Digital Rights at a Crossroads

RECOMMENDATIONS FOR ADVANCING HUMAN RIGHTS AND SOCIAL JUSTICE IN THE POST-2020 ERA

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ACRONYMS USED IN THIS REPORT

COE	Council of Europe
EU	European Union
FOC	Freedom Online Coalition
IGF	Internet Governance Forum
ITU	International Telecommunication Union
OECD	Organisation for Economic Co-operation and Development
UN	United Nations
UNGA	United Nations General Assembly
UN HRC	United Nations Human Rights Council
UNSP	UN Special Procedure
UPR	Universal Periodic Review
TVEC	Terrorist and violent extremist content
WEF	World Economic Forum
WTO	World Trade Organisation

ACKNOWLEDGMENTS

EXECUTIVE SUMMARY

Key Findings

As we enter the new decade, the international digital policy landscape finds itself at an inflection point, as the ubiquitous nature of digital technologies comes to challenge the accepted notions of the relationship between technology, society, human rights and social justice. The key effect of this trend is the growing convergence between digital issues and broader policy issues, manifesting itself in the growing complexity of the landscape.

Within this policy landscape, there is a large number of Internet and digital-related issues on the international policy agenda. Among these, ten issues stand out as particularly relevant from the vantage point of human rights and social justice: access and digital divides, artificial intelligence and algorithmic decisionmaking, cybersecurity and cybercrime, data protection, digital identity and identification, encryption, network disruptions, online content (including disinformation, terrorist content, hate speech), regulation of tech companies (including intermediary liability), and surveillance. Most of these issues are interconnected and straddle the offline and the online.

It is likely that the rapid and continued technological development will simply lead to more and more issues on the international policy agenda as further areas of life - at both the individual and societal level - are impacted. At the same time, technological exceptionalism is likely to eventually disappear, or diminish, as a concept, with issues not viewed through a technological lens, but - as the offline and online continue to merge - simply as broader policy issues which transcend the technological dimension.

Just as "the Internet" was considered in and of itself an "issue" in its earliest days, before discussions moved to more specific aspects of the Internet and its use, today's newest digital technologies are going through a similar process. Whether that process continues, and, if so, how long it will take, are impossible questions to answer. But while it is an important long-term trend, it is unlikely that any of the issues considered "relevant" above will disappear in the short, or even the medium term. In the long term, however, such a development will require civil society organisations to be able to engage on issues as they are framed presently as well as part of broader policy issues.

Reflecting the increasingly complex policy landscape, so, too, is the ecosystem of forums and processes whose agenda includes the Internet and digital technologies, an ecosystem shaped as much by geopolitical trends as by technological developments.

There is a large number of international forums and processes where these issues are discussed and decided. The landscape is complex, and the forums and processes which stand out as particularly relevant range from multilateral forums and processes such as the ITU, the UN General Assembly, the UN Human Rights Council, the OECD, the Universal Periodic Review, the WTO and the Freedom Online Coalition, through regionally focused forums such as the European Union and the Council of Europe, to multistakeholder forums such as the IGF, RightsCon, and WEF. Other processes, such as the UN Special Procedures and the former UN High-Level Panel on Digital Cooperation were also identified as relevant. Increasingly, relevant issues are discussed and decided in forums and processes that are purely multilateral, rather than multistakeholder.

Of the forums and processes identified, few focus exclusively on the Internet and digital technology; however, issues are increasingly on the agenda of forums and processes whose mandates are not specific to the Internet and digital technology, but on broader policy areas such as security and economic development.

The "digital rights" community is at a similar inflection point, as organisations look at ways to reposition themselves in the evolving environment. The overall landscape is one in which there are not many CSOs consistently and strategically engaging in international forums and processes, suggesting a mismatch between the evolution of the policy environment and the community's ability to "keep up".

Organisations that engage internationally tend to fall into one of two categories: (1) those that focus exclusively on issues related to the Internet and digital technology, and (2) those which focus on specific human rights or human rights more broadly but have developed a particular program or thematic focus on digital issues. Across the board, there is far less representation from organisations based in the global South than the global North. Often a smaller

number of intermediary organisations act as a channel between local groups and global discussions.

Both types of organisations are faced with a fundamental challenge. For those organisations that focus on the Internet and digital technology, the question is how to use that expertise to influence forums and processes which are not so focused, and how to contextualise that focus when the issues are looked at as part of broader policy areas. For traditional human rights organisations, the question is how to build and integrate an understanding of the impact of the Internet and digital technologies into their existing agendas.

Furthermore, analysis suggests that to ensure meaningful engagement, approaches may need to be made more strategic. At the moment, the correlation between the openness and ease of engagement and levels of engagement by civil society suggests that a key factor in deciding where to engage is how easy it will be, rather than the potential impact of the respective forum or process on actual policy development.

There are examples of effective coordination among civil society organisations, however there are many more opportunities which are unseized. Engagement with civil society organisations which are not exclusively focused on the Internet and digital technology is limited, as is engagement with other non-government stakeholders such as the private sector, technical community and academic institutions.

While impact is difficult to measure, it is certainly far less than it could be. Whether civil society organisations are to be impactful will increasingly depend upon their ability to adapt and evolve. While the precise nature of the future landscape cannot be known, maintaining the status quo is certainly not an option.

Key Challenges

There are five key challenges facing civil society engaging in international forums:

- The complexity of the field, both in terms of the number of issues on the international policy agenda, their interconnectedness, and the number of relevant forums and processes.
- The closed nature of many forums and processes, and the consequent limited power and influence of civil society organisations within them.
- The limited availability of adequate support,

including financial resources, necessary to support civil society engagement in international forums, particularly for organisations based in the global South.
- A lack of coordination among civil society organisations when engaging at relevant forums and processes.
- Difficulty in making the case for engagement at the international level so as to bring in new organisations.

Recommendations

In this landscape, we make the following recommendations on how funders can support civil society engagement in international Internet and digital-related policy:

1. Undertake or commission regular reviews and monitoring of the policy landscape in order to ensure that relevant actors remain fully abreast of new and emerging issues, as well as relevant forums and processes.

2. Ensure adequate support. This should include long-term and flexible financial support so as to ensure the sustainability of organisations and the security of being able to invest in long-term engagement in forums and processes. It should also include ways to support effective capacity-building, including building substantive knowledge of relevant issues, facilitating strategic engagement at different forums and processes, and mentorship from more experienced organisations.

3. Support coordination efforts. Greater support should be provided to facilitate coordination with other civil society organisations (including those that do not focus on the Internet and digital technology) and other stakeholders (including the private sector, technical community and academic institutions) when engaging in international forums and processes.

4. Encourage international engagement through programmatic support and awareness raising. This support could be complemented with efforts to raise awareness of the importance of international engagement among the broader donor community.

5. Strengthen coordination among the broader donor community in order to avoid duplication, encourage collaboration, streamline efforts and maximise impact. Donors could also play a more active role in encouraging coordination and synergies among their implementers, which could complement other efforts to support coordination mentioned above.

1. INTRODUCTION

The rapid evolution of the Internet and digital technologies, and the ever-increasing range of policy issues raised as a result, has raised challenges for civil society organisations (as well as other stakeholders) as they seek to ensure their development, use and governance support and enhance the enjoyment of human rights and social justice.

The onset of COVID-19 in early 2020, has accelerated this trend, with reports suggesting that the months after the outbreak saw the equivalent of several years of digital transformation.[1] At the same time, the virus has radically transformed, at least in the short-term, the workings of the forums and processes which focus on policymaking related to the Internet and digital technologies, and the opportunities for civil society organisations to engage and influence outcomes.

Few could have predicted what the opening years of the 2020s would look like. But in the circumstances in which we find ourselves, how can civil society organisations meaningfully engage in, and influence, those international forums and processes where the Internet and digital-related policy is made, now and in the upcoming years? This report was commissioned by the Technology and Society Program at the Ford Foundation to help answer this question. In doing so, this report examines the following four key themes:

- First, what are the most relevant Internet and digital-related issues on the international policy agenda given their likely impact on social justice and human rights? (Section 2)
- Second, what are the most relevant forums and processes where these issues are discussed and decided, their opportunities and limitations for civil society engagement? (Section 3)
- Third, what are the current level, capacity and gaps when it comes to engagement by civil society in these forums and processes? (Section 4)
- Finally, in this landscape, how can funders support civil society engagement in international Internet and digital-related policy? (Section 5)

The research and validation for this report comprised a combination of desk-based research, a survey of 36 civil society organisations engaging in the field of the Internet and digital-related policy, 18 in-depth interviews, and two focus groups reviewing a draft version of the report. While efforts were made for findings to be as comprehensive as possible, they were inevitably shaped by the background of the participants during these stages.

For a full description of the methodology, including a breakdown of participants, see **Annex 1. Annex 2** provides a more in-depth look at the most relevant issues identified in this report. **Annex 3** contains a list of the 63 civil society organisations identified through our methodology for the purposes of mapping the civil society landscape in **Section 4**.

2. THE INTERNATIONAL POLICY LANDSCAPE

This section identifies the most relevant Internet and digital-related issues on the international policy agenda given their likely impact on social justice and human rights,[2] as well as looking at broader trends within the policy landscape.

NOTE ON METHODOLOGY

At its broadest, an issue on the international policy agenda is simply a topic or problem of sufficient importance that it is discussed and considered at international forums and processes. "Relevance" of an issue is determined through an assessment of the impact that the issue (and policy responses to it) has (or may have) on the exercise and enjoyment of human rights, as well as on social justice within societies more broadly.

To identify the most relevant international Internet and digital-related issues, the research started by undertaking a comprehensive review of all issues being discussed, considered or listed among key stakeholder groups and trend-watchers. These included published "trend" reports, the existing policy issues upon which civil society organisations in the field engage, and the existing policy issues which are under study by key academic institutions in this field. An assessment was then undertaken in relation to each issue of the actual or potential impact of that issue on human rights and social justice. Policy issues which either had no impact, or a negligible impact, on human rights and social justice were filtered out. The remaining issues were then mapped against the results of a survey completed by individuals and organisations in the field. These were validated through a series of interviews and focus groups.

The full methodology for identifying the most relevant policy issues can be found in Annex 1. Annex 2 provides a more in-depth look at each issue identified as relevant.

As we enter the new decade, the policy landscape finds itself at an inflection point, as the ubiquitous nature of digital technologies comes to challenge the accepted notions of the relationship between technology, society, human rights and social justice. The key effect of this trend is the growing convergence between digital issues and broader policy issues, manifesting itself in the growing complexity of the policy landscape outlined below.

Within this policy landscape, there is a **large number of Internet and digital-related issues** on the international policy agenda. Future Today Institute's Tech Trends Report for 2020 alone, for example, identified well over 400 digital trends and issues.[3] In addition, **the number of policy issues related to digital technologies and the Internet has increased significantly over the years**. This is likely to continue as further technologies are developed and further areas of life - at both the individual and societal level - are impacted.

In this context, our research identified ten issues as particularly relevant given their likely impact on human rights and social justice: **access and digital divides, artificial intelligence and algorithmic decisionmaking, cybersecurity and cybercrime, data protection, digital identity and identification, encryption, network disruptions and Internet shutdowns, online content** (including disinformation, terrorist content, and hate speech), r**egulation of tech companies** (including intermediary liability), **and surveillance.**

Before looking at trends related to these issues more closely, it is important to note that there is no agreed way of categorising these issues. Taxonomies vary, and the policy landscape abounds with overlaps and interdependencies.[4] The list in this report, for example, comprises a mix of technologies, "problems" that require action, and broader areas of policy that need to be managed in some way.

One key challenge is framing. For example, an issue prominent on the agenda, framed narrowly, is how to tackle online terrorist and violent extremist content (TVEC). A broader framing could be on how to tackle all forms of illegal and harmful online content (i.e. not only TVEC, but also, for example, child sexual abuse imagery, disinformation and hate speech). An even broader framing could be the regulation of online platforms in their entirety (and so include not only content-related issues, but also the platforms' use of data, and issues such as advertising and competition).

At the same time, **many of these issues are interconnected**, a point made by a number of those interviewed. For example, encryption is not ordinarily seen as an issue relating to online content, but in practice, many organisations and bodies looking at online content as an issue also look at encryption, given that it is used by many online platforms to keep

communications private, thereby raising challenges when it comes to their ability to tackle certain forms of illegal and harmful content. Disinformation is not ordinarily seen as connected to cybersecurity and cybercrime; however, many governments regard disinformation as a threat to information security, and prohibit it via their cybercrime laws, meaning that each issue cannot be considered wholly separately from the other.

A related challenge, raised in our interviews, is that many of the issues straddle the offline and the online. In the words of one interviewee,

"Fifteen years ago [at the UN World Summit on the Information Society], the Internet was seen as a technical problem with political implications. In today's world we have to recognise that Internet issues are political issues with a technical component. We do not have two worlds: a real world here and a virtual world there. We live in one world which is based on digital platforms and services. The cyber world is the real world." [5]

This manifests itself in two ways. First, many of the issues identified are existing offline policy issues which are now manifesting themselves online. This is particularly the case for various forms of online content (such as disinformation, terrorist and violent extremism and hate speech) where digital technology has exacerbated existing offline challenges. The second is that many issues are as political as they are technical. While there has always been a political dimension to Internet and digital-related issues, some, such as cybersecurity, are now high on the geopolitical agenda.

