Access Now Submission to the United Nations Special Rapporteur on Freedom of Opinion and of Expression for UN Human Rights Council 53rd Session Report on "Freedom of Opinion and Expression and Sustainable Development: Why Voice Matters"

3 February 2023

Introduction

Access Now welcomes this opportunity to provide relevant information to the United Nations (UN) Special Rapporteur on Freedom of Opinion and of Expression (Special Rapporteur) to inform the thematic report on freedom of opinion and expression and sustainable development: why voice matters to be presented to the UN Human Rights Council at the 53rd session in June 2023.[1]

Access Now, a UN Economic and Social Council (ECOSOC) accredited organization, routinely engages with the UN in support of our mission to extend and defend digital rights of people and communities at risk around the world.[2] Since its founding in 2009, Access Now monitors the abuse and misuse of new and emerging technologies that threaten fundamental human rights, including freedoms of expression, association, and peaceful assembly, as well as the rights to privacy and non-discrimination. We also closely monitor internet shutdowns and coordinate the global #KeepItOn coalition and campaign against internet shutdowns.[3]

This submission addresses two main topics posed by the Special Rapporteur's questionnaire. First, how the right to freedom of opinion and expression contributes to the achievement of the UN Sustainable Development Goals (SDGs). We specifically discuss SDGs 3, 4.7, 9.C, 16.10, and 17.8. Second, we outline factors that affect the right to expression and information of women and girls, as well as of communities experiencing poverty and marginalization, and factors impacting their access to information and communications technology. This section focuses specifically on censorship of sexual and reproductive health information and the disproportionate impact of internet shutdowns. It is important to note that while this submission draws upon examples, these examples are non-exhaustive, and do not represent the lived experiences of all persons at risk. More information is required to take into full account the intersecting forms of oppression of those who are directly targeted.

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[1] OHCHR, Call for submissions to the thematic report of the Special Rapporteur on Freedom of Opinion and Expression to the United Nations Human Rights Council, 2023, available at:
https://www.ohchr.org/en/calls-for-input/2023/call-submissions-thematic-report-special-rapporteur-freedom-opinion-and.
[2] Access Now, About Us, 2021, available at https://www.accessnow.org/. As a grassroots-to-global organization, we partner with local actors to bring a human rights agenda to the use, development, and governance of digital technologies, and to intervene where technologies adversely impact our human rights. By combining direct technical support, strategic advocacy, grassroots grantmaking, and convenings such as RightsCon, we fight for human rights in the digital age.
[3] Access Now, #KeepItOn, 2023, available at: https://www.accessnow.org/keepiton/.

I. The right to freedom of opinion and expression in the achievement of the Sustainable Development Goals.

1. The 2023 Agenda for Sustainable Development – adopted by all United Nations Member States in 2015 – is grounded in human rights.[4] According to the Danish Institute for Human Rights, over 90% of the 169 SDG targets are connected to international human rights and labour standards.[5] The Danish Institute for Human Rights further suggests that the "SDGs can in some ways be seen as a way of operationalising human rights commitments," therefore ensuring that no one is left behind.[6] Protecting human rights is therefore necessary to reach the SDGs and vice versa.

2. Universal access to an open, free, interoperable, and secure internet is essential to the exercise of human rights in the digital age, and therefore to reaching the SDGs. Essential services and infrastructure, which include information and communications technologies, help put in place necessary conditions for people to live in dignity, opportunity, and to fully exercise their human rights.

3. In the prescient words of the former Special Rapporteur, "by vastly expanding the capacity of individuals to enjoy their right to freedom of opinion and expression, which is an 'enabler' of other human rights, the Internet boosts economic, social and political development, and contributes to the progress of humankind as a whole."[7] For example, the digital economy cannot lift people out of poverty if people and communities lack dependable access, or capacity and digital literacy skills to leverage the tools of the internet for their economic progress. For these reasons, in 2016, Access Now created the Human Rights Principles for Connectivity and Development, showcasing the need for infrastructure projects to center on human rights, rather than leave governments, telecommunications companies and development banks to their own devices, however well-meaning they may be.[8]

4. Principle 5 of the Human Rights Principles for Connectivity and Development states that "*connectivity investments for development must be content-agnostic and facilitate freedom of expression, the enabler of other human rights.*" Laws should promote wide access to content, with stable and resilient networks and sustainable systems. In practice, this means:

