

Regulating the Use of Digital Technology by Public Administration to Protect and Strengthen Human Rights

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The COVID-19 pandemic made established and emerging structural challenges related to inequality, discrimination, exclusion and violence more palpable and highlighted tensions around the continuum between the exercise of human rights online and offline.

Governmental initiatives to combat the pandemic were deployed worldwide after the emergency was officially announced. Most were characterized by the accelerated use of digital technologies and mobile communications to detect and report COVID-19 cases, monitor the spread of the virus, investigate its behaviour, organize vaccination processes and track their status, and collect information to inform decision-making.

Research undertaken during the pandemic suggested that neither developed nor developing countries were immune to new threats to freedoms and rights, and that there was a need to address the risks and potential benefits of digital technologies collectively with fresh vigour and adherence to international human rights law, acknowledging that the crisis—and the associated rights violations and exacerbation of structural deprivations—was disproportionately affecting marginalized, oppressed and vulnerable groups. Some government responses illustrated the potential of digital technologies to advance rights and to serve as a basis both for mitigating the medium- and long-term impacts of the COVID-19 pandemic and for catalysing positive approaches in the handling of future crises.

This contribution builds on analytical research led by the Association for Progressive Communications (APC) and published in the 2021-2022 edition of the Global Information Society Watch report, which explored digital futures for a post-pandemic world.

Key risks and challenges

Research undertaken by specialized civil society organizations working at the intersection of digital technologies and human rights shows that a range of rights protected by instruments endorsed by States around the world were affected by measures adopted by Governments during the pandemic.² In general, new or tighter restrictions on people's rights derived from the following: prevailing digital exclusion; a lack of clarity and transparency around the objectives, limits and principles on which digital technology-based responses were designed

and implemented; the absence of clear and comprehensive regulatory, technical and governance frameworks and robust institutions for personal data handling and protection; and gaps in the establishment of enforcement and oversight mechanisms aimed at limiting abuses of power, including by Governments wanting to control who had access to the Internet and how it was used, and by companies whose business models remained rooted in the surveillance and exploitation of people and their data. The major challenges, threats and risks that were observed are explored below.

Digital exclusion

The lack of meaningful Internet access for marginalized communities and groups remains a key concern. The many dimensions of digital exclusion revealed by the pandemic, including the gender digital divide,³ showed the interdependence between access to digital technologies, particularly the Internet, and the enjoyment of a wide range of human rights. People without a stable and affordable Internet connection were unable to work (in jobs that could be performed remotely) or to access education, life-saving information or government services, including health care. Amidst a lack of affordable Internet access and relevant digital skills, e-government initiatives created layered exclusions for marginalized groups, especially in Africa and Latin America. In the realm of education, for instance, the digital divide combined with pandemic restrictions produced a learning divide, with long-term socioeconomic consequences. The pandemic illustrated how fundamental meaningful Internet access and digital skills are to sustainable development and human rights.

Freedom of expression

Freedom of expression online came under threat during the pandemic as new and existing legislation and regulations were used to limit and criminalize legitimate expression in the name of combating hate speech and the spread of false information. In some cases, regulations contained provisions that targeted criticism of government efforts to contain the virus or that compelled technology companies to remove content or block access to content and users. Intentional disruptions to Internet access and digital communications in different parts of the world interfered with people's freedom of expression⁴ and access to essential information and services.⁵ Control over media reporting on the pandemic, arrests of journalists, and shutdowns of media entities critical of the Government

further curtailed free expression online. The monitoring of social media and the harassment of users by Governments and government supporters resulted in censorship (including self-censorship) and the spread of hate speech.

Public interest technologies, surveillance, privacy and data protection

The solutions adopted by Governments during the pandemic required the collection of enormous amounts of personal and sensitive data and the subsequent analysis and sharing of such data⁶ in contexts without proper privacy safeguards, clear privacy regulations, or mechanisms for enforcement and oversight. Public interest technologies⁷ such as contact tracing apps and vaccine passports, in tandem with expanded health regulations to monitor people's mobility and behaviour, were used to strengthen State surveillance mechanisms and the ability to profile individuals. Lack of transparency in the development of these technologies enabled a failure to uphold the principles of necessity, proportionality and legality. This had an impact on people's informational self-determination,⁸ restricting their ability to exert control over the use of their personal data. There were cases in which the right to access information was conditioned on the provision of certain personal data, and because of their indivisibility and interdependence, the rights to freedom of movement, association and peaceful assembly, as well as the right to work, were also affected.⁹

The protection of human rights online: opportunities, responses and promising measures

The increased visibility of the vulnerabilities and risks associated with the acceleration of digital transformation during the pandemic created an opportunity to put human rights at the centre of the configuration of the world's digital future.