A further challenge, and one that was raised during the focus groups, relates to those issues which are, in fact, technologies, such as artificial intelligence and encryption. It was noted that technologies should not be seen as "issues" in and of themselves, but that the focus should be on their application in particular situations, for example the use of artificial intelligence in predictive policing or online content moderation. However, where a particular technology has applications in a wide range of areas of life, there is a tendency for discussions to focus broadly on the technology itself.
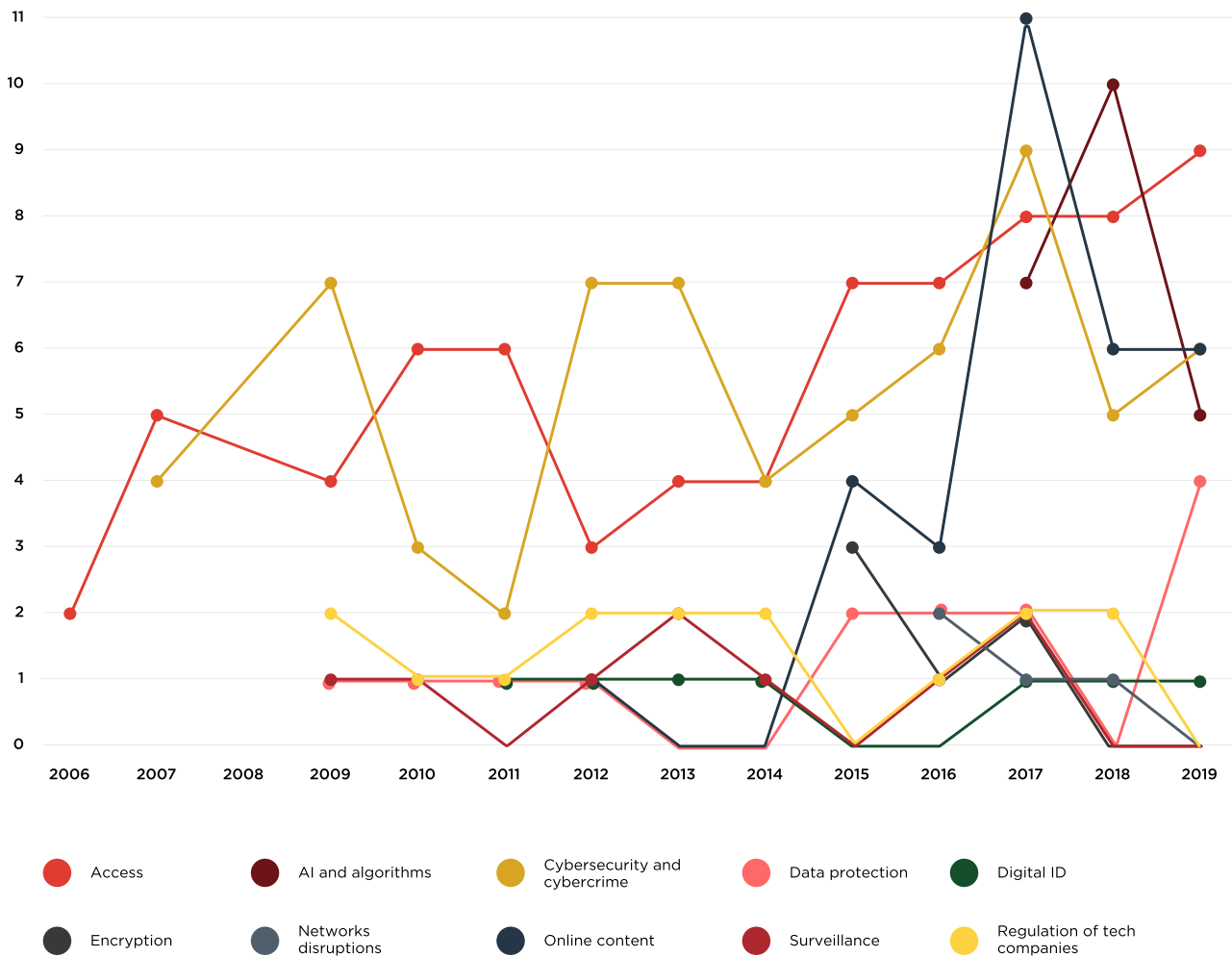

Image 1: Relevant issues over time as reflected in the number of IGF sessions (2006 to 2019)

Our interviews found that many civil society organisations prefer to use a more explicitly human rights-based framing of the issues that they work on. An organisation which engages on online content and network disruptions might prefer to say that they engaged on "freedom of expression" as an issue, or would use the framing of "discrimination" to describe their work on bias within algorithms and online hate speech. While there are certainly stronger links between certain issues and specific human rights than others, the interconnectedness of both human rights (which are, of course, interdependent, indivisible and interrelated) and of the issues themselves, can creates challenges in using such a framing, for example when it comes to engagement with other actors from outside the human rights community.

Adding to this complexity are changes on the international policy agenda which happen over time. Image 1 illustrates how the prominence of relevant issues varies over time using the number of Internet Governance Forum (IGF) sessions as a proxy for this trend. Surveillance, for example, has been consistently prominent on the IGF agenda across the years, alongside issues like cybersecurity and cybercrime, and the regulation of tech companies. Others, like online content, access and digital divides, data protection, and digital identity, have risen in prominence. The visual also shows that three of the most relevant issues are relatively new on the agenda. For example, there were almost no sessions looking at artificial intelligence up until 2016, since when it has soared in popularity, with over 20 sessions between 2017 and 2019. Others, such as encryption and network disruptions, only appeared on the IGF's agenda in 2015 and 2016, respectively.

This points to a dynamic policy landscape where issues can arrive and rise in importance with speed. This creates a challenge for civil society organisations: as well as keeping track of issues they are already engaged in, **civil society organisations also need to be able to identify new issues as they emerge**, in order to be able to engage at the forums and processes where they are discussed. This requires an understanding of both what issues are relevant from a human rights and social justice perspective and how they impact (or potentially impact) human rights and social justice. Exacerbating this challenge, civil society organisations need to be able to do so even as issues are framed in different ways and are increasingly interconnected.

While the focus of this report is on issues on the international policy agenda, it is important to note that almost all of the relevant issues are ones where policymakers at the national level are considering regulation.[6] Later sections of this report look at the impact that this has on determining the most relevant forums and processes (Section 3), and on civil society engagement (Section 4).

Among the ten relevant issues, there are differences in the importance that civil organisations currently attach to them. The graph below shows the number and percentage of the 36 civil society organisations surveyed for this report which (i) consider each issue to be relevant and (ii) engage on that issue.

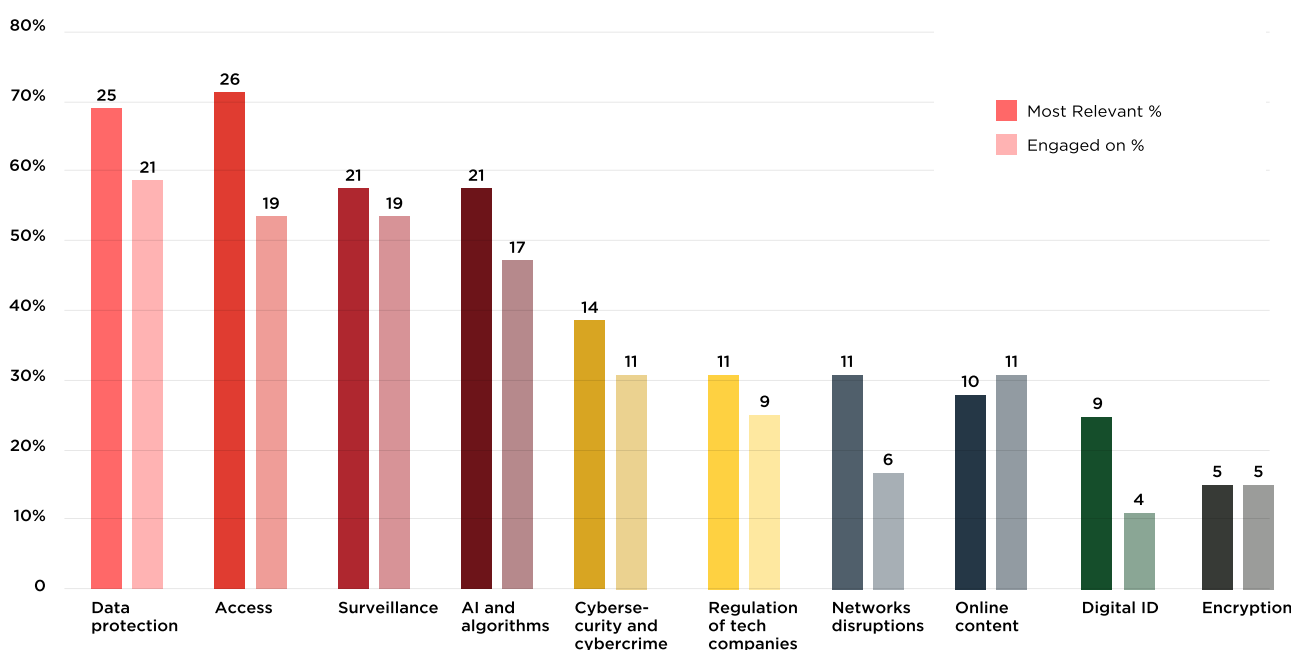As visible in Image 2, four issues –data protection, access and digital divides, surveillance, and artificial

Image 2: Number and percentage of civil society survey respondents indicating an issue was (i) one it considered as relevant and (ii) one on which it engaged.

intelligence and automated decisionmaking– have a comparatively high level of engagement, with around half or more organisations indicating they currently engage on them. Other issues, including network disruptions, encryption and digital identity / identification have fewer organisations actively working on them.

These engagement patterns correlate with relevance, as the data reveals a close correlation between the percentage of organisations considering an issue to be relevant and the percentage engaging on it. The largest differences were in respect of access and digital divides (72% considering it relevant v 53% engaging on the issue), network disruptions (31% v 17%) and digital identity / identification (25% v 11%).

When asked about the need for greater engagement, over 30% of respondents said that this was needed on data protection, artificial intelligence and algorithmic decisionmaking, access and digital divides and surveillance. In comparison, less than 10% thought that encryption and network disruptions required more engagement. Whether this indicates a saturated field, fatigue, a reflection on the impact of current efforts, or something else is a question for further research.

Looking at Images 1 and 2 together, there is a correlation between the length of time that an issue has been prominent on the policy agenda and the percentage of respondents who engage: the most common answers - data protection, access and digital divides, and surveillance - all of which were issues upon which more than half of respondents engage, have been on the policy agenda for many years. Two of the three issues with least engagement - network disruptions, encryption, and digital identity / identification - have only appeared in recent years, pointing to a delay in uptake and engagement.[7] If there is a lag between an issue becoming prominent on the policy agenda, and a mass of civil society organisations engaging on it, this might create a risk that policy discussions start and key decisions are made, with limited civil society engagement.

At the same time, a point raised in some of our interviews, particularly with those from organisations based in the global South, was that with a large number of issues on the international policy agenda, and the frequent addition of new ones, it is important that civil society organisations themselves are able to identify and engage on those which are the most relevant for their organisations and focus, and to avoid the distraction of new "shiny object" issues. The development of new technologies in the global North often drives the global policy agenda. An example given was artificial intelligence, which has attracted a significant amount of attention from governments, donors, and international forums and processes. For some civil society organisations, concern was expressed that pressure to engage on this issue risked distraction from more urgent and immediate issues on their agenda - such as increasing levels of access and the development of basic data protection legislation.

The overall landscape is one of increasing complexity as the number of issues which have impacts upon human rights and social justice increases relentlessly. Even engagement on the ten most relevant would prove a significant challenge for a civil society organisation, let alone the many others which still have impacts upon human rights and social justice. The challenges comprise both understanding how issues impact upon human rights and prioritising which issues to engage on as new ones arise based on their own particular context, without undue influence or pressure. These questions need to be considered by organisations with a degree of speed given that issues, once relevant, quickly come on to the international policy agenda.

3. FORUMS AND PROCESSES

This section identifies the most relevant forums and processes where the issues identified in the previous section are discussed and decided, their opportunities and limitations for civil society engagement, and broader trends.[8]

The full methodology for identifying the most relevant forums and processes can be found in Annex 1.

Reflecting the increasingly complex policy landscape detailed in Section 1, so, too, is the ecosystem of forums and processes whose agenda includes the Internet and digital technologies, an ecosystem shaped as much by geopolitical trends as by technological developments.

