



## **Centre for Communication Governance at National Law University, Delhi**

### **Submission to the International Telecommunications Union Council Working Group on International Internet-related Public Policy Issues**

#### **Summary**

Two facets of the developmental aspects of the Internet are dealt with in this submission viz, access and human rights. Providing universal access to the Internet is an SDG and recognised in the WSIS+10 Review. However significant social, political and economic barriers to ensuring access remain. Protecting human rights is closely related to promoting development goals. Human Rights Council resolutions on protecting human rights online are instructive to the work of the ITU and the CWG on Internet.

The role of various stakeholders in promoting the developmental aspects of the internet is unclear as the WGIG did not define it. The ongoing work of the WGEC is however relevant to this issue. The challenge is to match different governance configurations to policy challenges.

The Centre for Communication Governance at National Law University Delhi (CCG) thanks the Council Working Group on International Internet-related Public Policy Issues for the opportunity to submit this comment. Our submission below on the developmental aspects of the Internet addresses the questions asked from a law and human rights perspective.

Our response to the first question covers two broad themes- access and human rights. In response to the second and third questions, we have looked at relevant precedent in the UN system and cited the work of other agencies.

**1. What are the developmental aspects of the Internet (for example, economic, social, regulatory and technical aspects), especially for developing countries?**

Access to the internet is a crucial component of development around the world. This is especially so in the case of developing countries. Accompanying access with human rights guarantees is vital to the fulfilment of access initiatives in developing countries.

**a. Access**

The importance of internet access to the realisation of development goals was recognised by the UN General Assembly in 2012.<sup>1</sup> Universal access to the internet is also a Sustainable Development Goal (SDG).<sup>2</sup> Goal 9(c) sets an ambitious target to achieve affordable access to the internet in Least Developed Countries (LDCs) by 2020.<sup>3</sup> In 2012, India's National Telecom Policy (NTP) set out a similar goal, aiming to connect all villages in India by 2020.<sup>4</sup>

To achieve development goals, it is important for developing countries to overcome the digital divide. In our submission to the WSIS+10 Review, we noted that developing countries suffer from a digital divide where many sections of society do not have access to the internet.<sup>5</sup> In India for instance, internet penetration has been reported to be as low as 26%.<sup>6</sup>

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<sup>1</sup> UN General Assembly, "Information and communications technologies for development", A/Res/66/184, paras 1 and 2.

<sup>2</sup> Goal 9 of the SDGs aims to provide universal and affordable access to the internet, see <<http://www.un.org/sustainabledevelopment/infrastructure-industrialization/>> (last accessed 11<sup>th</sup> January, 2017).

<sup>3</sup> Id, see Goal 9 Targets.

<sup>4</sup> Department of Telecom, "National Telecom Policy 2012", p. 5, available at <<http://www.dot.gov.in/sites/default/files/NTP-06.06.2012-final.pdf>> (last accessed 11<sup>th</sup> January, 2017).

<sup>5</sup> Centre for Communication Governance at National Law University, Delhi Comment on the Non-paper, pp. 3-5, available at <<http://workspace.unpan.org/sites/Internet/Documents/UNPAN95332.pdf>> (last accessed 11<sup>th</sup> January, 2017).

<sup>6</sup> Freedom House, "Freedom on the Net: India Country Report 2016", available at <<https://freedomhouse.org/report/freedom-net/2016/india>> (last accessed 11<sup>th</sup> January, 2017); Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators October – December 2015, May 18, 2016, p. ii, available at

The digital divide between rural and urban areas in India is particularly stark with only 16% of all fixed line connections being in rural areas.<sup>7</sup>

The Indian government for its part has launched an ambitious programme to bring close to 700 million people online by 2020.<sup>8</sup> Digital India also aims to bridge the digital divide between “digital haves and have-nots”.<sup>9</sup> The Digital India programme was launched in 2014 by the Department of Telecom (DoT) and the Department of Electronics and Information Technology (DeitY),<sup>10</sup> and seeks to provide high speed access to the internet as a utility in all rural areas.<sup>11</sup> The Telecom Regulatory Authority of India (TRAI) recently recommended giving 100 mb of free data per month to users in rural and remote areas, to improve access to the internet in rural areas.<sup>12</sup> It has been reported that the Indian government is using different strategies to provide access to remote regions.<sup>13</sup> The Bharat Broadband Network Limited aims to connect all Indian villages through a nationwide broadband network.<sup>14</sup> The DoT is reportedly looking to provide last mile internet access through Multiple Service Operators (MSOs) and cable operators.<sup>15</sup>

However, there are many socio-economic aspects to the digital divide that need to be addressed while providing internet access. As highlighted in our submission to the WSIS+10 Review, digital exclusion is a manifestation of existing social, economic and political inequalities which are exacerbated by technological change.<sup>16</sup> Social barriers to access the internet may include limited access to public spaces for women or certain marginalised

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<[http://www.trai.gov.in/WriteReadData/PIRReport/Documents/QPIR\\_Oct\\_to\\_Dec-15.pdf](http://www.trai.gov.in/WriteReadData/PIRReport/Documents/QPIR_Oct_to_Dec-15.pdf)> (last accessed 11<sup>th</sup> January, 2017).

