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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Association for Progressive Communications, a non-governmental organisation in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 June 2020]

* * Issued as received, in the language(s) of submission only.

Upholding human rights online in the context of COVID-19

The Association for Progressive Communications (APC) is an international organisation and a network of organisations dedicated to empowering and supporting people working for peace, human rights, development and protection of the environment, through the strategic use of information and communication technologies (ICTs). APC has 57 organisational members and 35 individual members active in 73 countries, mostly in the global South.

We submit this written statement¹ ahead of the Human Rights Council's 44th session to express our concerns about the human rights online implications of States' measures adopted to respond to the COVID-19 crisis. The current pandemic has thrown challenges for human rights and, in some cases, responses by governments have revealed fault lines that challenge international human rights law. While we recognise that these are extraordinary times, this should not be the basis for human violations in online spaces. States' responses to the crisis should be proportionate and avoid curtailing human rights.

I. Internet access and exacerbated digital divides

Equitable, affordable and reliable internet connectivity is paramount in accessing relevant information and effective online health assistance, for staying connected and for psychological and psycho-social support. The continuation of education for children and adults has now also become dependent on reliable connectivity and devices. The internet allows us to sustain economies through remote work and, just as importantly, to strengthen responses from communities and social movements, including to ensure that human rights are upheld by authorities.

Interruptions to access to the internet or shutdowns are in violation of international human rights law, as the Council recognised, and cannot be justified under any circumstances during the pandemic.² Prolonged and intentional disruption of communications services continues, for instance in Kashmir, where the population is now restricted to 2G internet services, affecting access to critical health information.³

Other measures such as the so called social media tax, introduced in Uganda in 2018, which requires telecom subscribers to pay a daily subscription to access social media platforms, stifles meaningful access to the internet. As the Collaboration on International ICT Policy in East and Southern Africa (CIPESA) stated, despite several requests to suspend the tax during the pandemic, the government has upheld it, thereby excluding segments of the population from easily accessing information and resources via these platforms.⁴

People who have been historically marginalised are the most adversely impacted by the pandemic. This is particularly true for people at the intersections of multiple forms of discrimination and exclusion, including those related to sexuality and gender. Inequality in terms of internet access exacerbates an already repressive, harmful and unequal context for women and people of diverse genders and sexualities.⁵ In addition, the lack of access to reliable or

1 This written statement builds on "Closer than ever: Keeping our movements connected and inclusive", the position paper that outlines the Association for Progressive Communications' (APC) thinking on the pandemic.

<https://www.apc.org/en/pubs/closer-ever-keeping-our-movements-connected-and-inclusive-association-progressive>

2 Voule, C. N. (2019). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. https://www.ohchr.org/Documents/Issues/FAssociation/A_HRC_41_41_EN.docx

3 <https://thewire.in/government/kashmir-2g-internet-restored-in-eight-of-ten-districts>

4 <https://www.apc.org/en/news/cipesa-ugandas-social-media-tax-undermining-covid-19-fight>

5 Bridging the gender digital divide from a human rights perspective: APC submission to the Office of the High Commissioner for Human Rights, February 2017.

https://www.apc.org/sites/default/files/APCSubmission_OHCHR_BridgingGenderDigitalDivideHumanRightsPerspecti

affordable internet connection can also harness the work of human rights and women's rights defenders supporting these groups and communities, as Unwanted Witness, an APC member organisation, documented in Uganda.⁶

Concerted efforts to bring the benefits of meaningful internet access to all people are necessary in the current circumstances. In the immediate and short term, barriers related to costs and data capacity should be addressed. Establishing fee waivers for key disadvantaged groups, reducing the costs of internet-enabled devices (smartphones) and data packages, and eliminating data caps or at least increasing mobile data allowances are practices that can be easily adopted and implemented by internet providers to ensure people can access the internet while under lockdown. Governments should include subsidised data packages and laptops as part of measures related to social protection strategies for low-income populations and health workers to assist them in the crisis. They should also acknowledge the importance of free public access facilities and hotspots by putting them back on the connectivity agenda and investing in those solutions. Those solutions will be particularly important while the social distancing restrictions are progressively eased. It will clearly take a longer time for developing countries to universalise household connectivity. Because of this, public access is an important step in mitigating the social and economic effects of the crisis.

In the longer term, it is critical that attention is urgently given to affordable and appropriate internet access for communities. A radical change of policy, logic and strategy is necessary to address the needs of the billions of people in developing countries who still suffer from digital exclusion.⁷ The first step is to provide alternatives for infrastructure deployment, expanding coverage and addressing affordability. Governments should create enabling ecosystems to allow small-scale networks and locally-owned telecommunications infrastructure to emerge and expand. Decentralised community-built and owned networks are the most effective way to overcome digital exclusion in areas that are still isolated from the social and economic dynamics of the digital era.

