Discussion Group on Human Rights and Human Agency

Summary note

Meeting Chair

- Edson Prestes, Panel Member

Moderator

- Jovan Kurbalija, Executive Director & Co-Lead of the Secretariat

Guiding Questions

The meeting sought to address the following questions:

- What are the key elements of success in upholding human rights and human agency? What could be the roles/responsibilities of different stakeholders (e.g., government, industry and civil society) in better protecting human rights and meaningfully respecting human agency in the digital space?
- What does cooperation with other organizations and/or stakeholders on these issues currently look like?
- What are the priority areas for improved cooperation among stakeholders? How do we enable cooperation? What methods and mechanisms of cooperation are we missing?

Meeting Summary

The meeting began with two presentations: the first on civil/political rights (Ranking Digital Rights) and the second on economic/social/cultural rights (community networks).

Corporate Accountability Index

Ranking Digital Rights’ corporate accountability index evaluates mobile and telecommunications platforms (22 companies have been evaluated so far). The index takes into account company policies that violate user privacy and freedom of expression as set forth in the Universal Declaration of Human Rights. The index is also built on the UN’s Guiding Principles for Business and Human Rights and other work related to the translation of human rights norms to privacy and freedom of expression online.
The index seeks to increase transparency and accountability with regard to who has access to data and under what authority. It constitutes a benchmark for companies and other stakeholders including policy makers and civil society. Moreover, it serves as a basis for researchers to conduct further inquiries on the work of companies. Ranking Digital Rights engages companies in the whole process from initial enquiry to final ranking.

**Community networks**

Community networks can facilitate full and enabling access to the Internet. First, they provide connectivity in rural and low income areas that offer little or no return on investment for telecom operators. Second, they facilitate the production of and access to local content whilst reflecting local cultural, economic and social dynamics. Community networks also introduce some innovative mechanisms. They are developed and managed in a participatory fashion by local communities as a common good. Beside guaranteeing the right to access and information, community networks facilitate implementation of many other rights, in particular economic, social and cultural ones (through e.g. the use of local languages, poverty reduction, access to education).

The discussion covered the following issues:

**Bridging the gap between tech aspirations and realities**

Human empowerment often falls in the trap between declared technology’s aspirations and possibilities on the one hand and realities that are shaped by policy, economic and social circumstances on the other hand. In order to realize the potential of technology and uphold human rights, this gap between aspiration and realities should be identified, monitored and bridged. The risk is that inflated expectations when faced with a complex reality could trigger a “tech backlash” and ultimately impact trust in tech-driven progress.

**Factfulness: monitoring, reporting and evidence-based policy**

Facts, data and evidence on human rights online featured prominently in the discussion on indexes and reporting tools. The UN Special Rapporteur on the Right to Privacy announced the launch of ‘Privacy Metrics’. Some participants highlighted the need to have granular indexes that reflect the increasing interplay between digital developments and human rights occuring at the local, national and regional level. The ‘Teledemography’ project focuses on the impact of gender, ethnicity and economic status on the access to the Internet.

**Access without rights unseats digital progress**

Connectivity is necessary but not sufficient for realizing the full potential of digital access. In addition to accelerating the positive use of technology, under certain circumstances digital access can accelerate misuses and pose a risk in particular to children and vulnerable communities. Creating access without rights unseats progress, a theme that has already been tackled by the Broadband Commission for Sustainable Development. Providing access to the internet without addressing rights
therefore has the potential to provoke further exploitation and serve as a new means of exclusion.

**Human rights and digital public goods**

With regards to human rights and public goods, it was noted that collected/processed data should be considered as a public good in the case of business models which rely heavily on data. In the case of artificial intelligence, a sovereign wealth fund model could be adopted whereby publicly-owned algorithms trained on the data of a country’s citizens (e.g. health data) are collectively owned by the government as a public good. Access to medicine and access to knowledge could also be considered as digital public goods.

**Tech business and human rights: consumers and/or users**

Privacy protection and freedom of information are human rights that could affect the core of business models and the ‘bottom line’ of the tech industry.

The private sector is willing to recognize its human rights responsibilities when under pressure from governments. At the same time companies are reluctant to understand and recognize the value of human rights for aspects of their work that are categorised as “private” (e.g. terms of service and decisions made pursuant to these terms of service).

