



CENTRE FOR COMMUNICATION GOVERNANCE

NATIONAL LAW UNIVERSITY DELHI

SUBMISSION TO THE UNITED NATIONS SECRETARY-GENERAL'S HIGH-LEVEL PANEL ON DIGITAL COOPERATION

The Centre for Communication Governance (Centre) is an academic research centre within the National Law University Delhi and is dedicated to working on information law and policy in India. It seeks to embed human rights and good governance within communication policy and protect digital rights in India through rigorous academic research and capacity building.

We welcome the efforts of the United Nations Secretary-General and the High-Level Panel on Digital Cooperation (UN HLP), towards strengthening cooperation in the digital realm and enabling a safe and inclusive digital future. Our consolidated response to the questions put forth by the UN HLP in its Call for Contributions are below.

The key values that all stakeholders should prioritise when working to address digital issues should be drawn from the human rights recognised under the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESR) (collectively, International Bill of Human Rights).

States that are party to the ICCPR and ICESR are obliged to respect and protect the rights of their citizens, and ensure that adequate measures are taken to enable the exercise of such human rights within their territories. However, increasingly, we see that often private corporations and businesses are in a position to unduly interfere with the human rights recognised under the International Bill of Human Rights. The Information and Communications Technology (ICT) industry is one which exemplifies this issue, and it has been said that much of contemporary exercise of rights such as the freedom of opinion and expression is owed to private industry¹. Therefore, it is equally important to ensure respect for and implementation of the values laid out in the Guiding Principles on Business and Human Rights. These principles not only provide that business enterprises should respect human rights, but also provide operational principles to guide businesses in this context.

The human rights that are often seen as impacted in the context of digital technology are the right to freedom of opinion and expression² and the right to privacy³. This includes ancillary rights such as the right to access the internet itself⁴, and the right to information⁵. These rights are typically accorded importance under the Constitution (or constitutional jurisprudence) or equivalent documents in most democratic nations today. The Internet, which allows us to communicate with each other across distances in a way that has never been possible before is a great enabler of these rights. At the same time, we see that increasingly, both States and private corporations that control either access to the Internet itself, or content available on the Internet (often through

¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the Human Rights Council on freedom of expression, states and the private sector in the digital age, May 11, 2016, A/HRC/32/38.

² Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

³ Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights.

⁴ United Nations General Assembly, Resolution of the Human Rights Council on The promotion, protection and enjoyment of human rights on the Internet, June 27, 2016, A/HRC/32/L.20.

⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the General Assembly on access to information in international organizations, August 18, 2017, A/72/350.

specific service providers), are resorting to means that would interfere with these fundamental human rights in violation of commitments to the protection of human rights under the UDHR and the ICCPR, as well as in many cases, national law.

In addition to the above-mentioned rights, emerging technology such as Artificial Intelligence also raise questions about bias, discrimination and the right to equality⁶. With the growing use of digital technology for essential functions, other rights may also be impacted depending on whether or not all individuals have access to such technology, as well as the quality of access to the technology. For instance, developing economies such as India are keen on leveraging technology and digitising government functions⁷. However, for those individuals who do not have *meaningful* access to the internet or relevant technology, such a move may result in an inability to exercise other rights guaranteed to them by the State.

In this context, we reiterate that it is important to for all stakeholders to abide by the key principles that are laid out in the International Bill of Human Rights. It is also important for us to explore in greater detail and understand how these rights interact with developing technology, and the practices of both States and private industry.

These principles, as they apply in relation to digital issues, have already been elaborated upon by the Office of the High Commissioner for Human Rights, and the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, and the right to privacy in their annual reports. State efforts in this regard are seen in the form of documents such as the European Commission's ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights⁸.

⁶ Article 2 of the Universal Declaration of Human Rights, and Article 2 of the International Covenant on Civil and Political Rights.

⁷ See the Indian Government's 'Digital India' Programme, details available at <https://digitalindia.gov.in/> (last visited January 31, 2019).

⁸ European Commission, ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, available at https://www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/ICT/EC-Guide_ICT.pdf (last visited January 31, 2019).

Civil society initiatives have also led to important attempts in norm generation, such as the African Declaration on Internet Rights and Freedoms, the Manila Principles on Intermediary Liability, and the Toronto Declaration: Protecting the right to equality and non-discrimination in machine learning systems, among many others. Civil society, and other stakeholders have also come together to elaborate and agree upon principles to abide by in the protection of human rights in the digital space. For instance the Global Network Initiative (GNI) is a multi-stakeholder body which focuses on the responsibility of companies in the ICT industry to ‘respect and promote the freedom of expression and privacy rights of their users’⁹. The GNI has built its own set of principles on the basis of the rights provided for in the International Bill of Human Rights, and the Guiding Principles on Business and Human Rights, among other things¹⁰.

Today, ICT companies are racing to develop new technology at a rapid pace, and governments, and governments are trying to keep up, not only in terms of regulation but also implementation and use of technology in their governance initiatives. It is important that the impact that technology can have on our human rights, both positive and negative, is recognised, and that stakeholders find means to cooperate in different settings to address these issues.

The key to ensuring effective cooperation in the digital space, is to have open and inclusive discussions that are not limited to the government and / or industry. In order to ensure that the principles discussed above are incorporated not only in the way government’s attempt to regulate the digital realm, but also the way technology and business models in the industry are built, it is imperative that diverse voices are heard. Both government and industry must function in a transparent manner that allows for civil society to understand and provide feedback.

Multiple efforts have been made to provide for multi-stakeholder discussions. However, we see that in many cases it is still difficult for civil society and importantly,

⁹ Global Network Initiative, Global Principles on Freedom of Expression and Privacy, available at <https://globalnetworkinitiative.org/gni-principles/> (last visited January 31, 2019).

¹⁰ Global Network Initiative, Global Principles on Freedom of Expression and Privacy, available at <https://globalnetworkinitiative.org/gni-principles/> (last visited January 31, 2019).

marginalised communities in many parts of the world to meaningfully contribute to the discussions and decision-making processes. In order to provide for this, we need to not only have diverse perspectives in the room, but also ensure that people with different areas of expertise have the knowledge and capacity to understand each other, and engage in providing inputs.

Some examples of efforts that have had a positive impact include networks and projects such as the Global Network Initiative, which broadly focuses on digital rights issues. Efforts such as the EQUALS Global Partnership and research groups also work towards addressing the gender gap in technology¹¹.

It is important that such projects are encouraged, and that all stakeholders work together to incorporate the principles that emerge from such projects in their work on the digital space. International Organisations have a responsibility, and the means to bring different stakeholders together, to ensure that the internet remains free and open, and that our human rights are protected online. At the same time, we note that not all development / discussions can happen at an international level, and it is important that resources are dedicated to building spaces for meaningful cooperation at all domestic, and local community levels as well.

¹¹ See EQUALS Global Partnership, information available at <https://www.equals.org/coalitions> (January 31, 2019).