

Right to Internet

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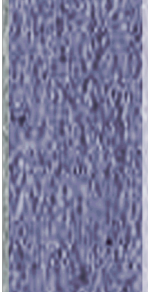
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The realities of the digital age have prompted the international community to arrive at the consensus that human rights must be protected both offline and online.¹ The Internet has become “an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress.”² During the unprecedented COVID-19 pandemic, it was the Internet that allowed many to stay virtually present in conference rooms and university classrooms, maintain social contacts, receive and impart up-to-date information. If the Internet is such an important catalyst³ for the implementation of human rights, should access to the Internet be a right in its own name?

1 United Nations General Assembly, *The promotion, protection and enjoyment of human rights on the Internet*, A/HRC/32/L.20, 27 June 2016.

2 United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, A/HRC/17/27, 16 May 2011.

3 United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, A/HRC/17/27, 16 May 2011; Stephanie Borg Psalia, ‘UN declares Internet access a human right’ — did it really?, 10 June 2011.



Digital divides

As routine and indispensable as the Internet has become in our day-to-day lives, stable Internet access still remains a privilege for many. The COVID-19 quarantine measures, requiring many people to work and study from home, have laid bare the associated digital inequalities.

When the classes at his college switched to an online format, a Russian student had to climb a eight-metres high tree in the middle of winter to get a better Internet signal.⁴ In Mexico City, where about 40% of all households do not have access to a broadband internet connection, schoolchildren had to rely on community-based initiatives for Wi-Fi access to ensure participation in virtual learning during the pandemic.⁵ The socioeconomic status of students has shown to significantly influence the access to remote learning in Nigeria.⁶

Digital inequalities have impact within and beyond classrooms. For people belonging to digitally disadvantaged classes, due to their race, gender, social status, other characteristics, or a combination thereof, digitalization often leads to exclusion. Digitalization of school and university studies leads to the inability to fully enjoy the right to education,⁷ the digitalization of transport services — to limitations on the right to free movement,⁸ the digitalization of healthcare — to obstacles in enjoying the right to the highest attainable standard of health.⁹

The inequality in accessing and using modern information technologies leads to digital divides between developed and developing countries,¹⁰ men and women,¹¹ title citizens and refugees.¹² The multiple and intersecting forms of discrimination which vulnerable groups face may further limit their ability to take advantage of digital technologies.

The Human Rights Council has long affirmed the importance of applying a comprehensive human rights-based approach in providing and in expanding access to the Internet and requested all States to make efforts to bridge the many forms of digital divides.¹³ However, as highlighted by the General Assembly President Volkan Bozkir, “the digital divide, which existed long before COVID-19, was only made worse by the crisis.”¹⁴

4 Reuters, *Siberian student scales birch tree for internet access as classes move online*, 16 November 2020.

5 The World, *Mexico City tortilla shop provides free Wi-Fi for kids to access virtual school*, 8 October 2020.

6 O.B. Azubuikwe, O. Adegboye, H. Quadri, *Who gets to learn in a pandemic? Exploring the digital divide in remote learning during the COVID-19 pandemic in Nigeria*, 15 December 2020.

7 The Office of the High Commissioner for Human Rights, *Digital technology in education can impair the right to education and widen inequalities — New UN report warns*, 17 June 2016.

8 Anne Durand, *Access denied? Digital inequality in transport services*, 30 October 2020.

9 L. Robinson, M. Ragnedda, J. Schulz, *Digital inequalities: contextualizing problems and solutions*, 4 August 2020.

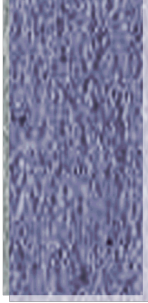
10 The World Bank, *Connecting for Inclusion: Broadband Access for All*.

11 International Telecommunication Union, *Bridging the gender divide*, November 2019.

12 The United Nations High Commissioner for Refugees, *Connectivity for everyone*.

13 United Nations General Assembly, *The promotion, protection and enjoyment of human rights on the Internet*, A/HRC/32/L.20, 27 June 2016, p. 3.

14 The United Nations, *Don't let the digital divide become 'the new face of inequality': UN deputy chief*, 27 April 2021.