Every company has its own policies to divide public and private (company) property, which are significantly influenced by patent and technology transfer issues. This is more of a challenge with respect to freedom of expression than privacy.

The collection of personal data by corporations is a crucial issue, especially when the data subject is not conscious of the fact that his/her data is being collected and that he/she is being profiled. This constitutes a major violation to explicit, free and informed consent. Moreover, the commodification of data creates incentives for private sector companies to gather as much data as possible. For example data needed for AI training is driving problematic business decisions.

A cooperation challenge is reaching consensus with the private sector on the relevance of human rights principles. Another challenge is to adjust the monitoring system for human rights to the size and role of the company. In some cases, as it happens with data protection, a heavy monitoring burden could affect start-ups and small companies much more than established tech players.

More discussion and a more granular response is needed on the topic of remedy in the context of freedom of expression in relation to content censorship.
Policy processes in multilateral fora

While there is a willingness among UN member states to engage on human rights concerns in the digital sphere through the Office of the United Nations High Commissioner for Human Rights, there is also a trend of shrinking civic space which makes full reliance on these mechanisms difficult. For instance, the more digital discussions shift towards the cybersecurity agenda, the less willingness there is to engage non-state actors in discussions that can affect human rights.

There is often a push to look at human rights issues at the global level at the expense of the regional level. However, more engagement with civil society and other actors is needed at the regional level, including through UN regional mechanisms or bodies.

Using existing human rights mechanisms

There are many possibilities to use existing human rights mechanisms in order to advance human rights online. The first channel is to use human rights treaty reporting processes such as reports to the Committee on the Rights of the Child. The second channel is the Universal Periodic Review for member states. The third channel is the special procedures of the UN Human Rights Council.

In addition, there is also heightened interest from various National Human Rights Institutions. National and regional Internet Governance Forum chapters should also be considered as a way of enhancing multidisciplinary cooperation in addressing human rights online. The Panel was encouraged to examine how to improve the use of existing digital policy and internet governance mechanisms to enhance human rights online (tech development, standardization, cybersecurity, etc.).

Children’s human rights

Children’s human rights are a rare area of digital policy where there is a global consensus, and could be the litmus test of progress of human rights online. Children’s human rights are not as advanced as they should be, however, due to numerous implementation limitations. Special monitoring and implementation efforts should therefore be made to advance these rights online. One positive step in this direction is the General Comment on children’s rights in the digital age.

Overcoming fragmentation and bridging policy silos

There is a need to address the fragmented nature of human rights mechanisms. Civil and Political Rights and Economic, Social and Cultural Rights communities do not interact often with each-other, particularly on the topic of new technologies including digitisation and datification. Out of 56 special procedures of the UN Human Rights Council, 22 reflect on digitalization and new technologies, but they do not usually incorporate one another’s views. Moreover, progressive human rights language adopted in one fora (e.g. the Human Rights Council) is questioned in another (e.g. UN General Assembly), thus limiting progress on these issues.
Capacity-centered approach to human rights online

It is important to adopt a capabilities approach to realising human rights in the context of digitalization and data. In addition to the digital gap between poor and rich, it is important to examine differences in digital vulnerability, including that of persons with disabilities and the elderly.

Gaps in methods and mechanisms of cooperation

There was general agreement that most of the existing cooperation mechanisms could be used for the following functions:

- **To enhance substantive access to the internet.** Community networks could be an important vehicle for ensuring substantive access to the Internet with a focus in addition to technical connectivity on developing local content, multilingualism, and anchoring community network dynamics in the local social, economic and cultural context.
- **To measure and monitor access and other human rights.** Data is missing on various aspects of human rights online. Existing indexes and monitoring mechanisms should be coordinated and supplemented by new ones in order to gather the missing data and evidence.
- **To integrate human rights into policy on artificial intelligence.** Human rights and human agency considerations should be in-built across the board in human rights instruments, in particular those dealing with human rights and business, such as the 2011 UN Guiding Principles on Business and Human Rights as well as the 2011 OECD Guidelines for Multinational Enterprises.
- **To enhance the protection of privacy and data within the context of international development.** For instance efforts could be made to build on the existing standards and guidelines for social impact currently led by the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) at the United Nations Conference on Trade and Development (UNCTAD). An indicator related to the protection of privacy and data could be incorporated into this social impact indicator.
- **To enhance consistency between human rights mechanisms at the UN and other fora where important decisions are being made on digital issues with a potential impact on human rights.** For example, cybersecurity discussions have an impact on human rights.
- **To evaluate company policies and even more importantly practices on human rights in the digital era.**
- **To ensure that youth and children are safe online.** As an illustration, a new age appropriate design code was incorporated into the UK data privacy law which ensures that data collection, holding and sharing policies must adhere to the United Nations Convention on the Rights of the Child.