<sup>7</sup> TRAI, “Recommendations on Encouraging Data Usage in Rural Areas through Provisioning of Free Data”, at p. 2, Table 1.2, available at <[http://www.trai.gov.in/sites/default/files/Recommendations\\_19122016.pdf](http://www.trai.gov.in/sites/default/files/Recommendations_19122016.pdf)> (last accessed 11<sup>th</sup> January, 2017).

<sup>8</sup> Krishna Vamsi, ‘Internet users in India to grow by at least 50 million yearly till 2020: report’, Indian Express 13<sup>th</sup> April 2016, available at <<http://indianexpress.com/article/technology/tech-news-technology/internet-users-in-india-to-grow-by-50-million-yearly-till-2020-report/>> (last accessed 11<sup>th</sup> January, 2017).

<sup>9</sup> Statement by Mr. J.S. Deepak, Secretary, Department of Electronics & Information Technology at the United Nations General Assembly High Level Meeting on WSIS+10 Review on December 15, 2015, para 8, available at <<https://www.pmineyork.org/pages.php?id=2340>> (last accessed 11<sup>th</sup> January, 2017).

<sup>10</sup> DeitY has since been designated as the Ministry of Electronics and Information Technology.

<sup>11</sup> Digital India – A programme to transform India into digital empowered society and knowledge economy”, August 20, 2014, available at <<http://pib.nic.in/newsite/erelease.aspx?relid=108926>> (last accessed 11<sup>th</sup> January, 2017).

<sup>12</sup> Supra, TRAI, note 7, pp. 16-17.

<sup>13</sup> Supra, Freedom House, note 6.

<sup>14</sup> For more information about this programme, see <<http://www.bbnl.nic.in/index.aspx>> (last accessed 11<sup>th</sup> January, 2017).

<sup>15</sup> “DoT mulls providing Internet via MSOs, cable operators”, Livemint 15<sup>th</sup> February, 2015, available at <<http://www.livemint.com/Industry/ppXqNLO6YmOzVw0gLfBDLK/DoT-mulls-providing-Internet-via-MSOs-cable-operators.html>> (last accessed 11<sup>th</sup> January, 2017).

<sup>16</sup> Supra, Centre for Communication Governance at National Law University, Delhi, note 5, pp. 3-5.

groups like people from particular castes.<sup>17</sup> Within a household, gender norms may prevent women from accessing the internet.<sup>18</sup> The gendered nature of the digital divide is confirmed by the fact that only 29% of internet users in India are women.<sup>19</sup> The figure falls to 12% in rural areas.<sup>20</sup> Globally, too there is a significant divide between the number of men and women who have access to the internet.<sup>21</sup> This is especially the case with developing countries.<sup>22</sup>

Another facet of the digital divide is the difference in quality of access between developed and developing countries. The annual “State of Internet Connectivity” report produced by Akamai found that the average internet speed in 2016 was 6.3 Mbps.<sup>23</sup> However, there is a wide variation between the speeds in developed countries (South Korea- 26.3 Mbps<sup>24</sup>) and developing countries (India-4.1 Mbps<sup>25</sup> and Namibia- 2.5 Mbps<sup>26</sup>). Varying internet speeds have been found to have an impact on the opportunities available for advancement and in the development of communities.<sup>27</sup> This has been termed the “Broadband Digital Divide”.<sup>28</sup>

Overcoming the broadband digital divide is crucial from an Indian perspective. As noted in our submission to the Telecom Regulatory Authority of India (TRAI), access to video content is necessary to cut across literacy barriers and reach marginalised groups.<sup>29</sup> This is important in a country like India where the majority of the population is not literate or easily conversant

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<sup>17</sup> Chinmayi Arun and Siddharth Manohar, *Empowering the Marginalized: Tales of the Digital Good Life* in “The Good Life in Asia’s Digital 21st Century, Digital Asia Hub (2016)”, p. 5, available at <<https://www.digitalasiahub.org/thegoodlife/>> (last accessed 11<sup>th</sup> January, 2017).

<sup>18</sup> Id.

