UN Special Rapporteur on Freedom of Opinion and Expression: Consultation on "Freedom of Opinion and Expression and Sustainable Development - Why Voice Matters"

Global Partners Digital submission
February 2023

About Global Partners Digital

Global Partners Digital is a social purpose company dedicated to fostering a digital environment underpinned by human rights.

Introduction

We welcome the opportunity to respond to the UN Special Rapporteur's call for input to inform the development of the thematic report to be presented to the Human Rights Council at the 53rd session.

GPD recognises the importance of the right to freedom of opinion and expression for achieving the Sustainable Development Goals (SDGs). In this submission, we respond to questions 1–4 posed in the call for input and provide a list of recommendations in response to question 8.

Response

Question 1: _In your view, how does the right to freedom of opinion and expression contribute to the achievement of the SDGs? Please provide examples, where possible, with concrete data relating to impact. Please also mention relevant laws, policies and other measures._

The right to freedom of opinion and expression directly supports many of the Sustainable Development Goals, including SDG 4 on education, SDG 5 on achieving gender equality, SDG 10 on reducing inequalities and SDG 16, which includes target 16.10 on public access to information and protecting fundamental freedoms.[1]

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[1] See, The Danish Institute for Human Rights, Sustainable Development and Human Rights Hub, https://www.humanrights.dk/learning-hub/content-topic/sustainable-development-human-rights
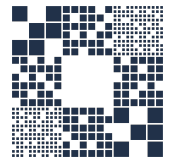
This has become particularly relevant in the context of COVID-19 as the pandemic and its recovery have posed unique challenges for human rights and achievement of the SDGs. States with strong press freedom and protections for expression allowed for greater public scrutiny of COVID-19 policy responses, whereas states without these protections limited access to reliable and accurate medical information that would have directly supported SDG 3.

A number of states have taken concrete steps to translate commitments to protect and promote freedom of expression and sustainable development. Good practice examples include:

- European Union – (a) EU Directive 2019/37, known as the whistleblowing directive, seeks to protect and enable whistleblowers by helping them to raise concerns without fear or retaliation. (b) The proposed Media Freedom Act is a direct response to the erosion of media freedom and safety of journalists. While it is still under development, it seeks to bolster transparency and strengthen media independence, as well protect journalists from undue interference or discriminatory measures.
- New Zealand – New Zealand updated its Protected Disclosure Act in 2022 to provide more expansive protections for whistleblowers, including providing protection even if the whistleblower is mistaken.
- Sweden – Sweden implemented the EU Directive on whistleblowing in 2021, but went further in its protections to cover all reports and disclosure of breach under national and EU laws. It has undertaken efforts under its Action Plan on Defending Freedom Speech to protect journalists, elected officials and others from threats and abuse by setting up a national helpline and victim support centres.

There are also relevant commitments at the international and regional levels.

- The United Nations Convention against Corruption (UNCAC), which was adopted in 2003, requires state parties to promote the active participation of anti-corruption defenders by "respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption".
- The 2020 Teieniwa Vision, which reaffirms the Pacific islands countries commitment to UNCAC, highlights the need for action on "the right to information, the need to protect genuine whistle-blowers and of an independent civil society and responsible media to be involved in national and anti-corruption efforts".
- The 2018 Lima Commitment, which was signed by 35 heads of states, provides commitments on tackling corruption through transparency, access to information, protection of whistleblowers and human rights, including freedom of expression.

Question 2: Are there restrictions or other challenges to freedom of expression or access to information that affect the delivery of public services and achievement of economic, social and cultural rights in your country? Which groups of people are most affected by these restrictions and in what ways? What measures would you recommend to address their problems?

Global Partners Digital works with digital rights organisations in over 30 different countries around the world, and through this work has seen numerous challenges to freedom of expression and access to information that impact these aims.

