

Glion Human Rights Dialogue 2020 (Glion VII)

Human rights in the digital age: making digital technology work for human rights

**Background paper for break-out group II:
'Making digital technology work for equality and non-discrimination,
including in the area of economic, social and cultural rights'**

The rapid evolution and spread of new technologies have major implications – both positive and negative - for the enjoyment of human rights. Indeed, numerous contemporary human rights challenges are inextricably linked with the growing power of new technologies, from the spread of online hate speech to attacks on the integrity of democratic elections via personal data theft and micro-targeted on-line campaigns.

The Human Rights Council and the wider UN human rights system have regularly considered the human rights implications of new technologies. Over recent years, that interest has intensified.¹ In light of this growing interest, there is clearly an important role to play for the UN in general, and the human rights pillar in particular, in clarifying universal human rights norms as they pertain to new and digital technologies. At the same time, ensuring that these technologies respect and work to enhance the enjoyment of human rights around the world requires cooperation between all relevant stakeholders and in particular the building of partnerships between governments, civil society and technology companies (e.g. social media companies).

(we should mention the current situation of COVID-19 pandemic and how these technologies could help or worsen the situation, such as infodemics or fake news could worsen the situation, while the online applications can assist contact tracing)

Putting digital technology at the service of equality and non-discrimination, including in the area of economic, social and cultural rights

The Human Rights Council and the wider UN human rights system have regularly considered the human rights implications of new technologies (e.g. resolution 41/11 on 'New and emerging digital technologies and human rights,' adopted in June 2019). Since the start of the global COVID-19 pandemic – which has tended to heighten public awareness about the opportunities (e.g. contact tracing apps) and the challenges (e.g. 'fake news' spread on social media) associated with digital technology - that interest has only intensified.²

Indeed, with resolution 41/11 the Council recognises that digital technologies can have positive, as well as the negative, implications of technologies for human rights – i.e. they can be used to promote and protect human rights, or - potentially – to harm them.³

Regarding the former, the Council, as well as senior UN figures including the Secretary-General and the High Commissioner for Human Rights have repeatedly spoken of the importance of putting digital technology 'at the service' of the basic rights of human rights, including economic, social and cultural rights. For example, in resolution 41/11 the Council recognises: 'that digital technologies have the potential to facilitate efforts to accelerate human progress, to promote and protect human rights and fundamental freedoms, to bridge

¹ <https://www.universal-rights.org/blog/do-digital-technologies-hurt-or-support-human-rights/>

² <https://www.universal-rights.org/blog/do-digital-technologies-hurt-or-support-human-rights/>

³ PP10, Council resolution 41/11

digital divides, to support, *inter alia*, the enjoyment of the rights of persons with disabilities, the advancement of gender equality and the empowerment of all women and girls, and to ensure that no one is left behind in the achievement of the Sustainable Development Goals.’

For her part, the High Commissioner for Human Rights, Michelle Bachelet, has spoken of the ‘enormous’ benefits of digital technology ‘for human rights and development.’ For example, in a speech to the Asian Society in New York in late 2019,⁴ she outlined some of those benefits: ‘we can connect and communicate around the globe as never before; we can empower, inform and investigate; we can use encrypted communications, satellite imagery and data streams to directly defend and promote human rights; and we can even use artificial intelligence to predict and head off human rights violations.’

However, she also – in line with 41/11 and the Secretary-General’s many interventions on this subject (see below), warned that digital technology may – either accidentally or deliberately – also be used to undermine or violate human rights: ‘The digital revolution is a major global human rights issue,’ she said, ‘its unquestionable benefits do not cancel out its unmistakable risks.’

This last point – that the negative impacts of digital technology on human rights can occur unintentionally – is an important one. Indeed, most technology-related human rights abuses probably fall into this category. As Bachelet noted in her speech, these abuses ‘are not the result of a desire to control or manipulate, but [are rather] by-products of a legitimate drive for efficiency and progress.’ For example, contact tracing apps may undermine individuals’ right to privacy, while algorithms designed to make social security systems more efficient (and therefore support economic and social rights) may end up exacerbating inequalities.