Our research led us to identify around 70 international forums and processes where at least one relevant issue is on the agenda. In this landscape, a smaller number of forums and processes emerged as particularly relevant to shaping the Internet and digital technology agenda, and which may take different forms:

- Multilateral forums and processes which comprise, or are open to, all states (ITU, the UN General Assembly, the Universal Periodic Review and the WTO);
- Multilateral forums and processes which comprise a smaller number of states chosen from a larger number on the basis of election or rotation (the UN Human Rights Council);
- Multilateral forums and processes which comprise a number of states based largely on geographic criteria (the Council of Europe and the European Union);
- Multilateral forums and processes which comprise a number of states on the basis of criteria other than geography, such as a commitment to human rights or economic development (the Freedom Online Coalition and the OECD);
- Forums and processes which are established by states, but do not comprise states (UN Special Procedures); and
- Forums and processes which are, in practice, conferences (with varying levels of openness), but where policy is nonetheless discussed (the Freedom Online Conference, the Internet Governance Forum (IGF), RightsCon and the WEF).

In our interviews, many organisations considered other regional forums and processes to be relevant for their work, particularly in Africa (the African Union, the African Commission on Human and People's Rights, the Digital Rights and Inclusion Forum, and the Forum on Internet Freedom in Africa) and the Americas (the Organisation of American States and

the Inter-American Commission on Human Rights). Unlike these other regional forums and processes, however, the outputs and outcomes of the European Union and the Council of Europe often have impacts beyond Europe and their specific membership, hence their inclusion here.[9] The future may, however, see other regional forums and processes have influence beyond their regions and the members.

Of the forums and processes identified above, some focus exclusively on the Internet and digital technology, such as the IGF (established in 2006) and the Freedom Online Coalition (established in 2011). While not included on our list above, the number is growing as new forums and processes which have such a mandate relating to the Internet and digital technology, such as the UN Secretary General's Roadmap for Digital Cooperation (developed following the High-Level Panel on Digital Cooperation) and the proposed UN Secretary General's Envoy on Technology, both of which were raised in interviews and focus groups, are established.

Importantly, however, relevant issues are increasingly on the agenda of forums and processes whose mandates are not specific to the Internet and digital technology, but on broader policy areas such as security (e.g. the UNGA's First Committee) and economic development (e.g. the OECD). Within this, **there is a growing trend for forums and processes where relevant issues are discussed to be purely multilateral.**[10] During our focus groups, the point was raised that many of these multilateral forums have inherent challenges or are in some way perceived to be in some way "broken", largely as a result of geopolitical factors and growing distrust in international organisations.

The overall landscape is one in which there is a parallel increase in the number of forums and processes focusing specifically on the Internet and digital technology, and of broader policy forums and processes whose agenda includes one or more relevant issues.

The fact that a forum or process is looking at a particular issue does not, however, tell you to what extent policy development relating to that issue will be shaped. As noted in the methodology, our research sought to determine which forums and processes were the "most relevant". To do so, the authors reviewed all potentially relevant forums and processes against two factors: their influence of their outputs, and the level of detail of those outputs.

- **Influence**: Seeking to influence an output is of little benefit if policymakers pay little attention to it. It therefore makes sense to try and influence those outputs which are most likely to sway policymakers and the development of national level regulation and policies.

- **Detail**: An output may be influential, but if it is general in its wording and provides a great deal of discretion to the governments that then translate it into national regulation and policy, it is less valuable. Outputs which are more detailed and prescriptive more tightly constrain the states concerned and are therefore more likely to determine the actual regulation and policy developed at the national level.

While the final list of forums and processes also took into account the results of the survey which asked respondents to list those forums and processes which they considered to be most relevant, Image 3 shows the assessment of the level of influence and detail of the final list of outputs of the forums and processes.

A comparative assessment of relevance among these forums and processes points to **few whose outputs are both highly detailed and highly influential on states**. The most detailed and prescriptive outcomes come from the European Union, and bodies developing treaties (such as the Council of Europe and the WTO) and detailed standards (the ITU). Among the other forums and processes which develop specific outputs, such as the UN HRC or the UNGA, outputs are often of a general and broadly worded nature.

In almost all cases, any outcomes or outputs developed are largely optional for states to adopt, with the outcomes of the EU and the WTO being the most influential upon states in that they bind their members. At one third of all identified forums and processes, however, states face little or no pressure to translate relevant outcomes or outputs into national legislation or policy. These include multistakeholder forums, such as the IGF, RightsCon and the Freedom Online Conference, as well as the UN Special Procedures. Even at forums and processes which develop specific and detailed outcomes such as the UN HRC, UNGA, and the Universal Periodic Review, mechanisms for enforcement are arguably weak.

Furthermore, even where the outputs of a particular forum or process are binding on states or there is strong pressure on states to translate them into national legislation or policy, there is often still a high degree of discretion allowed as to how to do so, meaning that the output itself is not a guarantee as to what any impacts upon human rights or social justice will be.

As well as the downward relationship, whereby outcomes developed at international forums and processes are translated into national legislation and policy, the upward relationship, by which governments seek to promote their preferred approach to an issue as the global standard, is also critical. While governments have always sought to promote their values and foreign policy agenda at international forums and processes, **there is a growing tendency of governments using them to try to influence the regulatory frameworks**

Low Level of Influence HIGH LEVEL OF DETAIL	Medium Level of Influence HIGH LEVEL OF DETAIL	High Level of Influence HIGH LEVEL OF DETAIL
None	• ITU	• COE • European Union
Low Level of Influence MEDIUM LEVEL OF DETAIL	Medium Level of Influence MEDIUM LEVEL OF DETAIL	High Level of Influence MEDIUM LEVEL OF DETAIL
• IGF • UNSPs	• OECD • UNGA • UNHRC • WEF	• WTO
Low Level of Influence LOW LEVEL OF DETAIL	Medium Level of Influence LOW LEVEL OF DETAIL	High Level of Influence LOW LEVEL OF DETAIL
• FOC • RightsCon	• UPR	None

Image 3: Assessment of the level of influence and detail of most relevant forums and processes.

that are adopted in other states, with significant consequences for the extent to which human rights and social justice are considerations when issues are discussed at the international level. Examples include the continued efforts by some states to discuss artificial intelligence, cybersecurity and data protection at the ITU, and the calls for a new treaty on cybercrime being made at the UNGA's Third Committee.

Driving this trend is the increased interest among policymakers at the national level to regulate certain aspects of the Internet or digital technologies, noted in Section 2. Until recently, policymakers had been largely uninterested in regulation, unsure of how to regulate, or content for the development and use of the Internet and other digital technologies to be governed more informally. However, the growing impact of the Internet and digital technology upon societies has made calls for regulation irresistible. The pervasiveness and integration of technology in all aspects of people's lives has made the potential for harm more acute and immediate. And as the size and power of tech companies - particularly a small number of the largest tech companies - has increased, governments have become concerned over the seemingly growing "unregulated" space of activity.

A consequence of this trend is that, in multilateral forums such as the ITU and the UNGA, the positions taken by governments may be determined in capital, by domestic government departments, rather than the location of the forum or process and by the representatives of diplomatic missions. A further consequence is the increasing importance of geopolitical trends and tensions which shape multilateral discussions. In some cases, notably in the context of UN negotiations, votes on agreements relating to Internet-related issues may be traded for a vote on a completely unrelated issue being discussed among states in a different forum or process.

Whether as a result of "forum shopping" by states, the desire of forums and processes themselves to "own" a particular policy issue, or the general decentralised approach towards Internet governance, **almost all relevant policy issues are on the agenda of multiple international forums and processes**. Very rarely, if ever, does a single forum or process influence policy on a particular issue to the exclusion of all others. This means that there are ordinarily multiple forums and processes looking at the same issue. As Image 3 shows, the outputs of these forums and processes, however, have very different levels of influence on states, and give states different levels of discretion as to how they transpose those outputs into national legislation or policy (if there is any pressure to transpose it at all).
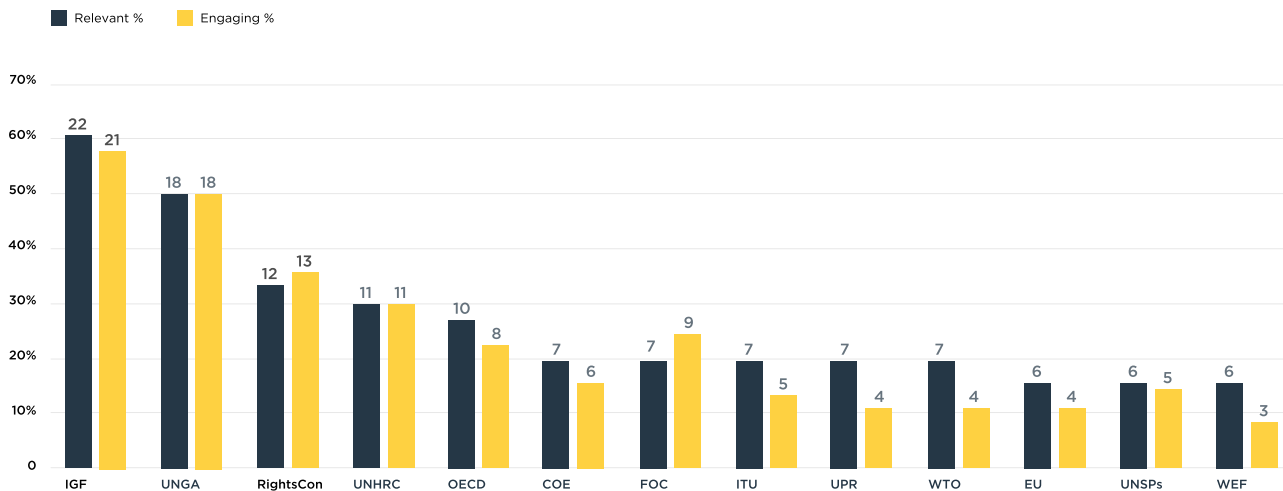
Legend: ■ Relevant % ■ Engaging %

Chart data:

Forum	Relevant	Engaging
IGF	22	21
UNGA	18	18
RightsCon	12	13
UNHRC	11	11
OECD	10	8
COE	7	6
FOC	7	9
ITU	7	5
UPR	7	4
WTO	7	4
EU	6	4
UNSPs	6	5
WEF	6	3

Image 4 : Number and percentage of civil society survey respondents indicating a forum/process was (i) one it considered as relevant and (ii) one where it engaged.

Among the most relevant forums and processes, there are differences in the importance that civil organisations currently attach to them. The graph above shows the number and percentage of the 36 civil society organisations surveyed for this report which (i) considered each forum/process to be relevant and (ii) engage there.

The survey results showed particularly high levels of engagement at the IGF and UNGA, with over 50% of respondents engaging at each. At the lower end, there were very low levels of engagement at most forums and processes. Fewer than 20% of organisations engage at the Council of Europe, the ITU, with UN Special Procedures, at the European Union, the Universal Periodic Review, the WTO and the WEF.

As noted above, during interviews, a number of organisations, particularly those based in Africa and Latin America, highlighted the importance of regional forums and processes not included in the above list, including the African Union, the African Commission on Human and People's Rights, the Organisation of American States and the Inter-American Commission on Human Rights.

To help understand different levels of engagement at different forums and processes, the research looked at the level of openness, inclusiveness and transparency of different forums and processes, with a particular focus on the possibilities for civil society to engage and influence the output. The level of resources required for a civil society organisation to engage and influence a particular forum or process is an important consideration, as the allocation of limited resources should take into account the cost of engagement against the benefits of engagement. The more open, inclusive and transparent a forum or process, the greater the benefit for the same cost. Image 5 shows the assessment of the level of openness, inclusiveness and transparency of the final list of outputs of the most relevant forums and processes.

Overall High Level of Openness, Inclusiveness and Transparency	Overall Medium Level of Openness, Inclusiveness and Transparency	Overall Low Level of Openness, Inclusiveness and Transparency
• IGF • RightsCon • UNSPs	• COE • UNGA • EU • UNHRC • FOC • UPR • OECD	• ITU • WEF • WTO
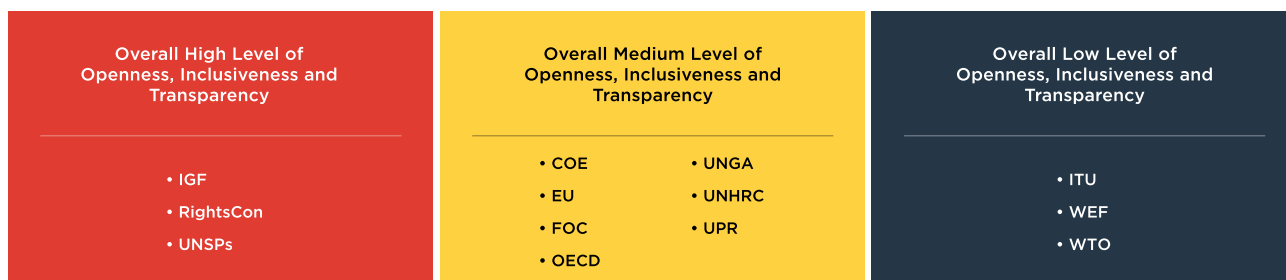
Image 5: Assessment of the level of openness, inclusiveness and transparency of the most relevant forums and processes.