Digital technologies can play a part in mitigating the impacts of climate change, as well as helping displaced and affected communities to adapt to the challenges that lie ahead. We would like to draw the Council's attention to the fact that the reliance on the intensive use of digital technologies increases to perform numerous activities, including remote work, schooling and provision of services, among others, eventually increases the production of devices and its impact on the environment.

II. Human rights concerns regarding responses to the pandemic

As emphasised by United Nations human rights experts, restrictions adopted "should be narrowly tailored and should be the least intrusive means to protect public health."⁸ However, some States are using the current public health emergency as a justification to implement measures that arbitrarily restrict human rights with the risk that these restrictions could become permanent and normalised.

Privacy and surveillance

APC is concerned about the increasing use by governments of surveillance and facial recognition technologies to manage COVID-19 widespread testing and contact tracing. Governments, such as those of Ecuador, India, Israel, Colombia, Chile and Kenya, among others, have deployed mobile apps and other digital technologies for controlling and monitoring the population.⁹ Whether technology is used for sharing information about the pandemic, assisting with diagnosis, reporting suspected cases or keeping track of individuals who have contracted the virus, it is crucial to ensure

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6 <https://www.unwantedwitness.org/internet-barriers-constrain-the-work-of-uganda-hrds-amidst-covid-19-pandemic/>

7 <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

8 OHCHR. (2020, 16 March). COVID-19: States should not abuse emergency measures to suppress human rights – UN experts. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E>

9 APC & Derechos Digitales. (2019). Ecuador: Surveillance technologies implemented to confront COVID-19 must not endanger human rights. <https://www.apc.org/en/pubs/ecuador-surveillance-technologies-implemented-confront-covid-19-must-not-endanger-human-rights>; CIPESA. (2020, 27 March). Covid-19 in Africa: When is Surveillance Necessary and Proportionate? <https://cipesa.org/2020/03/covid-19-in-africa-when-is-surveillance-necessary-and-proportionate>; <https://7amleh.org/2020/03/15/netanyahu-imposes-dangerous-big-brother-surveillance-under-the-pretext-of-a-security-response-to-the-coronavirus/>; <https://www.apc.org/en/node/36191/>.

adherence to the criteria of necessity and proportionality in the use of those technologies in order to safeguard human rights. Recent examples such as India's contact-tracing app Aarogya Setu exposing the data of millions of users¹⁰ shows that sufficient information on the scope of measures implemented by governments should be clearly communicated to the population, as well as the protocols to be adopted in order to prevent illegitimate access to and use of the information by third parties – both within and outside the public administration.¹¹ As guidance from the World Health Organization and the American Civil Liberties Union states, these technologies should be used only for public health purposes; their use should be voluntary and limited to the duration of the pandemic; oversight measures should be put in place; and there should be transparency about how the applications operate, and publication of open source and open access codes.¹²

Attention should also be given to public-private partnerships offering technological solutions in the area of health, but also for home schooling and distance online learning strategies.¹³ Because a large percentage of the population is forced to use commercial solutions, tools and platforms, governments should be transparent about those agreements with ICT companies. As stated in a joint letter, APC and other groups already emphasised that any private-public partnership that the Council may enter during the COVID-19 pandemic should also be fully transparent and the human rights implications of the agreement should be adequately assessed.¹⁴

Attacks on journalists and human rights defenders

Journalists and bloggers have a critical role to play in the current situation by sharing health information and keeping authorities accountable. They need to be able to report freely on the unfolding pandemic, and should not be censored online. We are concerned by the fact that journalists and human rights defenders have been experiencing online harassment in the context of the COVID-19 health crisis in countries such as El Salvador¹⁵ and Pakistan.¹⁶ As UN human rights experts emphasised, any emergency declaration based on the COVID-19 outbreak “should not function as a cover for repressive action under the guise of protecting health nor should it be used to silence the work of human rights defenders.”¹⁷

Misinformation and social media platforms

In line with the Human Rights Council resolutions on the right to privacy in the digital age¹⁸, on the promotion, protection and enjoyment of human rights on the internet,¹⁹ and the UN Guiding Principles on Business and Human Rights,²⁰ social media platforms have responsibilities regarding human rights. The increasing use of artificial intelligence and automated decision-making systems by platforms during the crisis²¹ could affect access to crucial

10 <https://techcrunch.com/2020/05/05/aarogya-setu-app-security-privacy-concerns-india-response/>

11 For example, see: Access Now. (2020). *Recommendations on privacy and data protection in the fight against COVID-19*. <https://www.accessnow.org/cms/assets/uploads/2020/03/Access-Now-recommendations-on-Covid-and-data-protection-and-privacy.pdf>

12 <https://www.aclu.org/press-releases/aclu-issues-governance-principles-covid-19-contact-tracing-technologies> and https://apps.who.int/iris/bitstream/handle/10665/332200/WHO-2019-nCoV-Ethics_Contact_tracing_apps-2020.1-eng.pdf

13 <https://www.apc.org/es/news/propuestas-de-educacion-distancia-exponen-desigualdades-y-acuerdos-que-ponen-en-riesgo-los>