Internet Shutdowns¹⁵

Besides the problem of initial digital inequalities across various groups, as well as the lack or absence of Internet access may also be the result of Internet shutdowns.

The June 2021 report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association entitled “Ending Internet shutdowns: a path forward” addresses this problem in much detail.¹⁶ It notes the worrisome tendency of states to use internet shutdowns as tools of silencing, surveilling, and harassing dissidents, political opposition, human rights defenders, activists and protesters and reiterates that “access to Internet and mobile telephony services should be maintained at all times, including during times of civil unrest.”¹⁷

Despite the concerns of international actors, the practice of using Internet shutdowns to silence political dissenters is ongoing and increasingly popular with authoritarian regimes. Since the first attempts to implement internet shutdowns – notably, during the Arab Spring,¹⁸ – the shutdowns have increased in length, scale, and sophistication.¹⁹ The current forms of shutdowns used in Belarus, Myanmar, or Ethiopia affect more people more significantly than ever before, often leading to complete information blockouts.²⁰

In order to remedy digital inequalities and prevent Internet shutdowns, the obligation of states and, to an extent, private companies²¹ must be established. There are several ways of placing the obligation to provide access to the Internet within the existing system of international legal rules. Two key strategies are (1) recognizing access to the Internet as a prerequisite for human rights implementation and (2) recognizing a standalone human right to the Internet.²²

15 United Nations General Assembly, *Ending Internet shutdowns: a path forward. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/47/24/ADD.2, 15 June 2021.

16 United Nations General Assembly, *Ending Internet shutdowns: a path forward. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/47/24/ADD.2, 15 June 2021.

17 United Nations General Assembly, *Ending Internet shutdowns: a path forward. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/47/24/ADD.2, 15 June 2021.

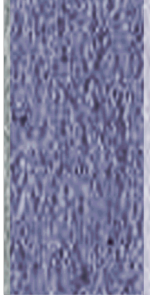
18 D. Olukotun, P. Micek, *Five years later: the internet shutdown that rocked Egypt*, AccessNow, 27 January 2016.

19 United Nations General Assembly, *Ending Internet shutdowns: a path forward. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/47/24/ADD.2, 15 June 2021, para 25.

20 United Nations General Assembly, *Ending Internet shutdowns: a path forward. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/47/24/ADD.2, 15 June 2021, para 25–27.

21 The Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*.

22 Başak Çalı, *The Case for the Right to Meaningful Access to the Internet as a Human Right in International Law*, The Cambridge Handbook of New Human Rights (2020), pp. 276–284.



Internet as a prerequisite for human rights

Access to the Internet is often incorporated into the wider framework of other human rights — such as the freedom of expression and the freedom of peaceful assembly.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression considers the Internet to be the *instrument* for the realization of rights, but does not speak of a standalone obligation to ensure Internet access.²³ Yet, the Special Rapporteur highlights that the role of this technology is so crucial in enjoying human rights in the modern day and age that “ensuring universal access to the Internet” should be a “priority” (but not an obligation) for all states.²⁴

The Special Rapporteur on the rights to freedom of peaceful assembly and of association speaks of the access to the Internet as a “necessary *precondition* for the exercise and enjoyment of human rights online and offline.”²⁵ To illustrate this viewpoint, the Rapporteur also cites the practice of international and regional organizations and bodies that have adopted a similar viewpoint,²⁶ namely:

- the Committee of Ministers of the Council of Europe has affirmed that access to the Internet is a precondition for the exercise of rights and freedoms online;²⁷
- the Inter-American Commission on Human Rights (IACHR) has stressed that that access to the internet is a condition *sine qua non* for the effective exercise of human rights;²⁸
- the African Commission on Human and People’s Rights (ACHPR) has affirmed that universal, equitable, affordable and meaningful access to the internet is necessary for the realization and exercise of human rights.²⁹

The Human Rights Council in its report frames the Internet as a platform, on which human rights may be realized or violated.³⁰ The report speaks of the trend of expanding Internet access, but does not attempt to crystallize a binding obligation to provide Internet access *per se*.