Impact

Ease of Engagement

Legend:
- IGF
- OECD
- WTO
- RightsCon
- ITU
- FOC
- WEF
- UNGA
- COE
- UPR
- UNHRC
- UNSPs
- EU
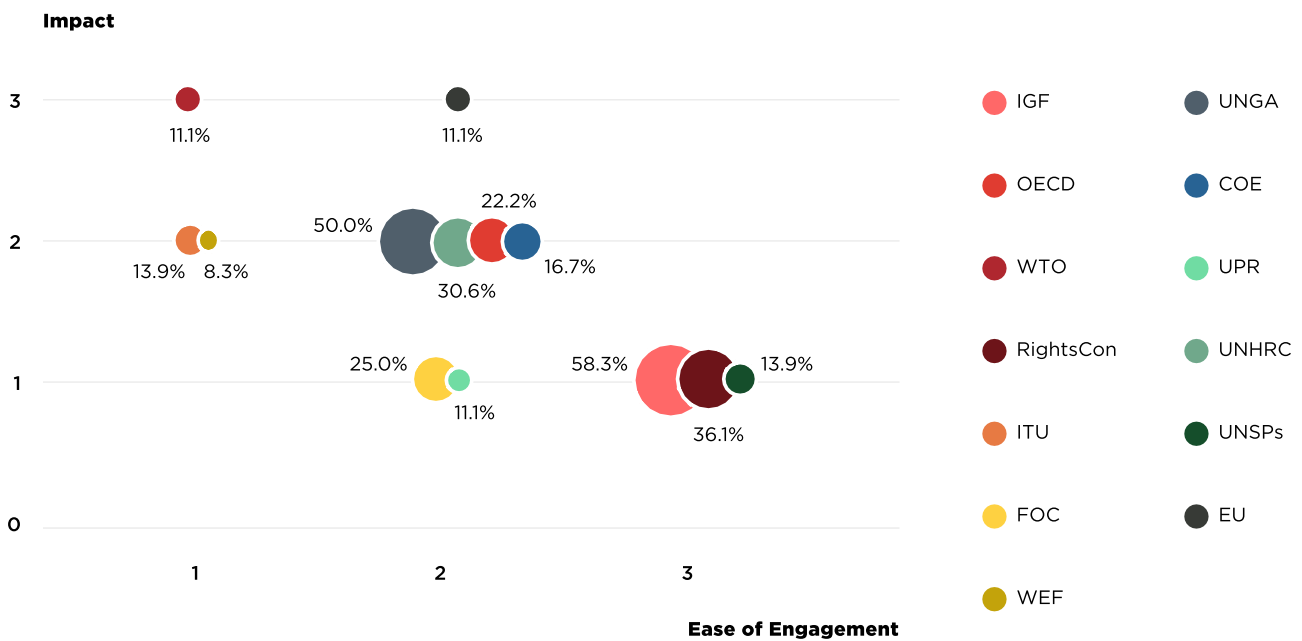
Image 6: Forums and processes mapped against impact score, ease of engagement and percentage of surveyed respondents engaging

Using this data, Image 6 maps the most relevant forums and processes against their impact score (a composite of their influence and level of detail as seen in Image 3), the ease of engagement (Image 5), and the percentage of surveyed respondents engaging (Image 4).

The data suggests a correlation between the openness and ease of engagement at a particular forum or process, and the actual level of engagement. Two of the three forums and processes with highest engagement levels - the IGF and RightsCon - are fully open, multi-stakeholder events where civil society organisations are able to engage easily. Interestingly, these are also two of the forums whose focus is primarily on fostering discussion and the exchange of views, rather than to produce policy outcomes.

The two forums and processes with the lowest engagement levels - the WEF and the WTO - are both more closed and challenging for civil society participation than many of the others. The challenge for civil society organisations of engaging in more closed or restricted forums and spaces is discussed further in Section 4.

Overall, there is a **far greater correlation between the percentage of respondents engaging in a particular forum or process and its openness, than its impact**. This suggests that a key factor in deciding where to engage is how easy it will be, rather than the influence that the forum or process may have. Given

the trend of issues increasingly being decided at multilateral forums and processes - which are often more closed to civil society - this raises a challenge of how to ensure that civil society engagement takes place at the right places, rather than the most accessible ones.

4. CIVIL SOCIETY LANDSCAPE

This section identifies the current level, capacity and gaps when it comes to engagement by civil society in relevant forums and processes.

NOTE ON METHODOLOGY

By using the "snowballing method" in our research methodology, we sought to capture as full a picture as possible of the civil society landscape in 2020. In total, 63 civil society organisations engaging on Internet and digital-related issues at the international level were identified. Of these, 36 responded to the survey inviting their views on the themes explored in this report. More information about the methodology can be found in Annex 1.

Our research identified 63 civil society organisations currently engaging in international forums and processes on issues related to the Internet and digital technology. This number reflects the findings from GPD's 2017 Report, "Advancing Human Rights in the Evolving Digital Environment", which identified a limited number of civil society organisations in the field overall considering the nature of the challenge.[11] In light of the wide-ranging and ever-increasing number of Internet and digital-related issues on the international policy agenda, **this points to a potentially concerning mismatch between the evolution of the policy environment and the community's ability to "keep up"**. It also raises questions about the success of efforts to broaden the field and expand the pool of groups engaging internationally.

Additionally, it remains true that most civil society organisations focusing on the Internet and digital technology are relatively young, with many groups still finding their footing in their respective local environments and building expertise and credentials at the national level. Most of those that have existed for a longer period of time, and are better integrated at the national level, originate in the global North. Often a smaller number of intermediary organisations act as a channel between local groups and global discussions.

The organisations identified tended to fall into one of two categories: (1) those that focus exclusively on issues related to the Internet and digital technology (such as Access Now and the Association for Progressive Communications), and (2) those which focus on specific human rights (such as ARTICLE 19 and Privacy International) or human rights more broadly (such as

Amnesty International and Human Rights Watch) but have developed a particular program or thematic focus on digital issues.

There are, in addition, other thematically focused organisations, such as consumer protection groups, whose work may intersect with digital issues. Survey responses, however, indicated little awareness of these groups and their work. Indeed, our research and interviews suggested a degree of siloisation between traditional human rights groups and those which focus on the Internet and digital technology ("digital rights groups"). The fact that digital rights is sometimes seen not as a subset of human rights more broadly, but a distinct agenda, while understandable historically, is likely to be untenable given the convergence between digital issues and broader policy issues identified in earlier sections of this report.

Our interviews suggested that the community (and the broader field) may in fact be at a critical inflection point, as both types of **organisations look at ways to reposition themselves in the evolving environment**. For those organisations that focus on the Internet and digital technology, the question is how to use that expertise to influence forums and processes which are not so focused, and so how to contextualise that focus when the issues are looked at as part of broader policy areas. For traditional human rights organisations, the question is how to build and integrate an understanding of the impact of the Internet and digital technologies into their existing agendas.

While some organisations focus largely or exclusively at the international level, there are others whose predominant focus is on a particular country or region, but who also engage at international forums and processes which are particularly likely to their respective influence national-level policymaking, such as the Universal Periodic Review or the UN Treaty Bodies. While outside of the scope of the research that we undertook, there is also a large number of civil society organisations who, for different reasons, do not engage at all (or very rarely) at the international level, focusing their capacity at the national level.

Among those civil society organisations that do engage at the international level, there is **far less representation from organisations based in the global South than the global North** (of the 63 civil society organisations identified, 44 were based in the global North and 19 in the global South). This means that certain voices and contexts are not heard and fully taken into consideration at international forums and processes. It also means there are few organisa-

tions able to link the outcomes of these forums and processes with national policymaking spaces, where critical decisions are made.

The ability of civil society organisations in this field to engage is often made more difficult by broader challenges facing civil society more generally, in particular attacks on their legitimacy (i.e. that they are not genuinely representatives of the societies where they work) and restrictions on their ability to operate, such as national registration requirements and restrictions on funding.

Levels and quality of engagement in international forums and processes vary widely, and analysis suggests that to ensure meaningful engagement, approaches may need to be made more strategic. Our research found that **there is little correlation between the number of organisations that engage in a particular forum or process and the potential impact of that forum or process** on actual policy development.

As noted in Section 3, over half of all organisations surveyed participate at the IGF, despite there being little evidence of the IGF's outcomes shaping national level policy. Very few organisations participate, however, at the ITU, even though the standards that it sets are highly influential on its members. Instinctively, this may seem counter-intuitive. Logic would dictate that the more influential a forum or process is on actual policy development, the greater the level of engagement by civil society organisations.

However, not all forums and processes are equal when it comes to their accessibility and opportunities for engagement, a theme which occurred throughout our interviews. One interviewee noted that the value of engagement in forums often comes from opportunities for capacity building, networking, and interaction with donors, all of which can be seen as prerequisites for effective advocacy. Similar points were made by other organisations, and particularly frequently by those based in the global South.

One means by which civil society organisations have sought to address the gaps set out above is through coordination which helps ensure information-sharing, more effective use of limited resources, and a potentially stronger impact. The research for this report found examples of effective coordination among civil society organisations, particularly when it comes to regionally-focused coordination (such as the Al Sur network which brings together civil society organisations from across Latin America) and coordination at specific forums and process (such as at the ITU and the UNGA First Committee's Open-Ended Working Group and Group of Governmental Experts processes looking at cybersecurity).

While there are examples of effective coordination among civil society organisations, however there are many more opportunities which are unseized. Engagement with civil society organisations which are not exclusively focused on the Internet and digital technology is limited, as is engagement with other non-government stakeholders such as the private sector, technical community and academic institutions.

A question that continues to pose challenges is how to identify and measure the impact of civil society organisations when they engage at international forums and processes. It is almost impossible to be able to point to a particular organisation or intervention as the agent of change at international forums and processes. While it is certainly recognised by other stakeholder groups that civil society participation adds value, measuring the impact (and therefore the effectiveness) of civil society engagement is not an easy task.

While impact is difficult to measure, it is certainly far less than it could be. Whether civil society organisations are to be impactful will increasingly depend upon their ability to adapt and evolve. While the precise nature of the future landscape cannot be known, maintaining the status quo is certainly not an option.

Key Challenges

In this landscape, research for this report sought to identify the specific challenges and needs of civil society organisations. That research found five key challenges.

CHALLENGE 1: THE COMPLEXITY OF THE FIELD

A critical challenge facing civil society organisations looking to engage in the international arena is the complexity of the field, as highlighted by Sections 2 and 3 of this report. The challenge is in part the large and increasing number of issues on the international policy agenda, many of which are technical in nature, which can make prioritisation and timely engagement difficult. Alongside this is the fact that there is a large number of international forums and processes, with the same issue often on the agenda of multiple forums and processes. The 2017 Report noted that:

"A particular challenge is the sheer number of relevant policy forums—some of them highly technical, and all of them requiring an investment of time and resources, as well as specific knowledge and skills."

This challenge remains equally valid today and, as a result, it is more difficult for civil society organisations to develop issue-dependent strategies, identify and prioritise relevant forums and processes to engage in, and it can create barriers to effective coordination where different organisations frame the same issue in different ways.

The complexity of the field is not limited to the number of issues, forums and processes, however, but the fact that many of the issues in the field are ultimately broader policy issues which now have a technical dimension: the use of facial recognition technology for the purposes of law enforcement, preventing violence and extremism, improving efficiencies in the provision of healthcare. While these issues may be couched, in the digital policy field as "artificial intelligence" or "online content", in practice many are really broad areas of policy which are being impacted by technology. This means that digital policy-focused civil society organisations may need to engage on issues outside of their traditional areas of expertise in new types of forums and with new types of actors.

These challenges require agility, both in terms of being able to identify relevant issues and forums in a timely manner, as well as the ability to work with different actors and other stakeholders in different policy areas. Incentives to help overcome the inertia and reluctance to engage in new forums and processes of some civil society organisations, should also be considered.

CHALLENGE 2: THE NATURE OF INTERNATIONAL FORUMS AND PROCESSES

A second external challenge, one that was highlighted repeatedly in our survey results and interviews is **the closed nature of many forums and processes, and the consequent limited power and influence of civil society organisations within them**. This was also identified as a challenge in the 2017 Report, which noted the absence of effective mechanisms to ensure civil society participation. The situation is, however, getting more challenging due to the trend of policy discussions moving to more multilateral spaces, where the rules of engagement are set by governments and which often permit limited or no participation (let alone decisionmaking) from non-governmental stakeholders.

The challenge of engagement in multilateral spaces is not unique to civil society organisations engaging on digital policy but should be seen against the broader context of a shrinking civic space globally. This is evidence both through national-level restrictions on civil society organisations being able to operate at all (e.g. through registration requirements or funding limitations) as well as limited opportunities for organisations to engage with government through national delegations at international forums or processes. This trend has exacerbated as a result of COVID-19 with limited opportunities to meet in person with individuals representing governments either at the location of international forums and processes or domestically, a critical means of influencing the outcomes of forums and processes where decisions are made multilaterally.

CHALLENGE 3: THE LIMITED AVAILABILITY OF ADEQUATE SUPPORT, INCLUDING FINANCIAL RESOURCES

Despite the existing opportunities for support, **many survey respondents and interviewees noted the limited availability of the types of support necessary to support civil society organisations work generally and at international forums and processes specifically**. While many organisations spoke out about a range of forms of support, some focused specifically on financial resources.

