
Consultative Meeting on Digital Space and the rights to freedom of peaceful assembly and association

Dialogue between experts from Latin America and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Clément Nyaletsossi Voule

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Summary of contributions offered by the experts¹

Regional trends

The freedoms of peaceful assembly and association are recognized as basic fundamental rights that, like the rights to privacy and freedom of expression, are key tools for the defense of democracy, the strengthening of public institutions, and the promotion of citizen participation. These rights are also a necessary condition for the realization of the Sustainable Development Goals. Civil society has played, and continues to play, a fundamental role in the defense of these rights.

Digital development and new technologies have created and presented new challenges to civil society and the exercise of fundamental freedoms. Undoubtedly, new technologies have facilitated an open online environment through the provision of user

¹ ICNL convened and facilitated a dialogue between a group of over thirty experts on digital space and human rights defenders whose contributions and reflections are presented in this synthesis.



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anonymity, physical dislocation, and asynchrony. Furthermore, social networks and digital platforms have been effective tools to activate and amplify access to information and citizen participation. At the same time, government and private actors may abuse these digital tools to misinform, harass, assault, and criminalize human rights defenders. In many cases, human rights defenders at the national level lack the legal protections necessary to face the new types of threats that occur in the digital space.

The rule of law and the quality of the functioning of public institutions are essential conditions for digital technologies to be used creatively and responsibly in advancing democracy and social inclusion. Private companies must be regulated as well, since they play a major role in the creation of hardware, software, the access and use of these technologies, and the storage of and access to sensitive information. In that sense, there is great concern about citizens' ability to counteract the power of the large companies that design these technologies and market their use. There is also concern about the power of states to exercise control over private companies. The regulation of private companies should be in accordance with the protection and extension of fundamental human rights.

THE PARTICIPANTS IN THE CONSULTATIVE MEETING IDENTIFIED THE FOLLOWING REGIONAL TRENDS:

- In Latin America, there is a gap in access to digital services due to an underdeveloped digital infrastructure. According to the Inter-American Development Bank (IDB), on average, only 40% of households in Latin America have access to the Internet, in contrast to 81% of households in countries belonging to the Organization for Economic Cooperation and Development (OECD).
- Civil society organizations (CSOs) have the opportunity to use digital space to promote citizen participation, strengthen the rule of law, and protect the exercise of fundamental freedoms by drawing stakeholders' attention to the most pressing problems of their countries. However, CSOs also face increasingly restrictive environments and are experiencing governmental restrictions ranging from the cancellation of their legal status and the closure of their activities due to digital surveillance and computer blocking. The use of new technologies, such as drones, cell phones, computers, and social networks, among others, have facilitated the implementation of these restrictive practices in a subtler way.
- The digital sphere has given rise to new forms of violence, including "virtual" aggressions. The risk of the restrictions previously mentioned and violent acts arising from the digital space have prompted CSOs to practice self-censorship as a security measure.

- Attacks against human rights defenders in the digital space often reflect the broader trend of gender and sexuality-based violence and racial discrimination.
- Governments, regardless their political affiliation, are restricting CSOs' work. Throughout the region, some governments use technologies to restrict rights and freedoms, promote polarization in society, and attack those who consider themselves political enemies. Government surveillance and espionage are recurrent practices used against activists, human rights defenders, journalists, and social leaders.
- While CSOs carry out activities in the digital space, many are unaware of the appropriate digital security measures available for their protection. For their part, States are not designing or applying strategies for the protection of CSOs in part because they lack the data and analysis to understand that CSOs are more vulnerable to government surveillance.
- Within the region, the domestic legislation that regulates and guarantees the exercise of the rights to peaceful assembly and association is not harmonized and there is a disconnect between the laws within each country that regulate those rights. Additionally, government officials exercise broad discretion over the implementation of the regulations related to these rights.
- The debate on the regulation of the rights to peaceful assembly and association in the digital space is open and in full development. It is necessary to avoid both over-regulation and absolute deregulation. The norms and principles regarding human rights under national and international law should be considered in the discussion on the scope of regulation.

1. Topic: Digital technologies and the rights of freedom of peaceful assembly and association. Mapping the current digital landscape for civil society and social movements in Latin America.