We already know what some of these risks look like in practice: recruitment programmes that systematically downgrade women or people from ethnic minorities; algorithms that automatically downgrade the exam results of students from poorer backgrounds; systems that classify black suspects as more likely to reoffend; or predictive policing programs that lead to over-policing in poor or minority-populated areas. The people most heavily impacted are likely to be at the margins of society. Only a human rights approach that views people as individual holders of rights, empowers them and creates a legal and institutional environment to enforce their rights and to seek redress for any violations and abuses of rights, can adequately address these challenges.

‘To respect these rights in our rapidly evolving world,’ according to the High Commissioner, ‘we must ensure that the digital revolution is serving the people, and not the other way around. We must ensure that every machine-driven process or artificial intelligence system complies with cornerstone principles such as transparency, fairness, accountability, oversight and redress.’

The digital divide

On 11 June 2020, UN Secretary-General António Guterres presented a set of recommended actions for the international community to help ensure all people are connected, respected, and protected in the digital age. The Secretary-General’s ‘Roadmap for Digital Cooperation’ was the result of a multi-year, multi-stakeholder, global effort to address a range of issues related to the Internet, artificial intelligence, and other digital technologies. The Roadmap presents recommendations in a number of key areas, including ‘universal

⁴ Keynote speech by Michelle Bachelet, UN High Commissioner for Human Rights, Japan Society, New York, 17 October 2019

connectivity by 2030,' 'ensuring digital inclusion for all, including the most vulnerable - under-served groups need equal access to digital tools to accelerate development,' and 'strengthening digital capacity building.'

Meaningful participation in today's digital age requires a high-speed broadband connection to the Internet. According to Guterres, 'countries report that 93% of the world's population live within physical reach of mobile broadband or Internet services; however, only 53.6% now use the Internet, leaving an estimated 3.6 billion without access.' LDCs are the least connected, only 19% of their populations have ready access.

Numerous barriers exacerbate this 'digital divide.' First, installing traditional broadband connections is costly, and countries often face difficulties in financing the fibre-optic cables required. Second, market dynamics are often unfavourable. Lower purchasing power in LDCs, for example, is a limiting factor for connectivity providers and, although wireless technology may help to spread broadband coverage further, faster and more cheaply, companies do not have the incentives to pursue this. Finally, the lack of digital skills can also limit the adoption of digital tools.

This digital divide reflects and amplifies existing social, cultural and economic inequalities. The gender gap in global Internet use is a stark example – in two out of every three countries, more men use the Internet than women. Similar challenges affect migrants, refugees, internally displaced persons, older persons, young people, children, persons with disabilities, rural populations and indigenous peoples.

The COVID-19 pandemic has again underscored the urgency in bridging these divides. Digital tools have been a lifeline for millions of people. Without prompt action, there is a risk of layering the current barriers to digital inclusion on top of existing obstacles to development. 'In looking towards post-COVID-19 economic support for developing countries, digital tools have to be leveraged for these countries, as well as underserved groups, so that recovery efforts build an inclusive digital infrastructure that would accelerate progress for all.'

Putting technology at the service of economic and social rights, and the SDGs

As noted above, digital technology has both positive and negative implications for the enjoyment of human rights, including economic and social rights; and both sides of the coin have been brought into especially sharp relief during the COVID-19 pandemic.

The mobilisation of digital technologies has, for example, been at the forefront of States' efforts to mitigate the health impacts of COVID-19 and protect people's right to health (e.g. through symptom monitoring and flow modelling). It has also been at the forefront of national strategies to help societies adapt to the reality of living with coronavirus (e.g. through contact tracing and quarantine control) – so that governments can loosen lockdown measures and protect, *inter alia*, people's rights to work and to education. However, the ethical and human rights legal boundaries of deploying digital tools for disease surveillance and control purposes are unclear, and a rapidly evolving debate has emerged globally around the promises and risks of mobilising digital tools for public health.

Similarly, COVID-19 has had a devastating impact on children's/young people's right to education around the world. Schools and universities have been closed, and exams cancelled. In this situation, digital technology

has been crucial for the continuation of teaching and student assessments. Yet in many cases schools and universities have struggled to adapt to this new reality, leading some politicians and journalists to speak of a ‘lost generation.’ Moreover, it is the right to education of pupils/students from poorer backgrounds or already-marginalised groups that has been the hardest hit (because, for example, they may not own a computer or printer, or may have slow Internet connection).