When it comes to financial support specifically, a large number of civil society organisations, and particularly those based in the global South, highlighted the need for long-term financial resources which can ensure the sustainability of the organisation, and a sufficient degree of discretion in how those resources are used.

Many international forums will be looking at particular issues for long periods of time, potentially indefinitely, and even one-off processes may exist for several years from establishment to conclusion. For an organisation to engage meaningfully, therefore, requires a significant degree of investment and confidence that there will be financial resources available for engagement for a number of years. There is little point in starting to engage in a process without any certainty that you will still be there at the stage when the final outcome or output is agreed. Funding opportunities which provide this degree of confidence are rare, creating a disincentive for an organisation to invest in engagement and international forums and processes. This challenge was also identified in the 2017 Report which noted the phenomenon of "logframitis" where donors "seek to package the long-term and systemic change civil society may be passionate about into packages of fundable projects which fit the donor programme and timelines".

In addition, the necessary funding for engagement goes beyond merely individual staff members' time spent at the forum or process; or even the costs associated with the travel to in-person meetings, the time required to prepare and coordinate with other organisations beforehand. As one interviewee put it, "It's not just about money for travel, flights, hotels, and the time spent there; but also staff time in between, the

inter-sessional staff time, so that you can continue tracking, monitoring issues and preparing."[12] **Funding for relevant costs is not always available, with few funders offering core support funding**. This presents a stark contrast to other stakeholder groups, particularly governments and private sector organisations, who are more likely to be able to commit to long-term investments in forums and processes.

In addition to philanthropic foundations, there are a variety of other types of funders who support international engagement, including government departments and agencies, and the private sector. Different limitations on what these different donors are able to fund, particularly in more repressive environments, may limit opportunities for civil society organisations and the programmes for which they can obtain support. A number of interviewees suggested that greater coordination among these different donors is a potential way of avoiding duplication, encouraging collaboration, streamlining efforts and maximising impact.

It is not only financial resources which are needed for a civil society organisation to be able to engage meaningfully at international forums and processes, however. Many survey respondents and interviewees highlighted **a need for more focused and targeted capacity-building opportunities in order to enable meaningful engagement and influence**. Many of the interviewees referred to specific type of capacity-building required, and which included:

- As the number of issues on the policy agenda increases, there is a corresponding need for knowledge-based capacity-building on those issues, particularly (but not exclusively) when it comes to new and emerging technologies;
- Similarly, as a greater number of forums and processes look at relevant policy issues, there is a consequent need for process-based capacity-building on these relevant forums, processes, spaces. This includes capacity-building on identifying and prioritising forums and processes for engagement, as well as the particular rules, procedures and mechanisms for participation and engagement;
- Capacity-building on how to engage and undertake advocacy strategically, bearing in mind the very different nature of the different types of forums and processes that exist; and
- Mentorship from more experienced civil society organisations before and during engagement.

CHALLENGE 4: LACK OF EFFECTIVE COORDINATION AT THE INTERNATIONAL LEVEL

The 2017 Report highlighted "the lack of effective coordination" as a challenge, and the survey results and interviews make clear that this is still the case, even more so in the case of coordinating global engagement efforts. **There remains a need for improved coordination among civil society organisations, including when engaging at relevant forums and processes**. This is not limited to existing digital policy-focused organisations engaging with each other, although is an important element. Due to the increasing range of policy areas touched by digital technology, there is a need for the silos identified earlier in this section to be broken down, and for there to be greater engagement between "digital rights" groups and others whose expertise and focus is on broader policy areas, such as healthcare, racial equality or the criminal justice system. As one interviewee put it, we need to "broaden the pool".[13]

Divides between organisations which are, in practice, engaging on the same issues, albeit from different perspectives should be broken down. Among the human rights community, this includes divides between "digital rights" organisations and other broad or thematically focused human rights organisations. Beyond this, it may also require digital rights groups to engage with organisations whose approach is not a human rights-based one at all, but whose perspective may be based on sustainable development, environmentalism, humanitarianism or social justice. As interviewees made clear, however, there is no "one size fits all" model for effective coordination, and what it looks like will depend on the forum and process itself, as well as the specific organisations seeking to engage and coordinate. Throughout the interviews, a number of examples and ideas for effective coordination strategies were put forward, including:

- Where participation by a large number of organisations is not necessary (or even possible), agreement among interested organisations as to which ones will prioritise which issues and forums, complemented by informal coordination, in parallel, between participants and other organisations so that all positions and perspectives can be considered;
- Where participation by a larger number of organisations is possible and helpful, larger organisations taking the lead on coordination, given their greater ability to navigate and follow processes in a sustained and coordinated manner;
- One organisation, or a core group of several organisations, taking the lead role in coordinating engagement on particular issues or at a particular forum, sharing information, and ensuring that a wider network of civil society organisations remains engaged and active; and
- Dedicated resources for secretariats that coordinate engagement and coordinate between different civil society organisations (thematically or geographically).

A number of interviewees made the further point that determination about what effective coordination would look like should be determined from the bottom-up, i.e. by those organisations seeking to coordinate, or with expertise and experience on effective coordination on the issue, forum or process. As one interviewee noted,

"Sometimes donors see the issue of coordination and try to solve it by creating artificial coordination and it's a top-down scheme to try to make people coordinate. Some organisations then get together and create a consortium, but when you look at the organisations, each is doing their own stuff. Donors should be incentivising improved coordination, but in a way that is not imposed, but by fostering what is already being done by organisations based on their priorities and relationships. Look at what is there and provide resources to try and support it." [14]

CHALLENGE 5: MAKING THE CASE FOR ENGAGEMENT AT THE INTERNATIONAL LEVEL

Another challenge identified was that many organisations engaging on Internet and digital-related policy at the national level do not engage at the international level, whether through deliberate decision or otherwise. There are three main reasons for this.

The first is that, among some organisations, there is a limited **understanding of the relationships between policies and the forums at the international and national levels** and, in particular, how decisions at international forums and processes impact upon the lived experiences of those whom the organisation represents or advocates for. This also includes an understanding of which forums and processes have the most impact on national legislation and the broader policy agenda.

The second, connected to the first, is as a result of the increased focus given to the Internet and digital technology by governments domestically, namely the increased efforts to regulate at the national level. For civil society organisations engaging on relevant issues, this creates a strong incentive to focus efforts on national level policymaking, given the more direct impact. As Sections 2 and 3 of this report highlight, an assumption that increased national-level policymaking means that efforts should be focused solely or largely at the national level is, however, to misunderstand the situation. Governments are using international forums and processes to promote regulatory consistency through binding instruments or more prescriptive standards and guidelines. Inevitably,

those governments seek to push their own preferred standards or approaches, with significant consequences for the extent to which human rights and social justice are considerations when issues are discussed at the international level. As Section 3 notes, the impact and influence of different international forums and processes varies, but they do nonetheless strongly influence national-level policies, necessitating engagement at both the international and national level.

The third reason is that **policy discussions at international forums and processes are largely driven by technological developments in the global North**, and the consequent interest of governments (and donors) also based there. **It may appear to some civil society organisations that the agendas of these forums and processes do not reflect their concerns and priorities.** While valid, a decision not to engage creates a risk that global policy is shaped and influenced without the full representation of all voices and contexts being heard and considered.

5. CONCLUSIONS AND RECOMMENDATIONS

This section sets out how, in the current landscape, funders can support civil society engagement in international Internet and digital-related policy.

Sections 2 and 3 of this report set out a picture of a complex landscape, with a growing number of issues on the international policy agenda and an increasing number of forums and processes looking at them. But it is not just the large numbers that present challenges to civil society organisations: the issues are themselves increasingly interconnected, and the most critical forums and processes where the issues are discussed and decided are increasingly multilateral spaces, with limited opportunities for civil society engagement.

While there is little that civil society organisations can do to influence the landscape itself, there are still important opportunities for organisations to be able to engage and influence the outcomes and outputs of different forums and processes. Section 4 of this report sets out the current capacity of civil society organisations when it comes to engagement at the international level, but also identifies five key challenges which should be addressed. Donors have a critical role to play, both in helping to ensure that civil society organisations have sufficient resources to be able to engage on relevant issues, and by encouraging the changes which are necessary to ensure that engagement is strategic, effective and impactful.

In a rapidly evolving policy environment, it is as important to look to the future as it is to look at the situation today. Looking forward, however, it is not easy to discern what the future of the Internet and digital-related policy landscape will look like, even taking into account the trajectory of the last two decades.

It is likely that the rapid and continued technological development will simply lead to more and more issues on the international policy agenda. At the same time, technological exceptionalism is likely eventually to disappear, or diminish, as a concept, with issues not viewed through a technological lens, but - as the offline and online continue to merge - simply as broader policy issues which transcend the technological dimension.

If technological exceptionalism does disappear or diminish, this will have an impact upon how issues are framed and, consequently, on the forums and processes that consider them. Automation and robotics, for example, could continue to be seen as distinct technologies requiring specific attention; alternatively, they could ultimately be seen as simply an inherent and fundamental part of the landscape of labour markets and so considered as part of broader labour policy. Artificial intelligence may ultimately no longer be seen as a single technology, but its individual applications considered distinctly as part of other, broader policy areas such as healthcare, education, climate change and criminal justice. Indeed, as noted in Section 2, we are already seeing these broader policy forums and processes including technology on their agenda, potentially ultimately rendering the idea of technologies in and of themselves as issues obsolete.

Just as "the Internet" was considered in and of itself an "issue" in its earliest days, before discussions moved to more specific aspects of the Internet and its use, today's newest digital technologies are going through a similar process. Whether that process continues, and, if so, how long it will take, are impossible questions to answer. But while it is an important long-term trend, it is unlikely that any of the issues considered "relevant" above will disappear in the short, or even the medium term. In the long term, however, such a development will require civil society organisations to be able to engage on issues as they are framed presently (and in forums which are technology-focused) as well as part of broader policy issues (and therefore inevitably in forums focusing on a particular area of public policy, such as healthcare, labour or crime, and not technologically-focused).

Bearing in mind the situation as it is today, and how it may progress in the future, this final section of the report presents recommendations to funders on how they can support civil society engagement in international Internet and digital-related policy.

RECOMMENDATION 1: UNDERTAKE OR COMMISSION REGULAR REVIEWS OR MONITORING OF THE POLICY LANDSCAPE

Given the rapidly evolving policy landscape, a review of the issues on the agenda, as well as of forums and processes, should be undertaken or commissioned on a regular or ongoing basis in order to ensure that relevant actors remain fully abreast of new and emerging issues. This review should be undertaken using a consistent methodology so that results from different reviews can be compared, and trends identified. The methodology should include an assessment of the impact of issues upon human rights and social justice, and of the influence and impact of different forums and processes on national-level policymaking. While the review would not preclude civil society organisations from undertaking their own assessments, the results of this review should be public, so that civil

society organisations are able to use its findings to help inform their own decisionmaking around which issues to engage on.

RECOMMENDATION 2: ENSURE ADEQUATE SUPPORT, INCLUDING FINANCIAL RESOURCES

Financial support for civil society organisations should be provided on a long-term basis, over a number of years, so as to ensure the sustainability of those organisations, and give them the security of being able to invest in long-term engagement in forums and processes. The terms attached to that financial support should give organisations sufficient degree of discretion as to how those resources are used, not only staff time, but office-related costs and costs associated with travel to in-person meetings, and to prepare and coordinate with other organisations beforehand.

Further forms of support should continue to be provided to civil society organisations to build their capacity to be able to engage effectively and strategically. While organisations should themselves be able to identify where greater capacity is needed, consideration should be given to:

- Knowledge-based capacity-building on relevant issues, particularly (but not exclusively) when it comes to new and emerging technologies. This should include the different framings of that issue, and its connections with others.
- Capacity-building on relevant forums and processes. This includes capacity-building on identifying and prioritising forums and processes for engagement, as well as the particular rules, procedures and mechanisms for participation and engagement. It should ensure that civil society is able to engage in both technology-specific forums and forums focusing on particular areas of life, and which may not have any inherent technological focus. It should also take into account the fact that relevant forums and processes are increasingly multilateral, requiring engagement both with governments in capital at the national level, to influence the position they take at multilateral spaces, as well as direct engagement by the organisation at the forum or process itself.
- Capacity-building on how to engage and undertake advocacy strategically, bearing in mind the very different nature of the different types of forums and processes that exist.
- Mentorship from more experienced civil society organisations before and during engagement.

RECOMMENDATION 3: SUPPORT COORDINATION EFFORTS

Support should continue to be provided to civil society organisations to be able to coordinate with other organisations and stakeholders when engaging in international forums and processes. There is no "one size fits all" model of coordination that will be effective at all forums and processes, and the development of coordination models should be done using a "bottom up" rather than "top down" approach. Instead, examples of good practice and case studies of effective coordination should be promoted, and which may include:

- Where participation by a large number of organisations is not necessary (or even possible), agreement among organisations as to which ones will prioritise which issues and forums, complemented by informal coordination, in parallel, between participants and other organisations so that all positions and perspectives can be considered.
- Where participation by a larger number of organisations is possible and helpful, larger organisations with greater capacity and experience taking the lead on coordination.
- One organisation, or a core group of several organisations, taking the lead role in coordinating engagement on particular issues or at a particular forum, sharing information, and ensuring that a wider network of organisations remains engaged and active.
- Dedicated secretariats that coordinate engagement and coordinate between different organisations (thematically or geographically).