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[4] UNDP, Human Rights and the 2030 Agenda, 26 September 2019, available at:
https://www.undp.org/speeches/human-rights-and-2030-agenda.
[5] The Danish Institute for Human Rights, The sustainable development goals (SDGs), available at:
https://www.humanrights.dk/learning-hub/content-topic/sustainable-development-human-rights/sustainable-development-goals-sdgs.
[6] *Ibid.*
[7] UN Human Rights Council Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 16 May 2011, UN Doc. A/HRC/17/27, available at:
https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf.
[8] Access Now, The Human Rights Principles for Connectivity and Development, October 2016, available at:
https://www.accessnow.org/cms/assets/uploads/2016/10/The-Human-Rights-Principles-for-Connectivity-and-Development.pdf

a. Governments that routinely censor content, harass journalists, and retaliate against dissidents and human rights defenders do not respect fundamental human rights, and will not likely extend open and secure access. Therefore such Governments should not be entrusted with connectivity funds.

b. Internet shutdowns must be condemned for their damage to educational, economic, and health outcomes, specifically in countries that are just beginning to benefit from widespread connectivity. Internet shutdowns are therefore a bar to achieving the SDGs — specifically SDG targets 16.5, 16.6, and 16.7 — even if these targets avoid any language on freedom of expression and opinion and other related human rights.

c. The free flow of information and ideas, including on scientific matters, depends on a fragile foundation of independent journalists, intrepid activists, and eroding protections for civic actors and research institutions. Climate justice advocates[9] and human rights defenders seeking accountability for business-related harms[10] suffer vicious reprisals and shrinking civic space, compounded by impunity for the attacks they suffer. Public institutions should endeavour to provide sustainable, long-term preservation of and access to digital information, to guarantee posterity and archival oversight.[11] For instance, we must particularly protect environmental defenders fighting to preserve and disseminate scientific and qualitative research regarding climate change, in order to fight the skepticism and misinformation surrounding the threats posed by climate change.[12] Our Digital Security Helpline, which provides 24/7 direct technical assistance to journalists, activists, and others, including environmental defenders, aims to protect such defenders by providing digital security training and assistance.[13]

5. As written, the SDGs implicitly depend on human rights. For instance:

a. **SDG Goal 3: Health.[14]** The internet serves as one of the only places for broad access to medical information and support without stigma. Particularly as a sanctuary of support for those in patriarchal societies, the internet assists in realization of the right to benefit

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[9] *See e.g.,* International Service for Human Rights, HRC48: HRC must respond urgently to environmental crisis and key country situations of concern, 14 September 2021, available at:
https://ishr.ch/latest-updates/hrc48-hrc-must-respond-urgently-to-environmental-crisis-and-key-country-situations-of-concern/
[10] *See* Business and Human Rights Resource Centre, Human Rights Defenders and Civic Freedoms, available at:
https://www.business-humanrights.org/en/big-issues/human-rights-defenders-civic-freedoms/
[11] *See specifically* UN sources for Principle 5 in Access Now, The Human Rights Principles for Connectivity and Development, October 2016, available at: https://www.accessnow.org/cms/assets/uploads/2016/10/The-Human-Rights-Principles-for-Connectivity-and-Development.pdf at pages 9-10.
[12] Access Now, Sustainability and digital rights: how they're connected and what that means for our work, 25 September 2019, available at: https://www.accessnow.org/sustainability-and-digital-rights-how-theyre-connected-and-what-that-means-for-our-work/.
[13] Access Now, Digital Security Helpline, available at: https://www.accessnow.org/help/
[14] SDG Goal 3: *By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes,* available at: https://sdgs.un.org/goals/goal3.

from scientific progress and its application, Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Outright bans on certain categories of data, like sexuality, gender identity, and reproductive health information, are common. In addition, medical practitioners are increasingly relying on the internet for their daily work. Filtering the results medical practitioners see hinders the overall benefits of scientific and medical research. At least one study has shown that shutting down the internet directly impedes access to emergency medicine.[15]

b. **SDG Target 4.7: Education.[16]** Censorship makes it more difficult for people to enjoy robust education and gain open access to knowledge. People are not able to fully grow their intellect, develop opinions, and achieve new skills if they are not able to access the wealth of resources online. Innovation in education, including remote learning, and massive open online courses, depends on access to an open, free, interoperable, and secure internet. The COVID-19 pandemic has only increased the dependence on the internet for education. For instance, in Uganda, testimonies indicate that the internet shutdown prevented the ability of parents to home-school their children, in addition to depriving citizens of economic opportunities.[17] Persons with disabilities become even more vulnerable to the isolating impact of internet shutdowns, as the physical infrastructure in many countries does not provide reasonable accommodations.[18]