14 <https://www.apc.org/en/pubs/joint-civil-society-open-letter-un-public-private-partnerships>

15 “El Salvador: Bachelet preocupada por la erosión del estado de derecho en medio de las medidas para la COVID-19” <http://www.oacnudh.org/el-salvador-bachelet-preocupada-por-la-erosion-del-estado-de-derecho-en-medio-de-las-medidas-para-la-covid-19/>

16 <http://mediamatters.pk/media-matters-for-democracy-expresses-concern-on-safety-of-journalists-covering-covid-19-health-crisis-demands-adequate-protection-measures/>

17 PC & Derechos Digitales. (2019). Ecuador: Surveillance technologies implemented to confront COVID-19 must not endanger human rights. <https://www.apc.org/en/pubs/ecuador-surveillance-technologies-implemented-confront-covid-19-must-not-endanger-human-rights>

18 <https://undocs.org/en/A/HRC/RES/42/15>

19 https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/13

20 https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

21 Kayyali, D. (2020, 19 March). As content moderators go home, content could go down. WITNESS. <https://blog.witness.org/2020/03/as-content-moderators-go-home-content-could-go-down>

information to reduce the risks of contagion, and freedom of expression could be affected through automated content moderation and takedowns. Human rights laws should be the default standards guiding companies' content moderation policies and procedures, and principles of accountability, transparency and meaningful appeal processes, among others, should guide content moderation responses to the pandemic.²² In addition, practices of information verification should be promoted instead of suppressing or censoring content or criminalising disinformation.²³ We also would like to draw the Council's attention to the situation of gig workers and content moderators heavily impacted by the pandemic. This labour is often invisibilised and gendered. The labour rights of these workers, including their right to a healthy and safe work environment, need to be upheld during the pandemic.

Online gender-based violence, hate speech and discrimination

The pandemic has put lives across races, classes, gender and ethnicity at risk. There has been an upsurge in racist and Islamophobic messaging in online spaces in India and other countries,²⁴ vilifying particular communities for the spread of the virus. Online and traditional media as well as political actors and non-state actors have resorted to violent hatemongering in these countries, resulting in loss of life and sense of security. States and the private sector need to take immediate action to address these forms of violence in accordance with international law to ensure that communities and individuals are not further marginalised.

During this time of lockdowns and limited mobility, there has been an increase in domestic violence, since women are forced to be at home with their abusers. This also showed an impact on its online manifestations.²⁵ Gender diverse, trans, lesbian, gay and queer people are more at risk when their freedom of movement is curtailed and they have to live in proximity to abusive and controlling families or communities.²⁶

III. Recommendations

To the Human Rights Council:

- Work with States to ensure that measures to respond to the current health crisis are adequate, necessary and proportionate;
- Work with States to guarantee that the internet is a means for secure and private communications, and a platform that enables human rights that are vital for overcoming the social and economic effects of the pandemic;
- When considering partnerships with the private sector, to prioritise engaging with ICT companies that demonstrate a public commitment to human rights, and to undertake consultations with various stakeholders, including civil society;
- Work with States to take appropriate measures to counter online gender-based violence, intimidation, threats and attacks against journalists and human rights defenders.

To Governments:

- To ensure that internet access is maintained at all times. Freedom of expression and access to information need to be safeguarded. Internet shutdowns or other restrictions to internet access should not be considered as a response to the crisis under any circumstances;

²² <https://santaclaraprinciples.org>

²³ <https://foreignpolicy.com/2020/04/01/coronavirus-censorship-pandemic-disinformation-fake-news-speech-freedom/>

²⁴ Equality Labs. (2020, 7 April). #StopCOVIDIslamophobia: COVID-19 Appeal Letter.

<https://medium.com/@EqualityLabs/stopcovidislamophobia-covid-19-appeal-letter-c47dd0860ff1>

²⁵ <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/brief-online-and-ict-facilitated-violence-against-women-and-girls-during-covid-19-en.pdf?la=en&vs=2519;>

<https://www.apc.org/en/news/kictanet-online-gender-based-violence-times-covid-19>

²⁶ <https://genderit.org/resources/open-letter-friends-and-partners>

- To acknowledge the importance of free public access facilities and hotspots by putting them back on the connectivity agenda and investing in those solutions;
 - To include subsidised data packages and laptops as part of measures related to social protection strategies for low-income populations and health workers to assist them in the crisis;
 - To ensure that surveillance measures adopted to address the pandemic are lawful, necessary and proportionate. They must be provided for by law and must be justified by legitimate public health objectives, as determined by the appropriate public health authorities, and be proportionate to those needs;
 - To avoid censoring content or criminalising disinformation.
 - To be transparent about the measures they are taking so that they can be scrutinized and if appropriate later modified, retracted or overturned. Transparency and respect for human rights should be ensured when entering public-private partnerships in the context of the COVID-19.
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