Support could also be provided to efforts to build relations between organisations focusing on the Internet and digital technology and those that focus on broader policy issues. A key aim of this support would be to strengthen the capacity of the former to participate in forums and processes which are not focused on the Internet or digital technology, but where relevant issues are discussed. A secondary aim would be to promote consistent and coordinated human rights-based positions being put forward at forums and processes which focus on the Internet and digital technology from a broader range of civil society organisations.

Further, support could also be provided to efforts to build relationships between civil society organisations and other stakeholder groups, including the private sector, technical community and academic institutions, so as to ensure a broader coalition of stakeholders putting forward human rights-based positions at forums and processes.

Finally, there could be value in investing in research into successful examples of coordination, as manifested in other policy areas, such as climate change, consumer protection, and gender equality.

RECOMMENDATION 4: ENCOURAGE INTERNATIONAL ENGAGEMENT THROUGH PROGRAMMATIC SUPPORT AND AWARENESS RAISING

In order to encourage civil society organisations, particularly those that focus solely or largely at the national level, to engage at the international level, the case for engagement needs to be made clearly and persuasively. This requires building a stronger understanding among organisations of the influence and impact of different international forums and processes on national level policymaking, as well as the links between any outputs developed and translation into national legislation and policy. Support should be provided, particularly in the global South, to efforts to make the case for international engagement to new organisations, so as to ensure stronger and more representative civil society participation and engagement at international forums and processes.

This type of programmatic support could be complemented with efforts to raise awareness of the importance of international engagement among the broader donor community.

RECOMMENDATION 5: STRENGTHEN COORDINATION AMONG THE BROADER DONOR COMMUNITY

Greater donor coordination could go a long way in avoiding duplication, encouraging collaboration, streamlining efforts and maximising impact, when it comes to funding civil society organisations engaging at the international level. This could take the form of coordination calls or events for donors, aimed at sharing information, identifying common ground and de-conflicting funding portfolios. In addition, donors could play a more active role in encouraging coordination and synergies among their implementers, which could complement other efforts to support coordination mentioned above. At the minimum, it should involve research into existing funding opportunities and their scope.

ANNEX 1: METHODOLOGY

1. Research themes

This report examines the following four key themes:

- First, what are the most relevant Internet and digital-related issues on the international policy agenda given their likely impact on social justice and human rights? (Section 2)
- Second, what are the most relevant forums and processes where these issues are discussed and decided, their opportunities and limitations for civil society engagement? (Section 3)
- Third, what are the current level, capacity and gaps when it comes to engagement by civil society in these forums and processes? (Section 4)
- Finally, in this landscape, how can funders support civil society engagement in international Internet and digital-related policy? (Section 5)

For the purposes of this report, "human rights" refers to the full range of internationally recognised human rights as contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The term "social justice" refers to an absence of broader structural and economic inequalities in societies.

In accordance with the agreed terms of reference for this report, this report did not look at technical bodies, such as Internet Corporation for Assigned Names and Numbers, the Institute of Electrical and Electronics Engineers, the Internet Research Task Force, the International Organization for Standardization and the World Wide Web Consortium.

When considering whether a forum or process was "international", this report included forums and processes which are regionally-focused or open only to stakeholders from certain states where there is some evidence of broader impacts of the forum or process's outcome and outputs. This approach means that purely regionally-focused forums and processes and those which look at policy at the sub-national level were outside of scope.

2. Data collection and analysis

The initial research for this report relied on a combination of primary and secondary data sources collected through desk-based research, a survey and 18 in-depth interviews. To analyse the data collected, we used quantitative and qualitative data analysis techniques, including content analysis, descriptive analysis and inferential analysis. Initial findings were validated through the in-depth interviews and a first draft of the full report during two focus groups.

3. Data constraints and mitigation

Constraints included data validity and reliability—especially when it came to primary data collection and the assessment of stakeholder capacity—and validity of findings arising from selection bias (i.e. the fact that the sample of groups participating in the research is not randomised and therefore not fully representative of the field). To account for these constraints, we put particular emphasis on data triangulation: where possible, secondary data sources were corroborated by primary data sources, and quantitative data was corroborated by qualitative research and vice versa. In addition, stakeholder identification relied on snowball sampling methodology.

4. Identification of consultees

The research for this report required consultation and engagement with a range of different stakeholders, and particularly civil society organisations. A key element of this research was a survey which asked respondents 14 questions.

To mitigate any potential unconscious bias in determining consultees, and to address any potential gaps or blind spots, GPD used the snowball sampling method to identify relevant consultees for the research survey, asking initial consultees to suggest further ones with whom GPD should consult. GPD reviewed the list of further suggestions, who were then also invited to complete it if they had not already, and repeated the process until there were no significant further suggestions. A total of 36 individuals completed the survey.[15] Of these, 20 represented global organisations with no particular regional or national focus and 16 represented national or regionally-focused organisations (3 in Africa, 4 in Asia, 2 in Europe, 5 in Central and South America, 1 in North America and 1 in the Middle East).

Following the distribution and completion of the survey, a set of interviews was conducted with 18 select stakeholders to corroborate survey findings and deepen analysis of findings coming from the survey.[16] Of these, 11 represented global organisations with no particular regional or national focus, 5 represented national or regionally-focused organisations (2 in

Africa, 1 in Asia, and 2 in Central and South America), and 2 represented no organisation.

Following the first draft of the report, two focus groups were held, with participants provided with a copy of the draft and invited to share comments and feedback on each of its sections. A total of 17 individuals participated in a focus group.[17] Of these, 10 represented global organisations with no particular regional or national focus, 4 represented national or regionally-focused organisations (1 in Africa, 1 in Asia, 1 in Europe, and 1 in Central and South America), and 3 represented no organisation.

While it had initially been planned for the interviews and focus groups to take place in person on the margins of forums or events, due to COVID-19, they took place virtually.

5. Specific methodology for identifying issues

The authors of this report used a range of different sources and methods of analysis and verification to identify the most relevant international Internet and digital-related issues. The process started by undertaking a comprehensive review of all issues being discussed, considered or listed among key stakeholder groups and trendwatchers. These included:

- Published "trend" reports (such as Bond's Internet Trends 2019 Report,[18] the Future Today Institute's Tech Trends Report 2019,[19] and Access Partnership'; Tech Policy Trends in 2019);[20]
- The existing policy issues upon which civil society organisations in this field engage;
- The existing policy issues which are under study by key academic institutions in this field; and
- The results of the survey completed by 36 individuals/organisations which asked them to identify relevant international Internet policy issues.

From this, the authors put together a list of approximately 90 issues. An assessment was then undertaken in relation to each issue of the actual or potential impact of that issue on human rights and social justice. That assessment used a spectrum of options, from "no or negligible impact" to "a high impact". GPD then filtered out those policy issues which either had no impact, or a negligible impact, on human rights and social justice. The remaining issues were then mapped against the results of the survey to identify a smaller number of the most relevant issues, which were tested and validated through the interviews and focus groups.

6. Specific methodology for identifying forums and processes

The authors of this report used a range of different sources and methods to identify the forums and processes where at least one relevant international Internet and digital-related issue was on the agenda. The process started by undertaking a comprehensive review of all international (including regional) forums and processes previously identified in mapping exercises, including:

- The mapping undertaken by the CSTD Working Group on Enhanced Cooperation on internet-related public policy issues and related mechanisms in 2014;
- The processes identified by the Geneva Internet Platform's Digital Watch Observatory;[21]
- The forums and processes identified in "trend" reports (such as Bond's Internet Trends 2019 Report,[22] the Future Today Institute's Tech Trends Report 2019,[23] and Access Partnership'; Tech Policy Trends in 2019);[24]
- The existing forums and processes in which civil society organisations in this field engage; and
- The results of the survey completed by 36 individuals/organisations which asked them to identify relevant forums and processes.

From this review, GPD compiled a list of around 70 forums and processes identified as relevant. For each of these forums and processes, GPD undertook an assessment of two elements. First, the degree of influence that its outputs have on states when developing national legislation and policy. For example, a forum or process that produces legally binding outcomes (such as treaties) would be considered as having a "high level of influence", whereas a forum or process that produces recommendations not even attaining the status of soft law, would be considered as having a "low level of influence". Second, the degree of detail contained within its outputs and therefore the latitude and discretion that states have when translating those outputs into national legislation and policy. For example, a forum or process whose output is transposed into national legislation and policy verbatim (or near verbatim) would be considered as having a "high level of detail". A forum or process whose outputs provide little or no indication of what text would be contained within national legislation or policy would be considered as having a "low level of influence". This assessment was then mapped the results of the survey to identify a smaller number of the most relevant forums and processes, which were tested and validated through the interviews and focus groups.

Survey questions

For the purpose of this survey, "relevant international Internet and digital-related policy issues" refers to policy issues which (i) relate to the Internet or digital technology, (ii) are discussed at global or regional forums or processes, and (iii) have a significant potential impact on human rights and social justice.

1. Which international Internet and digital-related policy issues do you consider to be the most relevant for human rights and social justice? Please list up to 10 relevant policy issues.

2. On which international Internet and digital-related policy issues does your organisation currently engage?

3. What are the international Internet and digital-related policy issues where you think greater engagement from civil society organisations is needed? Please list up to 5.

FORUMS / PROCESSES

For the purpose of this survey, "relevant international forums/processes" refers to any global or regional forum or process, the outcomes, decisions or other outputs of which have a significant influence on real-life impacts related to one or more international Internet and digital-related policy issues.

4. Which international forums/processes do you consider to be the most relevant? Please list up to 10.

5. At which international forums/processes does your organisation currently engage?

6. What are the international forums/processes where you think greater engagement from civil society organisations is needed? Please list up to 5.

7. What would enable more effective civil society engagement in relevant forums?

IMPACT OF COVID-19

8. How, if at all, has COVID-19 affected your programmatic engagement in international forums/ processes on Internet and digital-related policy issues (i.e. priority issues you work on; the forums / processes at which you engage)?

9. What internal or organisational challenges has your organisation experienced as a result of COVID-19?

PARTNERS

10. Who are the key civil society partners in your international efforts? Please list up to 5.

11. Are there other organisations that you think should be involved? Please list up to 5. (In answering this question, consider groups and organisations that may not currently work on digital rights issues or at the international level.)

FURTHER RESEARCH

12. Which organisations or individuals would you suggest should also be consulted as part of this research? Please indicate up to 5 including, if possible, names and email addresses.

13. Would you be happy to participate in follow up interviews to help inform our research?

ANNEX 2: ISSUES

1. Access and digital divides

What is it?

Access refers to an individual's ability to access the Internet and digital technology. Access requires not only the existence of the physical infrastructure necessary to be able to connect to the Internet, but other factors such as affordability, quality of access, and the relevance of available content. The related term, **digital divide**, refers to an uneven distribution in the access to, use of, or impact of ICTs between any number of distinct groups. The divide may be based on social, geographic or any other criteria. Some of the more commonly cited digital divides include differences in access and use of ICTs between men and women, between urban and rural communities, between those in different socio-economic groups, and between more and less developed states. While access is generally the focus of discussions on digital divides, many also look at other aspects, such as the differences in levels of meaningful content (e.g. content in languages spoken by particular users, or relevant to them) and the opportunities and benefits that ICTs provide to different groups.

What is the link to human rights and social justice?

They key impact of access and digital divides upon human rights and social justice is the risk that low or unequal access will introduce or exacerbate inequalities between different groups in societies, and therefore undermine the rights to equality and non-discrimination. Beyond the characteristics upon which discrimination is prohibited under international human rights law (such as gender), these digital divides may also further socio-economic inequalities, undermining social justice. Where ICTs offer the potential to enhance certain human rights, such as freedom of expression or the right to education, low or unequal access and digital divides risk causing differential levels of human rights enjoyment, undermining the equal enjoyment of these rights demanded by international human rights law.

Where is it going and what is driving it?

The issue of access and digital divides has existed since the earliest conversations regarding the Internet and digital technology. While digital divides based on access alone will eventually reduce as the remaining 50% of the world gains access to the Internet, new digital divides may arise based on the affordability of cybersecurity products, and on the availability of newer and emerging technologies, and the economic and societal benefits that they bring.

What are the key forums and processes where it is being discussed? [25]

- Freedom Online Coalition
- International Telecommunication Union
- Internet Governance Forum
- RightsCon

2. Algorithmic decisionmaking and artificial intelligence

What is it?

An algorithm is a process or set of rules to be followed by a machine when making calculations or solving problems. The term **algorithmic decisionmaking** refers to computers making decisions, in some instances decisions that would ordinarily have been made by humans, on the basis of applying algorithms to datasets. They can be used for myriad purposes, but importantly, from a human rights perspective, are often used to analyse or predict an individuals' characteristics or their likely preferences or behaviour. **Artificial intelligence** (or AI) is a related, but more advanced technology, where a machine is not simply applying pre-determined algorithms to datasets to generate an output, but, through trial and error, and refining algorithms itself, "learning" how to perform a particular task or function. At present, most AI can only undertake a single task, or a small range of tasks. The term "true AI" refers to a speculative form of AI that, in the future, would be able to undertake all human cognitive functions.