Although the need for stable Internet access is often tied to the realization of human rights to freedom of expression and the freedom of peaceful assembly, it is also often coupled with the right to development.

23 United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, A/HRC/17/27, 16 May 2011, para 2.

24 United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, A/HRC/17/27, 16 May 2011, para 85.

25 United Nations General Assembly, *Ending Internet shutdowns: a path forward. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/47/24/ADD.2, 15 June 2021, para 9.

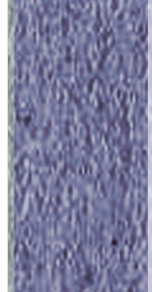
26 United Nations General Assembly, *Ending Internet shutdowns: a path forward. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/47/24/ADD.2, 15 June 2021, para 9-11.

27 Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers’ Deputies), para 1.

28 Inter-American Commission on Human Rights. Standards for a Free, Open and Inclusive Internet (2017), para. 32.

29 African Commission on Human and Peoples’ Rights. Declaration of principles on freedom of expression and access to information in Africa, adopted in 2019. See also, 362 Resolution on the Right to Freedom of Information and Expression on the Internet in Africa — ACHPR/Res.362(LIX)2016.

30 United Nations General Assembly, *The promotion, protection and enjoyment of human rights on the Internet*, A/HRC/32/L.20, 27 June 2016.



The right to development, most notably formulated in the the Declaration on the Right to Development,³¹ is meant to ensure the ability of every human person and all peoples “to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”³² As the Internet reconstitutes society, the ideas of self-determination and equality of opportunity, enshrined in the Declaration, become deeply tied to the Internet.³³ In the spirit of ensuring the right to development, experts call upon developed states, to honour their commitment to facilitate technology transfer to developing states, and to integrate effective programmes to facilitate universal Internet access in their development and assistance policies.³⁴

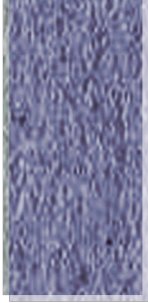
The strategy of viewing the Internet as a prerequisite for the realization of human rights helps incorporate the digital dimension into existing human rights framework, without introducing major amendments or declaring a new right – processes, which may cause backlash from states, unwilling to undertake additional commitments. However, such strategy does not always equip individuals with clear tools to remedy the violations, where the very essence of the breach lies in unequal Internet access or absence thereof.

31 United Nations General Assembly, *Declaration on the Right to Development, Resolution 41/128*, 4 December 1986.

32 United Nations General Assembly, *Declaration on the Right to Development, Resolution 41/128*, 4 December 1986.

33 D.M. Nyokabi, N. Diallo, N.W. Ntesang, T.K. White, T. Ilori, *The right to development and internet shutdowns: Assessing the role of information and communications technology in democratic development in Africa*, Global Campus Human Rights Journal, Issue 3 (2019), pp. 147–172.

34 United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/17/27*, 16 May 2011, para 86.



Internet as a separate right

One of the possible ways of bridging the digital divides and responding to politically motivated shutdowns is recognizing that having a stable access to the Internet is something that everyone is entitled to. In other words, people should be able to claim the Internet as their right, not merely as a privilege that states are free to give their citizens or take away from them. The idea of framing access to the Internet as a standalone right has been entertained on international organizations' platforms, in national laws, and in academia.

The right to Internet takes root in the right of the public to use the international telecommunication service, enshrined in Article 33 of the Constitution of the International Telecommunications Union.³⁵ This rule is not equivalent to recognizing the right to Internet as a human right *per se*, yet it imposes an obligation on the International Telecommunications Union member states to guarantee to the public the right to correspond by means of, *inter alia*, the Internet.

The report of the Organization for Security and Cooperation in Europe notes that certain countries and international organizations, including the United Nations, are considering whether to recognize Internet access as such to be a fundamental and universal human right.³⁶ Indeed, the practice of, *inter alia*, Mexico,³⁷ India,³⁸ Costa Rica,³⁹ France,⁴⁰ Finland,⁴¹ Estonia,⁴² Greece,⁴³ and Spain⁴⁴ shows that the right to Internet increasingly often finds its place in the national laws of states in a form of self-imposed obligation.⁴⁵ From the standpoint of customary international law, such legislative provisions may be indicative of both state practice and *opinio juris* of states, which consider themselves bound to guarantee stable Internet access to their citizens.