c. **SDG Target 9.C: Universal Access to the Internet by 2020[19]** is as close as the SDGs come to recognizing that the internet is essential to achieving sustainable development. Goal 9, "Industry, Innovation and Infrastructure" calls on Least Developed Countries to bring everyone online by 2020. We read this to mean extending access to an open, free, interoperable, and secure internet, not simply censored, surveilled, limited, or app-based connectivity. It is significant that SDG 9.C. had a significantly shorter deadline than the overall 2023 Agenda for Sustainable Development. It reflects an understanding of the urgent need to bring people online as a means to enable the realization of other rights and goals. The COVID-19 pandemic has only amplified this recognition of the internet as an essential tool for daily life. Governments can no longer hide from the stark reality that those who are disconnected

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[15] Institute for Human Rights and Business, Security vs Access - The Impacts of Mobile NEtwork Shutdowns, 30 September 2015, available at: https://www.ihrb.org/focus-areas/information-communication-technology/report-digital-dangers-mobile-network-shutdowns

[16] SDG 4.7: *By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development,* available at: https://www.globalgoals.org/goals/4-quality-education/?gclid=CjwKCAiA_vKeBhAdEiwAFb_nrU0MOGBBZ0Y1eOX2JnSzOS6wFtY64LVmCoDQPeXLkAWoIJVoIjiRCRoCgssQAvD_BwE

[17] Access Now, Cutting internet access when people need it the most: stories from Uganda, 9 February 2021, available at: https://www.accessnow.org/internet-shutdown-stories-from-uganda/,

[18] *Ibid.*

[19] SDG 9.C: *Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020,* available at: https://sdgs.un.org/goals/goal9

from the internet — deliberately or otherwise — are cut off from exercising a broad range of human rights, including the right to access information and express opinions. SDG 9.C was a very ambitious goal that we unfortunately failed to meet.[20] Yet given its significance, it is clear that if we do not double down on the effort to connect everyone to the internet with universal, affordable, open, secure, and high-quality connectivity, we won't be able to meet all of the sustainable development goals by 2030.

d. **SDG Target 16.10: Civic Engagement and Anti-Corruption[21]** clearly states that governments "must open" access to "all sorts" of data, as a matter of accountability and basic, best practice governance. We expect more governments to release information about their demands on private actors for content restrictions and sharing of user data, in addition to greater requirements that tech platforms release policies and account for their practices impacting civic engagement and anti-corruption.

e. **SDG Goal 17.8: Science, Technology and Innovation Capacity[22]** emphasizes that access to technology underpins ever commitment to the eradication of extreme poverty. The use of ICTs is not enhanced by information controls, filtering, or internet shutdowns — nor by the indifference of authorities to protecting the free flow of information online. By promoting, not just tolerating or protecting, freedom of expression, we can build capacity for societies to reach their goals widely.

II. Factors affecting the right to freedom of opinion and of expression and access to information of women and girls and communities experiencing poverty and marginalization

6. The lack of internet access disproportionately affects people in under-served and at-risk communities, such as women and girls, people in racial and ethnic minority groups, rural and indigenous populations, and people with disabilities. People in these groups have traditionally been left at the margins of political power, public policies, and investments, suffering structural and systemic inequality and discrimination.[23] That is also the case when it comes to internet infrastructure and connectivity. Keeping people disconnected means that we are denying them the ability to access essential services and exercise a wide range of rights, and therefore preventing them from thriving in the digital age. This cycle of repeated exclusion with

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[20] More than 3.5 billion left in the dark: why we're still fighting to reach UN targets for internet access, 5 November 2020, available at: https://www.accessnow.org/internet-access/.

[21] SDG Target 16.10: *Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements." In the digital age, governments must open the public's access to all sorts of data and policies to ensure good governance and accountability,* available at: https://www.globalgoals.org/goals/16-peace-justice-and-strong-institutions/.

[22] SDG Target 17.8: *Fully operationalize the technology bank and science, technology and innovation capacity-building mechanism for least developed countries by 2017 and enhance the use of enabling technology, in particular information and communications technology,* available ata: https://www.globalgoals.org/goals/17-partnerships-for-the-goals/.