The Internet and other digital technologies are an essential part of crisis response and an emerging source of resilience, but they are not sufficient on their own; holistic strategies are also needed to address structural inequalities, strengthen democracy, and reinforce the safeguarding and enjoyment of human rights. The Internet needs to be protected as a global public resource, and human rights must be upheld both online and offline in any short-, medium- and long-term crisis response measures, taking into account that people are affected in different ways both during and in the aftermath of the crisis.

Context-based responses are needed, but equally important are global responses based on true multilayer, multidisciplinary, multi-stakeholder collaboration guided by principles of inclusion, transparency and accountability. Internet governance, as a central element of broader global digital governance and global digital cooperation ecosystems, is part of those

necessary responses oriented towards ensuring compliance with international human rights law and the preservation of the public core of the Internet at all levels. Processes such as the development of the Global Digital Compact¹⁰ and the World Summit on the Information Society +20 review¹¹ offer valuable opportunities to place human rights at the centre of the development, deployment, utilization and regulation of the Internet and other digital technologies.

Some of the contextual responses by Governments illustrate rights-respecting approaches taken during the pandemic and serve as models for handling future crises. In Brazil, for example, the Supreme Court affirmed that the protection of personal data represented a fundamental constitutional right. The Supreme Court's action prevented telecommunications companies from implementing a presidential order to share the personal data of users, resulting in a formal amendment that "effectively included the fundamental right to data protection in the Constitution". Decisions such as these link individual rights to collective rights,¹² social well-being and human dignity.¹³

Despite decades of communications infrastructure deployment, the growth of mobile phone penetration has slowed over the past decade, showing that the predominant strategies employed to extend affordable connectivity have a limit. With this loss of momentum and the need to address digital exclusion to mitigate the effects of the pandemic, it is crucial to support the realization of people's right to meaningfully shape and use the Internet and other digital technologies to meet their specific needs and realities through approaches that complement those provided by Governments and corporations. Alternative approaches may include small-scale local initiatives or community-owned communication networks built, operated and used by communities in a participatory and open manner to respond to the information and communication needs of unconnected or poorly connected groups. Two examples illustrate positive efforts in that regard: the Communications Authority of Kenya adopted a licensing and shared radio spectrum framework for community networks following public consultation and a process for the development of the framework that was undertaken in partnership with multiple stakeholders;¹⁴ and in Argentina, significant steps were taken to enable small operators to provide telecommunications services and Internet connectivity with support from the country's Universal Service Fund, one of the mandates of which is to support community networks in unconnected or underserved communities in both rural and urban areas.¹⁵

A development-oriented digital future can only be enabled where offline and online environments respect rights.

Recommendations

On alignment with established human rights standards to strengthen rights online

- Adopt a human rights-based approach as the standard for the design and use of digital technologies in accordance with the standards of international human rights bodies and instruments.
- Undertake human rights impact assessments of digital technology-related policies, acknowledging the local contexts and realities of vulnerable and marginalized groups within society.
- Create robust frameworks for multi-stakeholder decision-making and oversight that support the development of innovative technological responses to future crises and the shaping of a free, open and secure digital future.

On digital inclusion

- Reform policy and regulatory environments so that they are favourable to the development of complementary models for the provision of connectivity, including community networks and small and medium-sized cooperative service providers or operators.

- Ensure the participation of communities in policymaking concerning access to digital technologies and digital inclusion.

On privacy and data protection

- Define data governance frameworks and strengthen oversight and accountability mechanisms to increase scrutiny and transparency.
- Adopt comprehensive legal and regulatory frameworks that preserve privacy and regulate State-sponsored surveillance in line with the principles of necessity and proportionality.