The need for new mechanisms could be considered for the following functions:

- To ensure that algorithms can be considered a public/common good.
- To address specific aspects of the human-machine interaction when existing mechanisms do not provide sufficient protection (e.g. harm generated by machine-learning systems).
To develop new technical standards for data portability that could ensure that community networks and other smaller actors can have easy and fast access to user data.

Links to websites and other resources mentioned:

- https://rankingdigitalrights.org/index2018/
- http://bibliotecadigital.fgv.br/dspace/handle/10438/25696
- https://datasecurity.net/output/refugee-connectivity/
- https://www.intgovforum.org/multilingual/content/dynamic-coalition-on-community-connectivity-dc3-0?qt-dynamic_coalition_on_community_c=4#qt-dynamic_coalition_on_community_c
- https://www.giswatch.org/community-networks
- Best Practices on Due Process Safeguards regarding Online Platforms’ Implementation of the Right to an Effective Remedy: https://www.intgovforum.org/multilingual/content/dcpr-best-practices-on-due-process-safeguards-regarding-online-platforms%E2%80%99-implementation-of
- Concept of network self-determination:
  - http://bibliotecadigital.fgv.br/dspace/handle/10438/19924
Discussion Group on Human Rights and Human Agency

Background Note

Digital technologies are accelerating sustainable development, advancing well-being, and empowering individuals around the world. At the same time, digital technologies also have the potential to deepen inequality, undermine human rights and human agency. The objective of this group is to explore how stakeholders can better collaborate to ensure that human rights and human agency are upheld in the digital age. Some of the main human rights and human agency issues raised by digital technologies include:

- the degree to which human rights instruments and related mechanisms (e.g., UDHR, ICCPR, ICESCR, CRC, CEDAW, CAT) can incorporate human rights into innovation, technology deployment, and governance;
- preserving human agency such as decision-making abilities amidst the rise of automation and data-driven technologies which are replacing traditional human decisions with sophisticated statistical models and data-driven algorithms;
- upholding access to the Internet and freedom of expression in an increasingly complex jurisdictional setting. Content policies to address disinformation and hate speech have surfaced tensions between enabling free speech and censoring deliberate disinformation; and between free flow of information across national borders and respect for local laws, culture, and religion. Limiting access to the internet and in some instances shutting down the internet in response to perceived national security and public order challenges.
- upholding the right to be forgotten without creating a disproportional regulatory burden on the technology sector. This is particularly the case with our digital footprints, especially children’s digital footprints, which are longer lasting and more ubiquitous.
- ensuring that digital technology is developed in a gender sensitive, culturally diverse and multilingual setting to avoid the perpetuation of monoculturalism, misogyny, gender stereotypes and echo-chambers; and
- aligning the design and deployment of automation technologies with human values, including preventing automation systems from amplifying existing biases or creating new ones.

In reflecting on the numerous issues, this discussion group will cover the following questions:

1. What are the key elements of success in upholding human rights and human agency? What could be the roles/responsibilities of different stakeholders (e.g., government, industry and civil society) in better protecting human rights and meaningfully respecting human agency in the digital space?
2. Do governments and international organizations have the capacity to address the aforementioned issues/tensions? Which are the most critical gaps?
3. What does cooperation with other organizations and/or stakeholders on these issues currently look like? What obstacles have you come across in your
organization’s efforts to collaborate with other stakeholder groups in addressing these issues?

4. What are the priority areas for improved cooperation among stakeholders? How do we enable cooperation? What methods and mechanisms of cooperation are we missing?

5. What principles or values should underpin cooperation around the development and implementation of technology, policy, and regulations?