requirements to present ID to access communications services such as in cybercafes?
- Are there requirements to register SIM cards and other communications registration requirements?
- Are these enforced or 'on paper only'?

Interception tools

Most governments have some provision for lawful interception of phone, email and chat communication for their law enforcement agencies.

- Wherever 'lawful interception' is mentioned, are any specific technologies cited?
- Is there a requirement for security certification of imported telecom equipment?

Other Surveillance

Is there government use of CCTV in public places, or is it limited to private enterprises and local security?

Are there initiatives to develop ‘smart’ city initiatives?

Surveillance companies

- Are there any security 'trade shows' that have taken place in your country?
- If yes, who have been the main companies exhibiting at these shows?
- Who have been the main government agencies that have attended these?
- What kind of technologies are being promoted there?
- Do any surveillance companies have offices in your country?

Unlawful surveillance cases

- Who are the people/groups who are most targeted for surveillance by the government in your country? This can be traditional surveillance in the form of physical watching, harrassment based on online discussions, etc.
- Is there any information on spying on domestic political dissidents? E.g. opposition groups, non-governmental organisations, journalists.
- Have there been any surveillance-related scandals linked to political activity?
- Have you heard of any cases in which there have been arrests on the basis of information that must have been gathered through electronic surveillance?
    - Clue: look for mention of SMS or email in news reports about arrests/harrassment. Ask human rights defenders in your country.
- Note the details of the cases
    - Who are the suspected authorities who arrested/stopped the individual
    - When did this occur -- Walk through the days events, focusing on who was around at the time, what were the allegations, etc.