What is the link to human rights and social justice?

There are countless ways that algorithmic decisionmaking and AI can help enhance human rights and social justice. Better predictive policing can help reduce crime, protecting people's rights to life and security. The use of AI in healthcare diagnostics could mean better enjoyment of the right to health. AI products which can recognise speech and images could help people with certain visual or hearing disabilities participate more fully in society, reducing inequalities.

However, the use of algorithmic decisionmaking and AI also poses serious risks to human rights and social justice. By relying on personal data, and particularly large datasets containing often sensitive information, the use of any form of algorithmic decisionmaking and AI poses risks to the right to privacy depending

on how that information is obtained, secured and processed. Where that data is itself biased, any algorithmic decisionmaking and artificial intelligence which is based on that data could lead to discriminatory outcomes.[26] Algorithms are often used by large online platforms to determine what information we see in our search results or social media pages, as well as to identify particular forms of content that it wishes to remove or deprioritise. This gives huge power to these algorithms to determine what information we can access online, potentially undermining the right to freedom of expression.[27] AI can be used to generate synthetic, but realistic voices, images and videos, such as deepfakes, with a growing potential for them to be deployed by malevolent actors at election times, to fool people into believing that political figures have said something which they have not, undermining the right to free and fair elections.[28]

Where is it going and what is driving it?

At present, algorithmic decisionmaking and AI tools are being developed almost entirely by the private sector, but of growing interest among governments. As algorithmic decisionmaking and AI becomes more advanced, it will only impact people's lives, and be used by public bodies and businesses, more and more. It is likely that ultimately almost all areas of life - from healthcare to education, criminal justice to town planning - will use algorithmic decisionmaking and AI in some way. We are the earliest stages when it comes to the regulation of algorithmic decisionmaking and AI. While there are dozens of sets of ethical guidelines developed by a range of actors,[29] discussions are only starting about what regulation could look like, with the Council of Europe considering developing a legal instrument in the form of a treaty.[30]

What are the key forums and processes where it is being discussed?

- Council of Europe
- European Union
- Freedom Online Coalition
- International Telecommunication Union
- Internet Governance Forum
- Organisation for Economic Co-operation and Development
- RightsCon
- UN Human Rights Council
- UN Special Procedures

3. Cybersecurity and cybercrime

What is it?

While there is no single, universally accepted definition of cybersecurity, the term ordinarily refers to the preservation – through measures including legislation and policy, technology, and education – of the confidentiality, integrity and availability of information and its underlying infrastructure.

Cybercrime refers to two types of crimes which are related to computers and other devices: cyber-dependent crimes and cyber-enabled crimes. Cyber-dependent crimes are those which are solely committed using devices and where the target is another device (for example unauthorised interception or system interference); cyber-enabled crimes are those which are facilitated by devices but can take place without them as well (such as fraud or sharing child sexual abuse imagery). Cybercrimes raise new issues and challenges compared to traditional, "offline" crimes, such as how to collect non-physical evidence, such as data, particularly when it is another jurisdiction, and how cross-border law enforcement agencies should co-operate.

What is the link to human rights and social justice?

The particular actions taken to protect and enhance cybersecurity, and to prevent and respond to cybercrime, legislative or otherwise, will have different impacts upon a range of human rights - and privacy and freedom of expression in particular. These can be positive. Appropriate legislation, effectively and fairly enforced, can help enhance people's human rights, by protecting people's personal data and information (protecting their right to privacy), and ensuring that online communication channels remain open and secure (protecting their right to freedom of expression).

However, measures taken in the name of protecting cybersecurity or combating cybercrime can also pose risks to human rights. Overly broad powers for security and law enforcement agencies to enforce legislation, for example, or overly broad exceptions to cybercrime offences which protect individual's rights to privacy, can constitute or lead to unjustified restrictions on the right to privacy. And where legislation prohibits certain forms of communications or speech, overly broad criminal offences can constitute unjustified restrictions on the right to freedom of expression.

Where is it going and what is driving it?

Cybersecurity, similar to cybercrime, has been an issue on the agenda of governments since the 1990s. Most states have now developed national cybersecurity strategies, and adopted legislative and policy frameworks aimed at enhancing cybersecurity. However, there are continued calls for a new global legal instrument on cybersecurity at the global level, as cyberthreats increase in their complexity and without respect to national borders. Such an instrument is primarily called for by states who are unhappy with the existing cybersecurity frameworks developed by West-

ern states (such as China, Russia and the Middle East), as well as states with limited resources who would benefit from global standards they can easily adopt into national frameworks (such as African countries). As with cybercrime, cybersecurity is also increasingly being used as a guise by some governments as a means of dealing with alleged "threats" to national security, such as political opposition and criticism of the government.

These challenges noted above were recognised in the 1990s, with the initial focus on cyber-dependent crimes. Since then, there have been greater efforts to develop common cybercrime frameworks (such as the global Budapest Convention, as well as regional instruments), but also for more and more traditional crimes to be considered as "cybercrimes" as they move online, such as disinformation, hate speech. Cybercrime is increasingly being used as a guise by some governments as a means of restricting legitimate speech, such as criticism of government.

What are the key forums and processes where it is being discussed?

- Council of Europe
- Freedom Online Coalition
- UN General Assembly (First and Third Committee)
- Internet Governance Forum
- International Telecommunication Union
- RightsCon

4. Data protection

What is it?

Data protection refers to the measures taken to ensure the protection of data while it is processed (as well as when it is collected and stored). While this protection can be taken through technical and educational measures, the term is often used in the context of regulation - via data protection legislation - which mandates particular standards to be employed during the processing of data.

What is the link to human rights and social justice?

Data protection exists to protect personal data and information, which falls squarely within the scope of the right to privacy. It therefore has inherent links to that particular right. In some states, there have even been advancements towards the recognition of data protection as a distinct and separate human right.

Where is it going and what is driving it?

Data protection has been on the policy agenda of governments since the 1970s, with global frameworks - such as the Council of Europe Convention on Data Protection (Convention 108) and the OECD Privacy Guidelines - greatly influencing national legal and regulatory frameworks. However, these frameworks have been challenged by radical changes in how data is collected, processed and shared with third parties due to the Internet and other digital technologies. As noted above, emerging technologies such as algorithmic decisionmaking and AI, big data, blockchain and cloud computing, render existing frameworks potentially unfit for purpose. There are therefore pushes for data protection frameworks to be updated to take into account these new technologies.

What are the key forums and processes where it is being discussed?

- Council of Europe
- European Union
- Internet Governance Forum
- RightsCon
- World Trade Organization

5. Digital identity / identification

What is it?

Digital identity is, simply, the information which is used by computer systems to represent a person. While private companies have long used digital identities for their customers and users, governments are now increasingly offering public services digitally, and even developing national digital identification systems, often incorporating biometrics into the identification process.

What is the link to human rights and social justice?

The primary concern from a human rights perspective when it comes to digital identity, and particularly national digital identification systems, is on the right to privacy. A person's digital identity will contain a large amount of personal information, potentially even their biometric data. The risks of such data being lost, hacked or misused are significant, particularly since biometric data cannot simply be reset in the same as, for example, an identification document or password. Further, depending on the circumstances they are mandated, a single digital national identity system would give governments the power to monitor and surveil citizens, particularly where they are linked to services such as transport, communications, finances and voting.

Where is it going and what is driving it?

The trend is toward greater use of digital identification systems by governments, greater amounts of personal information - including biometric data - being captured on these systems, and greater requirements for digital identification to be provided when using particular public services. While for many governments this provides benefits of ease to citizens, and greater efficiency overall, others are motivated (instead or as well) by the greater level of control that they would have over citizens.

What are the key forums and processes where it is being discussed?

- Internet Governance Forum
- International Telecommunication Union
- World Economic Forum
- RightsCon

6. Encryption

What is it?

Encryption is the ability to encode communications (or information or data) so that only the intended recipient can read or understand them. While some for encryption (or coding) has existed for centuries, modern encryption involves applying a mathematical algorithm to data, scrambling it and making it unreadable. As part of the algorithm used, additional data – called a key – is incorporated, without which the encrypted data cannot be decrypted, even if the algorithm itself is known. It can be used for any form of data storage or transmission, and is common among communication service applications, web browsers and file storage systems.

What is the link to human rights and social justice?

By ensuring that our communications, information and data remain private, encryption enhances our right to privacy. And by providing this privacy over our communications in particular, it is a critical element for the full enjoyment of the right to freedom of communications, particularly where individuals only have the confidence to communicate certain information secure in the knowledge that those communications are private. Encryption also therefore helps enhance the enjoyment of other rights which build upon the right to freedom of expression, such as the rights to freedom of association and peaceful assembly. Measures which restrict the use of encryption, on the contrary, undermine and weaken these rights.

Where is it going and what is driving it?

The Internet, and communications in particular, is increasingly being encrypted. Many browsers and communications service providers now use encryption by default. This is raising concerns among governments who consider that encryption is making it impossible for security and law enforcement agencies to access information and communications necessary to prevent and investigate criminal offences, such as child sexual abuse imagery and terrorism. As such, many governments are proposing that encryption be weakened in certain circumstances, to allow for "lawful access" to the content of encrypted communications by certain state agencies.

What are the key forums and processes where it is being discussed?

- European Union
- Internet Governance Forum
- RightsCon
- UN General Assembly
- UN Human Rights Council
- UN Special Procedures

7. Network disruptions and Internet shutdowns

What is it?

The term **network disruption** (also known as an **Internet shutdown**) refers to any intentional state or state-sanctioned shutdown, disruption or other limitation of the Internet, social media or other form of electronic communication. They most commonly occur during (or prior to) elections, protests or periods of social disorder.

What is the link to human rights and social justice?

A network disruption removes the ability of those affected to access the Internet (or, at least, social media or other forms of electronic communications). Thus, they undermine all of the benefits to human rights provided by the Internet, such as freedom of expression. Where individuals rely upon the Internet for certain purposes, network disruptions may also undermine other rights such as the right to education, or the right to work.

Where is it going and what is driving it?

The number of occurrences of network disruptions is increasing, with certain parts of the world (such as South Asia and Africa) most affected. The number rose from 75 in 2016, to 10 in 2017 and 196 in 2019. With

more people communicating and organising protests or other forms of mobilisation through the Internet and electronic communications, network disruptions are an attractive measure for governments seeking to disrupt such protests or mobilisation efforts.

What are the key forums and processes where it is being discussed?

- Freedom Online Coalition
- Internet Governance Forum
- RightsCon
- UN Human Rights Council
- UN Special Procedures

8. Online content

What is it?

Online content is simply the content that an individual can access online, particularly in the form words, images or videos. Of all types of online content, three receive particular attention in the international policy landscape:

Disinformation, which is false, inaccurate, or misleading information designed, presented and promoted to intentionally cause public harm or for profit. The related term misinformation is the inadvertent or unintentional spread of false, inaccurate or misleading information without malicious intent. The term "fake news" is also often used, however usually to denigrate information or sources of information which particular individuals do not like, rather than because of any lack of veracity.

Hate speech, cyberbullying and **harassment** are all forms of abusive content directed towards individuals and groups online. Reflecting their offline dimensions, these forms of content can be targeted towards individuals generally, but are often particularly directed towards minority, vulnerable and marginalised groups, such as women, LGBT+ individuals, and religious and ethnic minorities. These forms of abusive content may or may not be illegal under national law, and are often, but not always, prohibited under online platforms' terms of service.

Terrorist and violent extremist content can refer, in a narrow sense, to material which constitutes (generally illegal) terrorist or violent extremist activity, such as content glorifying a terrorist attack, or a bomb-making manual. In a broader sense, it can also refer to material which simply relates to terrorism or violent extremism (such as videos of terrorist attacks or mass murders), which may or may not be illegal, and even communications between individuals planning terrorist acts.

What is the link to human rights and social justice?

Disinformation can have adverse impacts on a wide range of human rights, including the right to free and fair elections (by providing electors with incorrect information at election times), the right to health (by providing individuals with false information about healthcare), the right to privacy (when the disinformation is defamatory) and the rights to equality and non-discrimination (when the disinformation targets particular groups or individuals with particular characteristics). However, policy measures to prevent disinformation can, if inappropriate, unjustifiably restrict the right to freedom of expression. Such measures, if they define "disinformation" broadly and prohibit such speech, or incentivise its removal online, can lead to the censorship of legitimate speech.

Abusive content directed toward particular individuals and groups can have the effect of driving them off online platforms, undermining their right to freedom of expression. Their disproportionate impact upon certain groups - such as women, LGBT+ individuals, and religious and ethnic minorities - particularly undermines the equal enjoyment of this right which is mandated by international human rights law. However, restrictions on online speech in the name of combating hate speech, cyberbullying and harassment, potentially risk the right to freedom of expression of all users, where definitions are overbroad, or where AI is used which has high rates of inaccuracy in identifying particular kinds of speech.