The ability to exercise freedom of expression online, including the ability to access and impart information, firstly depends on the existence of digital infrastructure and whether it is accessible and affordable.[2] The ITU estimates that 2.7 billion people were not connected to the Internet in 2022; and UNICEF estimates that at least a third of the world's schoolchildren were unable to access remote learning when COVID-19 shuttered their schools.[3] Governments have enacted various laws and policies to overcome the digital divide, providing access and ensuring affordability. These include national plans of action for Internet access and affordability or measures which target digital literacy and education.[4] Some of these policy measures also place special emphasis on groups of people most impacted by poor digital access, for example, the Solomon Islands National ICT Policy 2017 highlights the need to improve access for women in order to advance health and education outcomes.
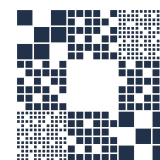
Even where the digital infrastructure is in place for enabling freedom of expression and access to information online, governments are increasingly restricting access to the Internet through the imposition of Internet shutdowns.[5] These measures have a disproportionate impact on freedom of expression and access to information, and negatively impact the various economic, social and cultural rights that are linked with sustainable development. For example, the ongoing Internet shutdown in Tigray, Ethiopia has induced food scarcity (SDG2), prevented health and emergency services (SDG3) and undermined the rule of law and accountability for war crimes (SDG 16). Moreover, states continue to enact laws and policies which impermissibly restrict expression online, often in the name of tackling online safety, public order, disinformation, or cybercrime. Many of these laws are vague or overly broad in scope, pursue aims which are not considered legitimate and carry disproportionate penalties. They are used in ways to censor critical voices, including from journalists and independent media, as well as marginalised groups. For example, the authorities

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[2] This depends on 'meaningful connectivity' as not all forms of digital access will enable expression and development, see A4AI, "Meaningful Connectivity – Unlocking the Full Power of Internet Access", https://a4ai.org/meaningful-connectivity/
[3] UNICEF, COVID-19 and Children, https://data.unicef.org/covid-19-and-children/
[4] OECD, "Bridging the Digital Gender Divide" Report 2018, https://www.oecd.org/digital/bridging-the-digital-gender-divide.pdf
[5] Access Now, "The Return of Digital Authoritarianism: Internet Shutdowns in 2021", Report, 2022.

in Senegal have used vague provisions relating to false news in order to crackdown on permissible expression and silence dissent.[6]

This is a troubling landscape for actors that rely on freedom of expression to advance sustainable development goals, particularly to expose corruption and provide accountability for human rights violations. A recent study in Pakistan identified legal restrictions on expression and access to information as some of the most significant barriers for reporting on critical issues related to sustainable development.[7] Another study from Nigeria found that investigative journalism was essential to fighting corruption, but that repressive press laws, political interferences, technological limitations and limited access to information can hamper accountability.[8] These developments have prompted research and coordination by various stakeholders. Civil society organisations have undertaken efforts to track laws relating to online expression and their enforcement against individuals, such as the LEXOTA database.[9] There are also a growing number of civil society organisations that have called upon states to end reprisal against anti-corrupt human rights defenders.[10]

Question 3: _What factors affect the right to expression and information of women and girls, indigenous peoples and other poor and marginalized communities and their access to information and communications technology in your country? What legal, policy or other measures has the government taken to overcome these problems? How effective are these measures and what improvements would you recommend?_

All of the restrictions and challenges outlined in Question 2 disproportionately impact women and girls and other marginalised groups. The ITU estimates that the majority of those not connected to the Internet in 2022 are women and girls, and that only 19% of women in Least Developed Countries (LDCs) used the Internet in 2020.[11] Furthermore, Internet shutdowns have been shown to disproportionately impact

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[6] Article 19, "Senegal: Rise in Censorship and Crackdown on Expression", 2022, https://www.article19.org/resources/senegal-rise-in-censorship-free-speech/
[7] Sadia Sadia Jamil, "Journalism for Sustainable Development: The Imperative of Journalists' Rights to Freedom of Expression and Access to Information for Promoting Sustainable Development in Pakistan", 9(3) Journal of Applied Journalism & Media Studies (2020).
[8] ES Asemah, "Investigative Journalism, Corruption and Sustainable Development in Nigeria: A Critical Overview", 10(2) Journal of Research in National Development (2013).
[9] LEXOTA,: https://lexota.org/
[10] Transparency International, "States Should End Reprisals Against Anti-Corruption Human Rights Defenders", December 2020, https://www.transparency.org/en/press/states-should-end-reprisals-against-anti-corruption-human-rights-defenders
[11] ITU, "Bridging the gender divide", 2022, https://www.itu.int/en/mediacentre/backgrounders/Pages/bridging-the-gender-divide.aspx

women,[12] LGBTIQ groups,[13] and people with disabilities,[14] among other marginalised groups. These obstacles to Internet access therefore impact the ability of these groups to express themselves and make progress on reducing inequalities.

