Targeting Power Asymmetries

Digital cooperation, digital taxes and digital governance:

Focus:

> *This is about international cooperation and about taxation of the digital health economy. Particularly taxation of tech giants, and particularly in the ways it leads to health. If it is justified on misinformation or social media content?*

Key Takeaways:

- On the level of global governance, the IGF is the seemingly leading actor on digital cooperation, and amendments are suggested within IHR to better enable the IGF.
- On par, so far, the majority of regulation of health companies appears to come through the judiciary, rather than the legislative process. One article suggests that this process is productive because once through the judiciary it provides the grounds for further regulatory oversight within legislation through judicial precedent.
- One seemingly limitation of the judiciary is it seems to often be used in exceptional cases (i.e. broadcasting a terrorist attack live), more every day and subtle abuses which require regulation may fall outside of this scope.
- A limitation to this section is a lack of information on taxation.

1. **IGF + What's Next? Event. 2020. Source.**

Key Topics: IGF; Standards; Options

Source Type: Event

Focus: Worldwide

Case Made:

Coherence with the IGF framework is often challenging because i) a diversity of values within the international space and their often incommensurability within blanket policy and ii) LMICs constrained governance capacity to participate in the production of standards as well as agree to implement.

Solutions Suggested or Implemented:

There is one central point I want to make from this event that I think is really important for this section of the report. That is, while the IGF can be framed as a vertical structure and the limitations that comes with that, they (the speakers including IGF drafters) are very aware of this

problem and are actively considering how to overcome some of these limitations. Within this event they expressed three ideas on how to overcome the limitations of a vertical structure:

i) Embrace a horizontal-vertical pseudo-structure similar to the argument currently proposed in the Lancet Report. That is, having regional offices for IGF to produce locally (read: regionally) appropriate solutions.
ii) Convene a high-level panel to help to overcome the limitations of the IGF. The HLP would need to be conscious of representational politics, which was evident in this event, but because of that needed consciousness this is probably the weakest proposal.
iii) Rather than creating strict rigid rules of best practice as the IGF currently does, the IGF could instead use the rhetoric of suggestions. That is, within each IGF goal there could be a number of options countries could do to help achieve that goal. This helps to include a greater diversity of values which can be commensurable with the IGF.

2. **Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act. 2019. Source.**

Key Topics: Legislation; Social media; Content governance

Source Type: Australian Legislative Amendment

Focus: National

Case Made:

Following a 2015 attack which was live streamed on social media, the Australian government felt it necessary to regulate social media content which could be traumatizing and or harmful to mental health.

Solutions Suggested or Implemented:

All abhorrent violent material is banned from the internet.

[NB: See this useful BBC article for a list of other government regulations, but explicit to health, beyond the UK already referenced in section 8, this was the best I could find.]

3. **Human Rights and Digital Health Technologies. 2020. Source.**

Key Topics: Governance tools; Judicialization

Source Type: Academic. Journal of Health and Human Rights

Focus: Global

Case Made:

This paper suggests that because governance is often lacking within the legislative arm for digital health rights, an effective solution to bot remediate digital harms and provoke future legislation has been the use of the judiciary. "Courts have historically played a key role in protecting human rights and clarifying the obligations of states."

Solutions Suggested or Implemented:

The article discusses two specific examples where this has been applied:

i) "The Indian Supreme Court's decision in *Justice K.S. Puttaswamy (Rtd) v. Union of India and Others* is noteworthy because the court read the right to privacy into the Indian Constitution, which otherwise does not explicitly enshrine this right. The Supreme Court's judgment paved the way for the development of a comprehensive privacy and data protection bill in India."

ii) "Supreme Court of Jamaica considered legal standards within an explicit constitutional right to privacy in the case of *Julian Robinson v. The Attorney General of Jamaica*.[57] Specifically, the case analysed the legality of the National Identification Registration Act (NIRA), which aimed to facilitate people's enrolment in a national identification system. Enrolment in the national identification system was mandatory for all citizens and residents of Jamaica, with the failure to enrol subject to criminal sanctions. In *Robinson*, the court struck down the NIRA, holding that the law violated the country's constitutional Charter of Fundamental Rights and Freedoms."

Further to the judiciary, once digital rights have legislation, this clarity can be used to influence the development of documents such as national digital health strategies. "These strategies facilitate coordination, set standards for interoperability, and establish policies related to digital health.[49] A country-wide strategy is also helpful for identifying gaps and opportunities where digital technologies can be best leveraged to improve health outcomes."

4. **Tracking and Tracing COVD: protecting privacy and data while using apps and biometrics. OECD 2020. Source.**

Key Topics: Coordination; Cooperation; Data sharing; COVID-19; Tracing

Source Type: Policy response

Focus: Global governance policy for national implementation

Case Made:

The COVID-19 pandemic has seen an unprecedented amount of the use of digital technologies to improve health care. Simultaneously, the rise of the digital in the health space has often outpaced the capacity of governments' regulations. This has raised concerns over COVID-19 data privacy.

Solutions Suggested or Implemented:

Of particular interest here is the way in which the government has worked with the telecommunications companies. The following excerpt is instructive and provides examples:

"Digital solutions based on geolocation data are emerging to help authorities monitor and contain the spread of the virus. Some are fed by mobile call data records (CDRs), i.e. data produced by telecommunication service providers on telephone calls or other telecommunications transactions, which provide valuable insights into population movements. As network operators serve substantial portions of the population across entire nations, the movements of millions of people at fine spatial and temporal scales can be measured in near real-time. The resulting information and trends are invaluable for governments seeking to track the COVID-19 outbreak, warn vulnerable communities, and understand the impact of policies such as social distancing and confinement.