MAIN CONCLUSIONS

- Digital connectivity is not yet within reach to most people in Latin America. However, participation in the different expressions of digital mobilization has grown substantially in the last five years.
- The digital space provides autonomy to activists and has become a tool for access to and dissemination of information. However, digital tools are also used to attack activists and human rights organizations. Surveillance, espionage, and online harassment are systematic practices perpetrated against social leaders, journalists and human rights defenders. In many cases, the degrees of

polarization and violence exercised in the digital space result in the self-censorship of CSOs.

- States should provide protection to individuals and groups in physical and digital spaces to counteract the activities of hate groups.
- Promoting digital rights will help strengthen democratic institutions. New legal protections must be instituted to cover certain digital rights, which are distinct from the rights protected in the physical world. At the same time, digital spaces created for dialogue with public officials must not supplant the physical spaces for public policy participation and advocacy.

2. Topic: Threats and challenges to the exercise of the rights to freedom of peaceful assembly and association in the digital era: A general overview of the situation in Latin America.

MAIN CONCLUSIONS

- Governments generate narratives that create a negative image of human rights defender organizations, justifying restrictions on these organizations by characterizing them as social destabilizers or misusers of public funds. In that regard, the regulatory frameworks for CSOs in several countries increasingly restrict the rights of CSOs and allow excessive discretionary practices by public officials responsible for their implementation.
- There are also concerns among CSOs about: a) the enactment of legislation to prosecute cybercrimes and cybersecurity strategies whose ambiguous language can be used to restrict fundamental rights; b) the efforts of the authorities to delegitimize CSOs based on their funding sources; and (c) the elimination of net-neutrality at the international level.
- In certain countries across the region, the general principles of international law, which guarantee the exercise of the rights to peaceful assembly and association, are not applied to the physical space and even less so to the digital space. There is no political will on the part of governments or enforcement mechanisms of these rights. These types of situations where there are no mechanisms or political will to protect the rights of freedom of association and assembly have been documented in countries such as Brazil, Cuba, Mexico, Nicaragua, and Venezuela.
- Some internet service providers share private information about activists and organizations to government entities. In this context, the fragility of the rule of law increases the vulnerability of organizations and human rights defenders in the face of abuses of power.

- It is not necessary to legally define the exercise of the right to protest and association in the digital space as something different from the concepts that already exist in international law. On the other hand, within the context of international law, it is necessary to further characterize or describe the way in which those rights are practiced in the digital space to better understand how certain regulations could restrict their exercise.

WE ENCOURAGE THE SPECIAL RAPPOREUR TO:

- Include the connection that exists between physical security and digital security in the debate on the regulations of the rights to freedom of association and assembly. It is important to identify the potential consequences for the victims to whom the technology used for espionage or information extraction of CSOs is applied. It is also important to document and publicize the design and purchase of digital surveillance technology by States.
- Promote the use of international mechanisms for the defense of human rights, such as those foreseen by the Inter-American Commission on Human Rights and the United Nations System, for the defense of these rights in the digital space. At the regional level, it is important to encourage the use of judicial processes as a tool to advance towards a better regulatory framework through jurisprudence.

3. Topic: Obligations of the State and the role of the Law

MAIN CONCLUSIONS

- We consider that the current legislation does not favor or protect the exercise of the rights of peaceful assembly and association in the digital space. However, considering the risk of overregulation, it may be more appropriate not to request the creation of new regulations from the State.
- The State assumes multiple roles: a) it may be the object of a claim for violations of human rights; b) it has the responsibility and legal power to protect human rights; and c) it must also preserve the collective memory concerning human rights violations.
- Governments must facilitate individual and CSO access to the Inter-American Human Rights System, since its jurisprudence is valid for all countries that recognize the American Convention and its judgments have repercussions at the regional level.

WE ENCOURAGE THE SPECIAL RAPPOREUR TO RECOMMEND STATES TO:

- Review the definition of "national security" in their national legislations. The concept of security in the digital field is often used to justify violations of rights and

it is difficult for organizations to counteract the implementation of those type of laws. This concept has been used both to promote the dissolution of CSOs and to exercise greater state control over CSOs.