Even where access to the Internet is secure, women and girls, as well as other groups, can face disproportionate levels of discrimination, harassment and abuse. Disinformation and hate speech may be directed at marginalised groups and can have a chilling effect on their expression and removal of their voices from the public sphere.[15] Members of marginalised groups in positions with public visibility, such as politicians, human rights defenders or journalists, face significant abuse, restricting their ability to freely express themselves and contribute towards the SDGs.[16] Article 19 has called for the protection of women human rights defenders, journalists, and activists that face threats of violence, harassment and arbitrary imprisonment in the MENA region for exercising their right to freedom of expression online and offline.[17]

A number of legal and policy responses by multilateral institutions and states seek to address this issue. The OSCE Ministerial Council decision No. 4/18 of 2018 recognises that the abuse, threats and harassment of women and girls online may silence their voices, and calls on states to work with the private sector to address specific forms of violence faced by women and girls through digital technologies.[18] The UK published its first National Action Plan for the Safety of Journalists in 2021 to set out its plans to protect journalists from threats and intimidation, including online harassment and abuse. In addition, various UN Human Rights Council resolutions and the UN Plan of Action on the Safety of Journalists and the Issue of Impunity are notable for ushering in a more coordinated response to the safety of journalists by all stakeholders.

Some states have sought to protect marginalised groups from abuse and harassment online through online safety regulations and greater oversight of platforms' content moderation processes. Yet, even well-intentioned legislative efforts by governments,

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[12] Sandra Aceng, "The gendered impact of intentional internet shutdowns", Digital Human Rights Lab, https://digitalhumanrightslab.org/blog/the-gendered-impact-of-intentional-internet-shutdowns/; Skylar Thompson and Felicia Anthonio, "Shutdown impact stories: how internet shutdowns affect women in Iran", Access Now, June 23, 2022, https://www.accessnow.org/how-internet-shutdowns-affect-women-in-iran/

[13] Advocacy Assembly, "Pride month, internet shutdowns and the effect on LGBTIQ groups", June 30, 2022, https://advocacyassembly.org/en/news/227/
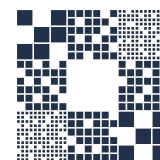
[14] Mohammed Kimbugwe, PWDs bear the brunt of internet shutdowns, NTV, January 18, 2021, https://www.ntv.co.ug/ug/commentaries/pwds-bear-the-brunt-of-internet-shutdowns-3261046.

[15] Article 19, "Freedom of Expression and Women's Equality: Ensuring Comprehensive Rights Protection", 2020, https://www.article19.org/wp-content/uploads/2020/11/Gender-Paper-Brief-1.pdf

[16] See, for example, Dhanaraj Thakur and DeVan Hankerson Madrigal, "An Unrepresentative Democracy: How Disinformation and Online Abuse Hinder Women of Color Political Candidates in the United States", Center for Democracy and Technology, 2022, https://cdt.org/insights/an-unrepresentative-democracy-how-disinformation-and-online-abuse-hinder-women-of-color-political-candidates-in-the-united-states/

[17] Article 19, "MENA: Stop Censorship the Voices of Women Human Rights Defenders", https://www.article19.org/resources/mena-stop-censoring-the-voices-of-women-human-rights-defenders/

[18] OSCE, MC Decision No. 4/18, (2018) MC.DEC/4/18.

including those related to online platform regulation, may pose risks to freedom of expression and sustainable development goals. This is because they may impose requirements or incentivise the use of automated tools for online content moderation. These automated tools perform poorly on recognising novel forms of content and considering context, and introduce risks of algorithmic bias, which is inevitable in most automated processes due to biassed training data or the types of value judgements built into AI systems.[19] These forms of regulation may pose risks to freedom of expression and non-discrimination, negatively impacting the ability of marginalised groups to express themselves, access information or otherwise take actions which would advance sustainable development.