Establishing the right to Internet as a standalone human right is also supported by a number of scholars:

- As early as 2000 Michael L. Best argued that the Internet is more than just an incrementally useful information technology and the right to Internet access should be a human right in and of itself;⁴⁶
- Artem Khusnutdinov in his 2017 article argued that the right to Internet is in the process of crystallizing and may soon evolve into a new universal right;⁴⁷

35 International Telecommunication Union, *Collection of the basic texts of the International Telecommunication Union adopted by the Plenipotentiary Conference*.

36 Organization for Security and Co-operation in Europe. The Office of the Representative on Freedom of the Media, *A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States*, p. 37.

37 *Mexico Constitution*, Article 5A.

38 *Supreme Court of India 2020 ruling*.

39 *Ruling of the Constitutional Chamber of Costa Rica*.

40 *Decision n° 2009-580 of the Constitutional Council of France*.

41 *Finland Communications Market Act*.

42 *Estonia Electronic Communications Act*, §70.

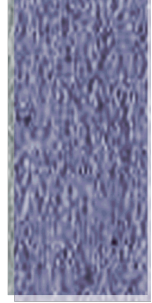
43 *Greece Constitution*, Art. 5A.

44 *Spain Law on Sustainable Economy*, 2011, Article 52.

45 Stephanie Borg Psalia, *Right to access the Internet: the countries and the laws that proclaim it*, Diplo, 2 May 2011.

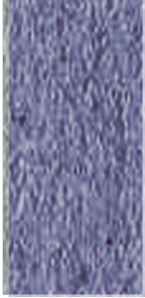
46 Michael L. Best, *Can the Internet be a Human Right?*, Human Rights & Human Welfare, Volume 4 (2004).

47 Artem Хуснутдинов, *Право на доступ в Интернет — новое право человека?*, Сравнительное конституционное обозрение №4 (119), 2017, с. 109-123.

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- Başak Çalı in her 2020 piece concluded that “on balance of argument, the instrumental case for deriving a stand-alone right to internet access as a human right in international law fares stronger than those arguments that would advise against it.” She also makes an important addition by saying that the right in question should be the right to meaningful access to the Internet, rather than the right to the Internet generally.⁴⁸

The recognition of the right to the Internet as a standalone right gives people a leverage to demand justice when this right is violated, without fitting it into other human rights frameworks. Those who live in digital deserts may be able to take their governments to courts over failures to address the digital divides and the concerning practice of using Internet shutdowns may become definitively outlawed. The spheres that were not within the original purview of those who drafted key human rights instruments in the 20th century — be it environmental advocacy or digital rights — challenge human rights systems to evolve and incorporate new rules.

⁴⁸ Başak Çalı, *The Case for the Right to Meaningful Access to the Internet as a Human Right in International Law*, *The Cambridge Handbook of New Human Rights* (2020), pp. 276–284.



Conclusions

As our lives rely on the digital realm, the Internet has become an essential resource — arguably, almost as essential as food and water, the rights to which are well-established under international law. Remote work and education, digital civil resistance, optimized modes of providing government services — have all been made possible by the Internet.

The right to the Internet is somewhat in between *lex lata* and *lex ferenda*. Although it exists as an ancillary to many other rights, such as the freedom of expression, the freedom of assembly and association, the right to development, it may not have risen to the level of a black letter rule yet. However, the process of the right to the Internet crystallization is underway — with states taking a more decisive stance on their obligations in the digital domains and thus contributing to the formation of customary international law.

The COVID-19 pandemic has shown the extent to which our lives may come to depend on stable Internet access. The overly optimistic views of the Internet as a great equalizer have shattered as the digital privileges and inequalities have manifested themselves. Conceptualizing the Internet as a human right should be on the agenda of international and local actors, if we are truly willing to build a “people-centred, inclusive, and development-oriented information society,” as we once declared.⁴⁹

⁴⁹ Letter dated 7 October 2004 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, *Report of the Geneva phase of the World Summit on the Information Society*, A/C.2/59/3, 27 October 2004.