<sup>19</sup> Press Release on Internet in India 2015, IAMAI, November 17, 2015, available at <<http://www.iamai.in/media/details/4486>> (last accessed 11<sup>th</sup> January, 2017); supra, Freedom House, note 6.

<sup>20</sup> Id, Freedom House.

<sup>21</sup> Jacob Poushter, “Smartphone Ownership and Internet Usage Continues to Climb in Emerging Economies”, Pew Research Center February 22<sup>nd</sup> 2016, available at <<http://www.pewglobal.org/2016/02/22/internet-access-growing-worldwide-but-remains-higher-in-advanced-economies/#men-have-greater-access-to-the-internet-than-women-in-many-nations>> (last accessed 11<sup>th</sup> January, 2017).

<sup>22</sup> Id.

<sup>23</sup> Akamai, “State of the Internet Q3 2016 Report”, p.12, available at <<https://www.akamai.com/us/en/multimedia/documents/state-of-the-internet/q3-2016-state-of-the-internet-connectivity-report.pdf>>.

<sup>24</sup> Id.

<sup>25</sup> Id, at p.28.

<sup>26</sup> Id, at p. 40.

<sup>27</sup> See for instance a paper that analyses the racial dimension of the broadband digital divide, James Prieger and Wie Min-Hu, “The Broadband Digital Divide and the Nexus of Race, Competition, and Quality”, Information Economics and Policy 20(2) June 2008 pp. 150-167, available at <<http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1011&context=sppworkingpapers>> (last accessed 11<sup>th</sup> January, 2017).

<sup>28</sup> Id.

<sup>29</sup> Centre for Communication Governance at National Law University, Delhi, “Comments on the Consultation Paper on Differential Pricing for Data Services”, at pp. 10-11 available at <[http://ccgdelhi.org/doc/\(CCG-NLU\)%20Comments%20on%20the%20Consultation%20Paper%20on%20Differential%20Pricing%20for%20Data%20Services.pdf](http://ccgdelhi.org/doc/(CCG-NLU)%20Comments%20on%20the%20Consultation%20Paper%20on%20Differential%20Pricing%20for%20Data%20Services.pdf)>.

with the languages used online.<sup>30</sup> Interestingly, the NTP in 2012 recognised these difficulties and sought to recognise broadband as a basic necessity in the future and to create a ‘Right to Broadband’.<sup>31</sup> Thus, access to high speed internet is an important tool in bridging divides online and offline.

## **b. Human Rights**

The importance of protecting human rights on the internet to further development goals was recognised by the Human Rights Council in 2012.<sup>32</sup> Human rights were recognised as an important aspect of the information society in the WSIS+10 Outcome Document in 2015.<sup>33</sup> Drawing a link between human rights and sustainable development, the Outcome Document stated that “*democracy, sustainable development and respect for human rights and fundamental freedoms, as well as good governance at all levels, are interdependent and mutually reinforcing*”.<sup>34</sup> Human rights is essential to realise the benefits of the developmental aspects of the internet.

In this respect, it is necessary to secure access to the internet and protect human rights online. In 2012, the Human Rights Council recognised that the same rights people enjoy offline must be recognised online.<sup>35</sup> More recently, Human Rights Council resolution expanded on the earlier resolution to include a wider range of human rights protections online.<sup>36</sup> In the run up to the WSIS+10 Review, UNESCO’s Connecting the Dots conference in 2015 underscored the importance of human rights on the internet.<sup>37</sup> In its Outcome Document, the conference

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<sup>30</sup> Supra, Freedom House, note 6, ‘Obstacles to Access’.

<sup>31</sup> Supra, Department of Telecom, note 4, p. 8.

<sup>32</sup> Human Rights Council, “The promotion, protection and enjoyment of human rights on the Internet”, A/HRC/20/L.13.

<sup>33</sup> UN General Assembly, “Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society”, A/Res/70/125 paras 41-47, available at <<http://workspace.unpan.org/sites/Internet/Documents/UNPAN96078.pdf>> (last accessed 11<sup>th</sup> January, 2017).

<sup>34</sup> Id, para 41.

<sup>35</sup> Human Rights Council, “The promotion, protection and enjoyment of human rights on the Internet”, A/HRC/20/L.13, available at <<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G12/147/10/PDF/G1214710.pdf?OpenElement>> (last accessed 11<sup>th</sup> January, 2017).

<sup>36</sup> Human Rights Council, “The promotion, protection and enjoyment of human rights on the Internet”, A/HRC/32/L. 20, available at <[https://www.article19.org/data/files/Internet\\_Statement\\_Adopted.pdf](https://www.article19.org/data/files/Internet_Statement_Adopted.pdf)> (last accessed 11<sup>th</sup> January, 2017).