In some instances, government strategies to use digital technology to protect the right to education (and, ultimately, graduates’ right to work) during the pandemic have themselves violated children’s rights – in particular their right to equality and non-discrimination. For example, in the UK, the use of an algorithm to predict pupils’ grades based on where they live and the historic performance of their school was eventually abandoned when it became clear that the system was penalising high achieving students from poorer backgrounds.

The ‘digitalisation’ of social security

Although the COVID-19 pandemic has served to shine a very public spotlight on the relationship between economic-social rights and digital technologies, the growing power of technology to either support or undermine human rights has been evident for some time. One important and illustrative example of this is the ‘digitalisation’ of social security systems. As Michelle Bachelet noted in her speech in New York, such schemes may be conceived as part of a ‘legitimate drive for efficiency and progress,’ yet they can easily result in the violation of rights and the diminishing of human dignity.

At the heart of this case study lies a simple set of questions. Can machine learning replace the experience, intuition and judgement of human beings at the point of delivery? Can artificial intelligence effectively and compassionately judge which families need what kind of help most urgently? Can, in short, algorithms be relied upon to respect, promote and protect human rights without discrimination?

In October 2019, the Guardian newspaper published an opinion piece by Ed Pilkington entitled ‘Digital dystopia: how algorithms punish the poor.’⁵ The article focused on a quiet ‘revolution’ around in world in ‘how governments treat the poor.’ ‘Only mathematicians and computer scientists fully understand this sea change,’ he said, ‘powered as it is by artificial intelligence, predictive algorithms, risk modelling and biometrics.’ And yet, ‘if you are one of the millions of vulnerable people at the receiving end of this radical reshaping of the manner in which States promote and protect economic and social rights, ‘you know it is real and that its consequences can be serious – even deadly.’

The article explained how access to unemployment benefits, child support, housing and food subsidies, and much more, is being digitised and automated. ‘Vast sums are being spent by governments across the industrialised and developing worlds on automating poverty and in the process, turning the needs of vulnerable citizens into numbers, replacing the judgment of human caseworkers with the cold, bloodless decision-making of machines.’ The American political scientist Virginia Eubanks has called this the creation of a ‘digital poorhouse.’

In some countries, for example, algorithms have been used to recalculate welfare payments. Those who had received too much (in some cases, across periods of more than 30 years), have been automatically instructed

⁵ <https://www.theguardian.com/technology/2019/oct/14/automating-poverty-algorithms-punish-poor>

to pay it back. Elsewhere, welfare claimants have spoken of a climate of ‘fear’ and ‘panic’ as social security benefits (now calculated by robots) are changed without warning, without explanation and without remedy.

In each of these cases, digital technology solutions (affecting social services, unemployment benefits, disability allowances and health coverage) are often being rolled out with minimal public consultation and minimal parliamentary debate.

These serious threats and challenges to economic and social rights, and to the equality and non-discrimination principles that underpin international human rights law, are belatedly being considered at the UN. In late 2019, Philip Alston, the-then UN Special Rapporteur on extreme poverty, presented his final report to the UN General Assembly. In it, he warned that the world is ‘stumbling zombie-like into a digital welfare dystopia.’ ‘All too often’ he said, ‘the real motives’ behind the digitalisation of the welfare state, ‘are to slash spending, set up intrusive government surveillance systems, and generate profits for private corporate interests [...] The human rights community has thus far done a very poor job of persuading industry, government, or seemingly society at large, of the fact that a technologically-driven future will be disastrous if it is not guided by respect for human rights and grounded in hard law.’

Key questions to be considered during the break-out group session include, *inter alia*:

1. Bridging the digital divide: Does unequal access to the digital world exacerbate poverty, and how can the international community ‘flip’ the situation so digital technology works for human rights, especially social rights and the right to development, including with the integration of a gender perspective?
2. How to mobilise digital technologies to support progress towards the full enjoyment of social rights, especially during a global pandemic (e.g. rights to health, food, housing, education)?
3. What more can governments do to ensure that the digitalisation of the provision of social service, health care, education and employment, among others, is undertaken in a manner that is consistent with international human rights norms, and places digital technology at the service of economic and social rights, equality and non-discrimination, rather than the other way around? How to ensure that public services provided via new technologies remain under the democratic control of States, the primary duty-bearer?