Question 4: *What have digital companies done to promote safe and uninterrupted online access to timely and pluralistic information and communications of women and poor and marginalized communities? How can information and communication technology companies better engage with governments and communities to promote sustainable development?*
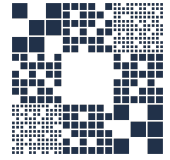
Digital companies play a key role in enabling freedom of expression and access to information, and can therefore directly contribute to sustainable development goals. However, their actions to promote safe and uninterrupted access to timely and pluralistic information and communications of women and poor and marginalised communities have been varied.

Online platforms have taken positive steps to promote safe and interrupted access to timely and pluralistic information online. Some of the largest companies such as Meta have made significant commitments to advancing sustainable development goals, including by improving connectivity in Africa, the Middle East and Asia-Pacific regions.[20] These efforts are a necessary prerequisite for poorer or marginalised communities to be able to access the Internet and engage with online media sources. Online platforms have also developed tools to support journalists and promote safe access to the Internet. This is the case with Twitter's Block Party or Instagram's 'Limits', which allows for individuals to customise their own moderation rules or block content from particular people, including anonymous users. Google's Jigsaw has created anti-harassment tools that allow journalists and media practitioners to limit exposure to abuse content at scale, as well as sharing reports with third parties. WhatsApp has launched a tool that introduces proxy connections to assist people in circumventing Internet shutdowns.

While we welcome these developments, digital companies must work more closely with all stakeholders to promote freedom of expression and sustainable

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[19] Spandana Singh, "Everything in Moderation", New America: Open Technology Institute, 2019, https://www.newamerica.org/oti/reports/everything-moderation-analysis-how-internet-platforms-are-using-artificial-intelligence-moderate-user-generated-content/

[20] META, Driving Towards an Open Internet Ecosystem to Help Tackle the Digital Divide, https://engineering.fb.com/2021/06/28/connectivity/digital-divide/; and META and the Global Goals, https://about.fb.com/sdg/

development. Online platforms that operate globally may not understand local contexts or lack societal or linguistic expertise, which makes it difficult, if not impossible, to mitigate online abuse, promote freedom of expression and support sustainable development. This requires platforms to work with journalists, media entities, and civil society organisations in all regions, including those representing marginalised groups, to be able to effectively promote safe and uninterrupted online access to timely and pluralistic information.

Question 8: *Do you have any specific recommendations that you think the Special Rapporteur should make in her report?*

Recommendation:

States should take appropriate measures to promote affordable, reliable and secure access to the Internet to facilitate the full enjoyment of human rights and achievement of the Sustainable Development Goals. States should also undertake efforts to address the digital divide and digital gender gap outside of their jurisdictions, particularly in regions with less economic resources.
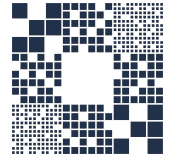
Recommendation:

States must uphold their obligations under international human rights law to respect, protect and promote human rights online and offline, including the right to freedom of opinion and expression. This requires implementing laws that create a safe enabling environment for journalists and independent media, repealing any vague or overly broad laws which do not pursue legitimate aims, refraining from Internet shutdowns, and providing effective remedies for violations.

Recommendation:

States should condemn the abuse, harassment and targeting of journalists by state and non-state actors, particularly women journalists and marginalised groups. They should publicly reaffirm that such acts hinder their ability to exercise freedom of expression and make progress on sustainable development goals.

Recommendation:

Companies should take a rights-based approach to their activities (whether expanding access to the Internet or creating a safe, enabling online environment). They should continue to provide tools to ensure safety online, including through encryption or other means of providing protection for all online users.

Recommendation:

Companies should engage with governments, researchers, journalists, media entities, and civil society organisations, including those representing marginalised groups, to address online abuse, empower women and girls, and support independent media.

Recommendation:

Civil society organisations, including human rights organisations and sustainable development groups, should enhance their cooperation because they are often engaging on the same issues, albeit from a different perspective. Enhanced coordination would bolster their ability to promote freedom of expression and sustainable development.