[23]Los Angeles Times, Ethnic groups' government influence and Internet access go hand in hand, study says, 8 September 2016, available at: https://www.latimes.com/science/sciencenow/la-sci-sn-internet-access-politics-20160908-snap-story.html

discriminatory impact adversely affects people's social and economic prospects and fails to recognize their human dignity — to which we are entitled as a part of our basic human rights.

Censoring sexual and reproductive health information

7. The internet serves as one of the only places for broad access to medical information, including information on sexual and reproductive health, and to receive support without stigma. Yet, in many countries, people are denied access to primary sources of essential information related to their reproductive health because these topics are taboo, including information about menstruation, breastfeeding and childcare, pregnancy, and abortion. States must ensure everyone has free, unhindered, and easy access to credible, reliable, objective and evidence-based information about health products and services.[24] As the UN Office of the High Commissioner for Human Rights has explained, "access to medicines is intrinsically linked with principles of equality and non-discrimination, transparency, participation, and accountability."[25]

8. Social media companies can play a crucial role in facilitating the enjoyment of sexual and reproductive health and rights around the globe, especially where access to information and services is restricted. As noted by the former Special Rapporteur of this mandate, it is essential for social media and technology companies to incorporate principles of human rights law — whether through their terms of service or community standards — to ensure that content-related actions are guided by the standards of legality, necessity and legitimacy that bind state regulation of expression.[26]

    a. Following the United States Supreme Court ruling in the case *Dobbs v Jackson Women's Health Organization* — which ended constitutional protections for abortion rights in the country — numerous American media organizations reported instances of Meta censoring reproduction health and rights-related information in the United States.[27] Specifically, countless media organizations reported that Meta-owned platforms, Facebook and Instagram, took down posts explaining how to access abortion pills. Media reports also indicate that Instagram continues to censor searches for hashtags

[24] UN CESCR Committee, General Comment 22 (2016) on the right to sexual and reproductive health (Article 12 of the ICESCR), UN Doc. E/C.12/GC/22 (2016), para 18, available at
https://undocs.org/Home/Mobile?FinalSymbol=E%2FC.12%2FGC%2F22&Language=E&DeviceType=Desktop&LangRequested=False
[25] Access to medicines – a fundamental element of the right to health, UN Office of the High Commissioner for Human Rights, available at: https://www.ohchr.org/en/development/access-medicines-fundamental-element-right-health
[26] UN Human Rights Council Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 April 2018, UN Doc. A/HRC/38/35, 2018, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/35 para 45.
[27] *Dobbs State Health Officer of the Mississippi Department of Health, et al. v. Jackson Women's Health Organization et al.* Supreme Court of the United States, 2022, available at: https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

referencing terms such as "abortion pills" and "mifepristone"[28] stating that such posts are "hidden because some posts may not follow Instagram's Community Guidelines."[29]

   b. On 17 August 2022, Access Now, and other civil society partners, wrote a letter to Meta calling on the company to address its dangerous censorship of reproductive rights content in the United States.[30] On 24 September 2022, Meta responded to our letter leaving many of our questions unanswered.[31]

9. Overall, these cases of censorship are alarming when it comes to tech company's platforms, and how (or if) such companies plan to protect peoples' rights to seek, receive, and impart information related to sexual and reproductive health.

Internet shutdowns disproportionate impacts

10. Internet shutdowns violate human rights and destroy people's lives and livelihoods. For women around the world, internet shutdowns also take away crucial opportunities and exacerbate the inequality and injustice they already suffer. Governments that impose deliberate network disruptions are choosing to further widen the gender digital divide, deepen existing inequality, and hobble women's economic development.

   a. In **Uganda**, where many women operate small online businesses,[32] a single internet shutdown can result in financial losses of up to one million Ugandan shillings (equivalent of U.S. $280) depending on its scale and scope.[33]

   b. Women in Manipur, **India** do not just lose income during internet shutdowns — the shutdowns have a severe impact on all aspects of their lives, affecting mental health, disrupting work-life balance, and limiting their ability to advocate on salient issues such as child trafficking and domestic violence.