Telecommunications providers in a number of OECD countries have started to share CDR-based geolocation data with governments in an aggregated, anonymised format. For example:

- The German telecommunications provider Deutsche Telekom is providing anonymised "movement flows" data of its users to the Robert-Koch Institute, a research institute and government agency responsible for disease control and prevention.
- Vodafone Group's Five Point Plan to address COVID-19 includes providing governments with large anonymised data sets (such as an aggregated and anonymous heat map for the Lombardy region) to help authorities better understand population movements.
- The European Commission is currently liaising with eight European telecommunications operators to obtain from them anonymised aggregate mobile geolocation data, in order to coordinate measures tracking the spread of COVID-19. To address privacy concerns, the data will be deleted once the crisis is over."

5. Additional links on social media policies: private sector and national perspectives.

- *Private sector:* Facebook
- *National policy:* China
- *National policy:* Russia
- *National policy:* United Kingdom

6. Additional links (from academia) on social media and impacts on (mental) health.

- *Social media usage and increased depression: a scoping review.* Source. 2014.
- *Social media usage and positive mental health impacts, with notably different impacts across ethnicity and socio-economic status.* Source. 2019.

Regulating powerful players and adopting mission-oriented innovation policies:

Focus:

> *Regulation of tech giants more broadly. Things that have to do with health directly. Since the previous part is about digital cooperation, this has to do most with national level approaches. Innovation policy, including IP issues, and digital public goods promotion.*

Key Takeaways:

- In some technology regulation, there is an appearing divide between health data privacy and health technology safety. Within the FDA's regulatory process, this is separated, and can easily be framed as a limitation.
- Many LMICs have established innovation 'clearing houses' especially for foreign aid and investment; this helps to coordinate initiatives around common strategies for digital health.
- Many LMICs are still working themselves out of harmful impacts of dangerous development legacies which had little concern for local capacity building beyond their free market evangelism. This manifests today in vertical programs unable to be coordinated against larger horizontal infrastructures.

1. **The Path to the US Market for Digital Health Technologies. LSX The Network for Life Science Executive Leaders. 2020. Source.**

Key Topics: FDA; Innovation; Adaptable; Speed of discovery

Source Type: Private sector consulting firm public education seminar

Focus: USA

Case Made:

The i) rapid production of digital health care technologies and ii) the ability of for AI to adapt over time this poses a number of governance challenges for health technology regulatory bodies. This event detailed how the US FDA is responding to this.

Solutions Suggested or Implemented:

i) The FDA has maintained some intentional flexibility in their definition of risk within the review process. Overall, the definition of risk is associated with a direct effect upon the patient's health, however, and as such does not include considerations around data privacy within HIPPA.

ii) Adaptable technology includes technology that is adapting over time to patient needs; for example, how will the FDA regulate a technology that creates new concerns for its harm or benefits to patients through adaptation? In response the FDA has

implemented two policies which aim to review digital AI over time, in doing this they do not have to pull these technologies off of the market during the review.

iii) Interestingly, most existing adaptable technology has been within radiology (at the least within the USA), the event suggests observing this space to see how governance of adaptable AI will continue to develop for more nascent sectors.

2. Interview. Africa 10 Countries: Ethiopia USAID. 2020.

Key Topics: Innovation; Innovation coordination; Redundancy; Vertical to horizontal

Source Type: Interview

Focus: National (Ethiopia)

Case Made:

There are a plethora of vertical innovations in Ethiopia. To coordinate this the MoH has intervened.

Solutions Suggested or Implemented:

An innovation centre for the MoH has been operational for the last 6 months. There is now a clearing house to document and assess various digital tools, including those imported from international partners. They discovered there were 178 different mobile apps in operation in different parts of the country, for different health issues, and at different stages of pilot/scale. The centre was created to increase knowledge sharing and improve standardisation. This provides lots of research opportunities for students.

3. Lancet and Financial Times Commission Africa Private Sector Consultation. Tanzanian Government 2020. Summary.

Key Topics: Donor coordination; Regulation; Innovation; Vertical to horizontal; Sustainability; ICT

Source Type: Event.

Focus: Regional (Africa)

Case Made:

Tanzania has seen many international development agencies implement "solutions." However, eventually the donors leave. The government implemented policy to coordinate and ensure the sustainability of development organizations.

Solutions Suggested or Implemented:

The following is an excerpt from the FT meeting:

"Individuals coming from most developing countries are receiving support from international development areas. As far as the 1980s-90s, most initiatives were fragmented in such a way that there are very few scaled. So Tanzania came to the approach that we have to initiate a strategy, which is a document which guides the initiatives in the country. After 5 years of implementation we realized that as a country we don't have the requirements of the entire country. These are the requirements, work with them and do what you need to do to implement. This was the approach where we came up with requirements which has the guidance of the country for the entire ten years to come. So far it has controlled the projects that are brought to us by most donors. But at the end of the project you find the donor leaving, there is no one to support it, but with these guidelines you ensure sustainability by putting emphasis on the government capacity to maintain it." (Near quote by representative from Tanzania Ministry of Health).

Summary: The Tanzanian government i) works to coordinate international aid within digital health and also broadly, and ii) demands sustainability (long term maintenance of digital infrastructures) in funding plans before allowing international organizations into the country. This sustainability can either be accomplished by the IO, or can allow the IO to fund Tanzanian ICT Ministry capacity.