- Create and use accountability mechanisms to respect the right to protest both in the physical and digital spheres.
- Promote the use of transparency protocols that eliminate the secrecy of government intelligence and security agencies that conduct surveillance activities during protests. In addition, it must be mandatory for States to notify affected people when their personal data is required. The case of Argentina is an example of arbitrary acts carried out by governments. In 2017, the government revoked 65 accreditations of representatives of CSOs to participate in the Ministerial Conference of the World Trade Organization (WTO). The government alleged that the individuals could carry out acts of destabilization, supposedly by monitoring social networks, and decided to restrict the participation of those representatives in the event. Two of the representatives were even deported. To the requests for habeas data and access to information of the criteria for which the accreditations were revoked, the state entities responded that it was non-public information and rejected the requests.
- Revisit the principles of freedom of expression and the right to privacy as they are applicable to the digital space in terms of the protection of human rights. We recommend a greater analysis through a human rights perspective on: a) the use of encryption; b) the use of anonymity to exercise the right to freedom of expression; c) facilitating access to the internet to avoid digital blackouts; d) the argument of online violence as an excuse for States to overregulate; and e) the use of cyberterrorism as an excuse for States to cancel the legal status of civil organizations and restrict the right to protest. The Office of the Special Rapporteur could review international standards on the right of peaceful assembly in relation to the digital space. Some standards could be adapted so that they respond the way in which this right is exercised when using technology. For example, the notification requirement cannot be applied to protests in the digital space in the same way that it is applied in the physical space.
- Promote progressive international standards to protect human rights in the digital space. National standards must be developed with a global perspective as protests increasingly involve the participation of international actors.
- Promote greater transparency regarding the purchase of surveillance technology. States should be required to develop clear and precise regulations established by law, not by executive decrees, for the use of communication surveillance technologies. States must ground these laws in international standards for the protection of human rights, including the principles of necessity and proportionality. States must have clear policies for the storage, custody and

destruction of information compiled from the application of surveillance technologies.

- Strengthen the government sectors' technical capacities for the defense and protection of human rights in the digital sphere.

4. Discussion topic: The role of the private sector

MAIN CONCLUSIONS

- It is necessary to protect individuals' personal data so the State cannot access the information through the private companies that offer the digital services. In some cases, there is a high level of cooperation by companies responding to government requests for information not related to the exercise of their business. In Mexico, for example, Claro / Telcel cooperated with 100% of government-submitted requests for information about private users .
- There are concerted efforts by the government to counteract online mobilizations through the use of trolls or government policies aimed at stigmatizing online mobilizations.
- CSOs face asymmetries in access to data in the digital space, particularly in relation to network tracking, targeted political marketing, the business model of companies, among others, which result in practical barriers to the realization of their work.
- The debate on the role of the private sector should address the lack of regulation of censorship by service providers. It cannot be ignored that companies' policies and terms of service affect the exercise of human rights.
- There are two trends in regulation: a) overregulation of censorship, leading to the violation of rights; and b) the absence of regulation resulting in the lack of accountability of the providers or intermediaries of the digital services. For example, companies such as Facebook and Twitter that exercise censorship of certain content are not subject to any domestic regulations. This is particularly worrisome for human rights defenders who must now fight against censorship on digital platforms in addition to censorship by the state. The State must regulate censorship by digital platforms to protect fundamental freedoms and prevent the restriction of information and control of the public conversation.
- It is imperative to coordinate actions to design regulations applicable to private companies and service providers with a focus on the protection and guarantee for the exercise of fundamental freedoms in the digital space.

WE URGE THE SPECIAL RAPPORTEUR TO RECOMMEND THE STATES AND THE PRIVATE SECTOR TO:

- Promote regulations for the provision of digital services that are compatible with the international human rights framework. These regulations must reaffirm the State's responsibility to sanction actions carried out by intermediary companies that limit or restrict the exercise of human rights in the digital space. The terms and conditions of use generated by intermediaries should also be in accordance with international human rights principles.
- Draft norms for service providers that include a definition of the different forms in which the right to associate can be exercised in the digital space to avoid violating them, as well as other rights that could be affected by their commercial actions.
- Promote participation dynamics and accountability, such as the news ombudsmen.
- Guarantee the neutrality of the network. The State must be the guarantor of the neutrality of the network and companies must respect the respective norm.

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