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[28] The U.S. Food & Drug Administration explains that "Mifeprex (mifepristone) is used, together with another medication called misoprostol, to end an early pregnancy." See U.S. Food & Drug Administration, Mifeprex (mifepristone) Information, 2021 available at:
https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information
[29] Goggin, Ben, Instagram restricts some abortion resource posts and hashtags, NBC News, 2022, available at:
https://www.nbcnews.com/tech/internet/instagram-restricts-abortion-resource-posts-hashtags-rcna35522
[30]Access Now, Civil society to Meta: Stop censoring reproductive rights content, 24 September 2022, available at:
https://www.accessnow.org/meta-stop-censoring-reproductive-rights-content/
[31] Meta, Letter to Access Now et al., 24 September 2022, available at:
https://www.accessnow.org/cms/assets/uploads/2022/11/2022_09_23_Brody.pdf
[32] Sandra. A,The Impact of Internet Shutdowns on Women's Online Expression and Participation in Uganda, December, 2020, WOUGNET, available at:
https://wougnet.org/assets/portal/wougnetwebsite/publications/2021-08-13/Research_Report_The_Impact_of_Internet_Shutdowns_on_Womens_Online_Expression_and_Participation_in_Uganda.pdf
[33] Access Now, Cutting internet access when people need it the most: stories from Uganda, 9 February 2021, available at:
https://www.accessnow.org/internet-shutdown-stories-from-uganda/

11. Overall, internet shutdowns rob women of career opportunities and interfere with efforts to empower young girls and other women to learn, gain certifications, and take up challenging roles. To commemorate International Women's Day, last year, we highlighted stories from Cameroon to Uganda to Tanzania and beyond, revealing the ways their own governments are disrupting their lives and robbing them of opportunities that would otherwise strengthen their communities.[34]

Recommendations
1. **States**
   a. Develop or expand emergency funding to help broaden connectivity initiatives, both to help ensure infrastructure build-out and to increase the affordability of connections, especially to historically underserved and marginalized communities;
   b. Marginalized individuals and communities, often lacking opportunities to enjoy new and emerging technologies and ICT devices, should receive targeted support to ensure that digital access, device ownership, and literacy levels grow;
   c. Order internet service providers operating to inform internet users of any potential disruptions and to take all reasonable steps to fix any identified disruptions likely to impact the quality of service they receive;
   d. Remove barriers to access, like mandatory SIM card registration. Mobile phones, affordable data plans, and laptops and other desktop devices should be made available to those in need, where possible;
   e. Encourage the growth of community networks and internet infrastructure by easing restrictions on publicly owned or publicly run networks;
   f. Encourage States to join existing multi-stakeholder initiatives addressing internet shutdown, including the Freedom Online Coalition (FOC) and the FOC's dedicated Task Force on Internet Shutdowns (TFIS).

2. **Private sector** (applicable to both the private sector and the investors of the private sector)
   a. Comply with the due diligence obligations in order to assess, respect, and remedy the human rights impacts of internet shutdowns, pursuant to the U.N. Guiding Principles on Business & Human Rights and the OECD Guidelines for Multinational Entities;
   b. Publicly denounce internet shutdowns and disruptions and highlight their devastating impact. At the very least, companies should consider disclosing such orders publicly;
   c. Document shutdowns' human rights impacts and economic costs, and preserve evidence and reveal any internet shutdown demands from the government;
   d. Investors should only support connectivity for development on the condition that it offers affordable, open, and secure internet access;

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[34] Access Now, Why internet shutdowns are even worse for women, 8 March 2022, available at: https://www.accessnow.org/internet-shutdowns-international-womens-day/.

e. Assessments of connectivity investments must include an evaluation of the impact on human rights;

f. Investment in connectivity should be deployed in tandem with human rights-based capacity building, public access points and digital literacy and skills development.

3. **International organizations**
   a. Monitor the impact of internet shutdowns on discriminatory access to education and take measures to ensure equitable access to the right to digital agency;

   b. Study and report on the impact of new and emerging technologies on the right to education, with particular attention on the realization of this right by individuals and communities at risk of marginalization and vulnerability;

   c. Establish a global fund to increase internet access in Least Developed Countries (LDCs) in light of SDG 9.C. This fund should include the full participation of local communities and civil society in technical skill transfer and digital literacy programming, especially with gender focus (building on the Global Connect Initiative and EQUALS projects) to ensure digital inclusion;

   d. Publicly denounce the use of internet shutdowns as a hindrance to its mission - for example, the World Health Organization can publicly denounce internet shutdowns as acute threat to public health.

Access Now (https://www.accessnow.org) defends and extends the digital rights of individuals and communities around the world. As a grassroots-to-global organization, we partner with local actors to bring a human rights agenda to the use, development, and governance of digital technologies, and to intervene where technologies adversely impact our human rights. By combining direct technical support, strategic advocacy, grassroots grantmaking, and convenings such as RightsCon, we fight for human rights in the digital age.

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