On freedom of expression

- Repeal laws that unnecessarily and disproportionately limit online freedom of expression.
- Refrain from disrupting Internet access.

Endnotes

- 1 Valeria Betancourt works with the Association for Progressive Communications as Communications and Information Policy Programme Manager.
- 2 Association for Progressive Communications and Swedish International Cooperation Agency, *Global Information Society Watch 2021–2022: Digital Futures for a Post-Pandemic World*, Alan Finlay, ed. (APC, 2022), available at <https://www.giswatch.org/2021-2022-digital-futures-post-pandemic-world>.
- 3 A more comprehensive characterization of the digital divide includes multiple determinants, such as race, age, education, class and geographic location, all of which have an impact on the differences in access between men and women and people of different sexualities and genders and between women in different economic, social and cultural circumstances.
- 4 For an overview of global Internet shutdowns in 2021 and 2022, see Access Now, “Internet shutdowns in 2021: the return of digital authoritarianism”, 28 April 2022 (updated 17 March 2023), available at <https://www.accessnow.org/internet-shutdowns-2021>; and Access Now, “Weapons of control, shields of impunity: Internet shutdowns in 2022”, 28 February 2023 (updated 24 May 2023), available at <https://www.accessnow.org/internet-shutdowns-2022>.
- 5 Human Rights Watch, “End Internet shutdowns to manage COVID-19”, 31 March 2020, available at <https://www.hrw.org/news/2020/03/31/end-internet-shutdowns-manage-covid-19>.
- 6 Jamila Venturini, “Between urgency and surveillance: an analysis on the use of technologies during the COVID-19 pandemic in Latin America”, article II, *Internet Sectoral Overview*, No. 4, year 13 (December 2021), p. 12, available at <https://cetic.br/media/docs/publicacoes/6/20211217114412/iso-year-xiii-n-4-privacy.pdf>.
- 7 Framing these digital technologies as “public interest technologies” offers a useful framework for the holistic evaluation of the impact of their deployment by Governments in terms of both benefits and harms; see Paola Ricaurte Quijano and Jacobo Nájera, “Getting ready for the next pandemic: public interest technologies in Latin America”, in *Global Information Society Watch 2021–2022: Digital Futures for a Post-Pandemic World*, Alan Finlay, ed. (APC, 2022), available at <https://www.giswatch.org/regional-report/latin-america-0>.
- 8 Informational self-determination is the right of individuals to choose without interference the circumstances in which information about themselves is exposed and the extent of that exposure.
- 9 Jamila Venturini and others, *Informe Observatorio Covid-19 del Consorcio Al Sur: Un Análisis Crítico de las Tecnologías Desplegadas en América Latina Contra la Pandemia* (Consorcio Al Sur, June 2021).
- 10 United Nations, Office of the Secretary-General’s Envoy on Technology, Global Digital Compact page, available at <https://www.un.org/techenvoy/global-digital-compact>.
- 11 David Souter, “Inside the digital society: WSIS+20 is closer than you think” (APC, 6 July 2020), available at <https://www.apc.org/en/blog/inside-digital-society-wsis20-closer-you-think>.
- 12 There are human rights generally recognized as exercisable by collectives (or groups of individuals) and not reducible to the individual, including the right to self-determination and the right to development.
- 13 André Ramiro and Mariana Canto, “New pathways for advocacy on personal data following a Supreme Court ruling during COVID-19”, in *Global Information Society Watch 2021–2022: Digital Futures for a Post-Pandemic World*, Alan Finlay, ed. (APC, 2022), available at <https://www.giswatch.org/en/country-report/brazil-0>.
- 14 Kathleen Diga and others, “Advocacy for community-led connectivity access in the global South”, in *Global Information Society Watch 2021–2022: Digital Futures for a Post-Pandemic World*, Alan Finlay, ed. (APC, 2022), available at <https://www.giswatch.org/en/digital-rights-internet-advocacy-meaningful-access/advocacy-community-led-connectivity-access>.
- 15 More details on the Argentina initiative are available on the APC blog at <https://www.apc.org/en/blog/seeding-change-community-networks-flowering-argentina-during-challenging-times> and <https://www.apc.org/en/blog?destination=blog%3Fpage%3D15&page=1>.