<sup>37</sup> UNESCO, “Outcome Document of the “Connecting The Dots: Options For Future Action” Conference”, 38 C/53, 10<sup>th</sup> August, 2015, para 8, available at <<http://unesdoc.unesco.org/images/0023/002340/234090e.pdf>> (last accessed 11<sup>th</sup> January, 2017).

recognised that the Internet must be human rights based and rooted in the various human rights covenants.<sup>38</sup>

One of the challenges in implementing human rights protections online is the interconnectedness of human rights obligations. In our submission to the WSIS process, we highlighted the interdependence and indivisibility of human rights online.<sup>39</sup> Using the interdependence framework will be a useful tool in the implementation of WSIS Outcomes and to guarantee human rights online.<sup>40</sup>

## **2. How can governments and other stakeholders promote the developmental aspects of the Internet?**

The question of what role various stakeholders play in promoting the developmental aspects of the Internet came up before the Working Group on Internet Governance (WGIG),<sup>41</sup> and a member of the WGIG called for future work in this area.<sup>42</sup> The WGIG noted that “general developmental issues” were the responsibility of governments.<sup>43</sup> The WSIS+10 Outcome Document resolved this question to an extent. It called on stakeholders from the private sector, civil society, technical community and academia to partner in facilitating the WSIS Action Lines and the SDGs.<sup>44</sup> This was in consonance with earlier UN General Assembly resolutions that sought multistakeholder partnerships to implement the WSIS Action lines and the Millennium Development Goals.<sup>45</sup>

However, the exact responsibilities of each stakeholder with respect to the developmental aspects of the Internet was not clearly defined by the WGIG. The WGEC is currently answering the broader question posed by the Tunis Agenda on the “*respective roles and*

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<sup>38</sup> Id.

<sup>39</sup> Supra, Centre for Communication Governance at National Law University, Delhi, note 5, p. 6.

<sup>40</sup> Puneeth Nagaraj, “Human Rights in the WSIS Process: The Notion of Interdependence and Indivisibility as a Way Forward”, CCG Working Paper Series (2015-16) Number 1, available at <http://ccgdelhi.org/doc/WSISHuman%20Rights%20and%20Interdependence%20working%20paper.pdf> (last accessed 13th July, 2016).

<sup>41</sup> WGIG, “Report of the Working Group on Internet Governance”, June 2005, paras 12 and 13(d), available at <http://www.wgig.org/docs/WGIGREPORT.pdf> (last accessed 11<sup>th</sup> January, 2017).

<sup>42</sup> Tarek Cheniti, *The WGIG Process: Lessons Learned and Thoughts for The Future* in William Drake (ed), “Reforming Internet Governance: Perspectives from the Working Group on Internet Governance”, ICT Task Force Series 12 (2005) p. 32 available at [http://www.wgig.org/docs/book/WGIG\\_book.pdf](http://www.wgig.org/docs/book/WGIG_book.pdf).

<sup>43</sup> Supra, WGIG, note 41, para 30.

<sup>44</sup> Supra, UN General Assembly, note 33, para 12.

<sup>45</sup> See for instance, supra, UN General Assembly, note 1, para 12.

*responsibilities*”<sup>46</sup> of stakeholders in internet governance. It might be instructive to follow the work of the WGEC in answering this broader question.

In our submission to the WGEC, we noted that different governance configurations applied to different governance challenges.<sup>47</sup> Similarly, different arrangements involving governments and other stakeholders will be relevant for different governance challenges presented in the promotion of the developmental aspects of the Internet.

### **3. What are the challenges and opportunities?**

#### **a. Challenges**

Based on the discussed above, the following are the challenges

- enabling access to the internet across social, political and economic divisions
- protection of human rights online
- defining the roles of different stakeholders in promoting the developmental aspects of the Internet.

#### **b. Opportunities**

The following are the opportunities

- linking the WSIS process with the SDGs enables the promotion of the developmental aspects of the Internet
- following relevant resolutions adopted by the Human Rights Council in developmental activities
- supporting the work of the WGEC in defining the roles of different stakeholders with respect to the developmental aspects of the Internet.
- Working closely with stakeholders, such as the Indian government, where there is a clear commitment to the developmental aspects of the Internet

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<sup>46</sup> Tunis Agenda, para 72.

<sup>47</sup> Centre for Communication Governance at National Law University, Delhi, “Contribution to the guiding questions agreed during first meeting of the WGEC”, pp. 5-6 available at [http://unctad.org/meetings/en/Contribution/WGEC2016\\_m2\\_c46\\_en.pdf](http://unctad.org/meetings/en/Contribution/WGEC2016_m2_c46_en.pdf).