Terrorism and violent extremism, which can be facilitated or encouraged by terrorist and violent extremist content, can have a huge impact upon human rights, with terrorist attacks leading to violations of the rights to life and to security. However, measures taken to limit terrorism and violent extremism, and terrorist and violent extremist content in particular, can, depending on the definition of "terrorism" and "violent extremism" and the types of measures, lead to restrictions on the right to freedom of expression by censoring legitimate expression, and potentially - if content is monitored - the right to privacy.

Where is it going and what is driving it?

The increase in the amount of information being shared, particularly on social media and encrypted communication channels, as well as the ease with which such information can be targeted to specific individuals based on their personal data, means it is easy to spread disinformation. As well as this legitimate concern, many politicians are using disinformation (or "fake news") to justify greater control of online speech and communications, and introducing legislative measures that prohibit vaguely-defined types of false or misleading information leading to censorship and self-censorship.

As more and more people access the Internet, and communications and discussions increasingly take place via social media and other online platforms, the potential impact of hate speech, cyber bullying and harassment is increasing. As such, it is an issue of increasing concern to governments.

While terrorists and violent extremists have always been able to use the Internet to communicate with each other, the trend of using the Internet to recruit people or to propagandise is a more recent one. The use of the Internet by ISIS, in particular, and events such as the livestreaming of the Christchurch Attack have only intensified concerns among governments. The driving factor behind increased government interest in restricting terrorist and violent extremist content is the increased use, and sophistication, in the use of the Internet by terrorists and violent extremists. The use of encryption by terrorists and violent extremists to hide their communications and planning, is also making terrorist content more difficult to access and surveil by security and law enforcement agencies.

What are the key forums and processes where it is being discussed?

- Council of Europe
- European Union
- Freedom Online Coalition
- Internet Governance Forum
- Organisation for Economic Co-operation and Development
- RightsCon
- UN General Assembly
- UN Human Rights Council
- UN Special Procedures

9. Regulation of tech companies

What is it?

The regulation of tech companies is simply the legislative or regulatory measures which govern those companies at the national level. Some regulation of tech companies is general in nature, and applies to all companies of whatever sector, such as regulation relating to data protection, health and safety, and competition. Of particular interest are forms of regulation which apply specifically to tech companies, and one predominant issue is that of intermediary liability, i.e. the legal liability of "intermediaries" (usually online platforms) for content and activity on those platforms.

What is the link to human rights and social justice?

Intermediary liability regimes have a strong impact upon the right to freedom of expression. The greater the level of liability that online platforms have for content on those platforms, the stronger the incentives for them to remove content which is illegal or otherwise harmful. However, liability regimes only attach liability for a failure to remove certain kinds of content, and not a failure to leave legitimate content up. The greater the level of liability, the stronger the incentive to remove more content rather than face a sanction. There is also a strong incentive, given the scale of online content, to resort to automated processes for identifying content, and artificial intelligence, which are notoriously inaccurate, and therefore likely to lead to over-removal of content. Any liability regimes which require or incentivise the monitoring of content also raise risks to the right to privacy, by encouraging platforms to monitor and review all online communications.

Where is it going and what is driving it?

Most intermediary liability legislation has until now avoided holding online platforms legally liable for content on those platforms, treating them as mere conduits of that content, comparable to telecommunications providers. However, the scale of illegal and harmful content on online platforms, combined with the tech ability of platforms to moderate that content, means many governments are now considering revising intermediary liability regimes so that online platforms could be held liable for a failure to remove illegal or harmful content.

What are the key forums and processes where it is being discussed?

- Council of Europe
- European Union
- Internet Governance Forum
- RightsCon
- UN Special Procedures
- World Economic Forum

10. Surveillance

What is it?

Surveillance refers to the monitoring of human activity, such as speech, behaviour or movement, by governments or corporations. Governments undertake surveillance primarily in order to monitor for potentially harmful behaviour by individuals, such as the commission of criminal activity. Corporations, however, undertake surveillance for very different

purposes, usually to be able to analyse user behaviour for business purposes, such as product development, or to sell advertising space for third parties.

What is the link to human rights and social justice?

Surveillance of an individual is, de facto, an interference with their right to privacy, and can only be justified in certain, limited circumstances. Surveillance which falls outside of these limited circumstances, such as corporate surveillance where the individual has not consented, or government surveillance which has no legitimate purpose or is disproportionate, will constitute a violation of that individual's right to privacy.

Where is it going and what is driving it?

The increasing use of the Internet and digital technologies means that more and more human activity is taking place using these technologies. And the increase in the number of devices collecting data about individuals means that it is possible to monitor more behaviour using surveillance. Together, these factors make it increasingly attractive and feasible for governments and corporations to surveil individuals, and more aspects of their behaviour. New forms of technology are also creating new means by which individuals can be surveilled, such as facial recognition technology, home devices and personal assistants and drones.

What are the key forums and processes where it is being discussed?

- Internet Governance Forum
- RightsCon
- UN General Assembly
- UN Human Rights Council
- UN Special Procedures

ANNEX 3: LIST OF ORGANISATIONS IDENTIFIED

- Access Now
- Africa Cybersecurity and Digital Rights Organisation
- Amnesty International
- Article 19
- Asociación por los Derechos Civiles
- Association for Progressive Communications
- BEUC
- Bolo Bhi
- Center for Democracy and Technology
- Center for Justice and International Law
- Center for Studies on Freedom of Expression and Access to Information
- Centre for Communication Governance
- Centre for Internet & Society
- Centre for Law and Democracy
- CIPESA
- Citizen Lab
- Coding Rights
- Committee to Protect Journalists
- Cyber Peace Foundation
- Cyber Threat Alliance
- CyberPeace Institute
- Derechos Digitales
- Digital Asia Hub
- Digital Freedom Fund
- Diplo Foundation
- EDRi
- Electronic Frontier Foundation
- Foundation for Media Alternatives
- Fundacion Karisma
- Global Cyber Alliance
- Global Forum for Media Development
- Global Network Initiative
- Human Rights Watch
- ICT4Peace
- IFEX
- International Center For Not-For-Profit Law
- International Media Support
- International Network of Civil Liberties Organizations
- Internet Freedom Foundation
- Internet Society
- InternetLab
- Internews
- IREX
- IT For Change
- KICTANet
- Media Monitoring Africa
- Myanmar ICT for Development Organization
- OBSERVACOM
- Open Net Korea
- Oxfam
- Paradigm Initiative
- Privacy International
- Public Citizen
- Public Knowledge
- R3D
- Reporters Without Borders
- SMEX
- Social Watch and Third World Network
- Software Freedom Law Centre
- TEDIC
- Web Foundation
- Wikimedia Foundation
- Women's International League for Peace and Freedom

ENDNOTES

1 See, for example, McKinsey & Company, How COVID-19 has pushed companies over the technology tipping point—and transformed business forever, 5 October 2020, available at: https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-covid-19-has-pushed-companies-over-the-technology-tipping-point-and-transformed-business-forever.

2 In accordance with the agreed terms of reference for this report, this section does not look at technical issues such as DNS, technical standards and protocols. A separate, standalone report commissioned by the Ford Foundation looks at these technical issues.

3 Future Today Institute, Tech Trends Report 2020, available at: https://futuretodayinstitute.com/2020-tech-trends

4 There have been a number of attempts to categorise Internet and digital-related issues. The Geneva Internet Platform's Digital Watch observatory (operated by DiploFoundation), for example, features over 40 digital policy areas, classified under seven broad clusters (infrastructure, cybersecurity, human rights, legal and regulatory issues, economic issues, development, and sociocultural issues). This taxonomy was devised in a paper developed for the UN Commission on Science and Technology for Development Working Group on Enhanced Cooperation in 2014, although even that paper recognised that "most of the issues are intersectoral, and consequently, they could also be classified in other clusters, depending on the context". Intersessional Panel of the Commission on Science and Technology for Development, The mapping of international Internet public policy issues, 2014, available at: https://unctad.org/system/files/official-document/CSTD_2014_Mapping_Internet_en.pdf.

5 Interview with Wolfgang Kleinwächter, 22 September 2020.

6 In particular, on artificial intelligence and algorithmic decisionmaking, cybersecurity and cybercrime, data protection, digital identity and identification, encryption, online content, surveillance, and the regulation of tech companies (and particularly on intermediary liability).

7 A key exception to this trend is artificial intelligence and automated decisionmaking which, despite being a relatively new issue on the policy agenda, is one on which almost half of all respondents stated that they engage.

8 In accordance with the agreed terms of reference for this report, this section (and this report) does not look at technical bodies, such as Internet Corporation for Assigned Names and Numbers, the Institute of Electrical and Electronics Engineers, the Internet Research Task Force, the International Organization for Standardization and the World Wide Web Consortium.

9 See above, note 10.

10 As well as those listed above, others highlighted during our interviews included the G7 and G20.

11 Global Partners Digital, "Advancing Human Rights in the Evolving Digital Environment", 2017, particularly Section 1.2.

12 Interview with Mehwish Ansari, ARTICLE 19, 21 August 2020.

13 Interview with Peter Micek, Access Now, 26 August 2020.

14 Interview with Valeria Betancourt and Paula Martins, APC, 25 September 2020.

15 The individuals answered on behalf of Access Now, Amnesty International, ARTICLE 19, Association for Progressive Communications, BEUC - The European Consumer Organisation, Bolo Bhi, Centre for Law and Democracy, Centro por la Justicia y el Derecho Internacional, Collaboration on International ICT Policy for East & Southern Africa, CyberPeace Institute, Derechos Digitales, DiploFoundation, European Digital Rights (EDRi), Fundación Karisma, Global Cyber Alliance, IFEX, International Center for Not-for-Profit Law, International Media Support, International Network of Civil Liberties Organisations, Internet Freedom Foundation, Internet Society, InternetLab, IT for Change, KICTANet, Open Net Korea, Paradigm Initiative, Privacy International, Public Citizen, R3D: Red en Defensa de los Derechos Digitales, SFLC.in, SMEX, The Citizen Lab, University of Toronto, Web Foundation, Wikimedia Foundation and the Women's International League for Peace and Freedom.

16 Tereza Horejsova (Diplo Foundation), Alexandrine Pirlot de Corbion (Privacy International) 'Gbenga Sesan (Paradigm Initiative), Mehwish Ansari (ARTICLE 19), Wolfgang Kleinwächter, Dominique Lazanski, Jose Alonso (Web Foundation), David Christopher (IFEX), Laurent Elder and Ruhiya Seward (International Development Research Centre), Valeria Betancourt and Paula Martins (APC), Peter Micek (Access Now),

Luis Fernando Garcia (R3D), Parminder Jeet Singh (IT for Change), María Paz Canales (Derechos Digitales), David Sullivan, Wakabi Wairagala (CIPESA) and Lisa Vermeer (ICNL).

17 The individuals who participated were María Paz Canales, David Christopher, Tomaso Falchetta, Tereza Horejsova, Parminder Jeet Singh, Dominique Lazanski, Paula Martins, Matthew McDermott, Erica Mesker, Peter Micek, Matthew Redding, Ursula Pachl, Alexandrine Pirlot de Corbion, 'Gbenga Sesan, Matthew Shears, David Sullivan and Stefaan Verhulst.

18 Bond, Internet Trends 2019, available at: https://www.bondcap.com/report/itr19/.

19 Future Today Institute, 2019 Tech Trends Report, available at: https://futuretodayinstitute.com/2019-tech-trends/.

20 Access Partnership, Tech Policy Trends, 2019, available at: https://www.accesspartnership.com/tech-policy-trends-2019/.

21 Available at: https://dig.watch/processes.

22 Bond, Internet Trends 2019, available at: https://www.bondcap.com/report/itr19/.

23 Future Today Institute, 2019 Tech Trends Report, available at: https://futuretodayinstitute.com/2019-tech-trends/.

24 Access Partnership, Tech Policy Trends, 2019, available at: https://www.accesspartnership.com/tech-policy-trends-2019/.

25 The key forums and processes here and throughout Annex 2 are taken from the most relevant forums and processes identified in Section 3. Other forums and processes may also look at these issues.

26 In the USA, for example, where algorithms are used in the criminal justice system to determine what sentences should be passed, the algorithms propose more serious sentences for ethnic minority individuals, likely to reflect biases in the datasets. See, for example, ProPublic, Machine Bias, 23 May 2016, available at: https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing..

27 UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/73/348, 29 August 2018.

28 See, for example, Villasenor, J., Deepfakes, social media, and the 2020 election, Brookings, 3 June 2019, available at: https://www.brookings.edu/blog/techtank/2019/06/03/deepfakes-social-media-and-the-2020-election.

29 See, for example, Algorithm Watch's AI Ethics Guidelines Global Inventory, available at: https://algorithmwatch.org/en/project/ai-ethics-guidelines-global-inventory/.

30 Council of Europe, Council of Europe Director Jan Kleijssen's Statement: How to regulate the development of artificial intelligence?, available at: https://www.coe.int/en/web/artificial-intelligence/coe-director-jan-kleijssen-s-statement.