

The relationship between human rights and technical standard-setting processes for new and emerging digital technologies (2023)

Response to the request for inputs ahead of the Report of the High Commissioner for Human Rights
3 March 2023

Introduction

Derechos Digitales América Latina is pleased to respond to this call for input from the Office of the United Nations High Commissioner for Human Rights on “the relationship between human rights and technical standard-setting processes for new and emerging digital technologies”.

The respondents are aware that the subject of human rights and technical standard-setting processes covers vast areas of knowledge, institutions, and policy. As members of civil society located and operating in different Latin American countries, the respondents understand the need for raised awareness in a group of highly contested matters that are outlined below, as recent developments in practice concerning human rights and technical standards in our region.

Derechos Digitales is following various forums that have attributions of technical standard-setting. In addition, our organisation participated as expert in the “Expert consultation on the relationship between technical standard-setting processes and human rights”, which took place in Geneva 15 February 2023.¹

In our view, the recent discussions that we have seen for the regulation of new technologies only through technical standards are worrying, without considering the negative impacts on human rights that have been discussed by various international human rights bodies.

In general, we are concerned of the lack of representation from Latin America, especially from civil society organisations (CSOs) working on technology and human rights, as well as the lack of representativeness of civil society from other regions of the Global South. We understand that the barriers exist and are greater for these organisations, which makes it difficult for the standardisation processes to be followed, and practically makes it impossible for these organisations to influence the definition of technical standards, which certainly have profound political issues involved.

This participation gap compounds the likelihood of negative human rights impacts from digital technologies that are not detected or addressed. Adverse impacts to various human

¹ OHCHR consultation on human rights and technical standard-setting processes for new and emerging digital technologies. Available at: <https://www.ohchr.org/en/events/events/2023/ohchr-consultation-human-rights-and-technical-standard-setting>.

rights, such as freedom of expression and privacy, can often be located at the infrastructure layer of the internet and the creation and development of standards to deal with new and emerging technologies, where tools, protocols or capabilities that affect those rights can become part of communication networks. One of the important moments for participation concerns precisely the moment of defining these technical standards, but also in defining how to assess the impacts on human rights before and after the development and deployment of the technology.

In this submission, we intend to highlight a few key areas of current issues in the field of technical standards and human rights, with a Latin America perspective, showing examples of concerns as well as possible action points for States and standard-setting organisations, in the hope that these will be reflected in the report. We consider it necessary to strengthen the governance of the infrastructure of the standard-setting organisations, allowing to CSOs and human rights experts to contribute to spaces where technical decisions are made.

Human rights and technical standards

Questions from OHCHR:

How do technical standards for new and emerging digital technologies impact the enjoyment of human rights; what are related risks and opportunities?

What are the duties and responsibilities of standard setting organizations and their stakeholders in effectively integrating human rights considerations in technical standard-setting processes for new and emerging digital technologies?

Standards developing organisations (SDOs) are multiple and have different institutional arrangements². They have different characteristics, forms of organisation and history with attention to human rights. There are organisations, for example, like the Internet Engineering Task Force (IETF), which currently have a research group on Human Rights Protocol Considerations (HRPC), since 2014,³ and has over the years increased consideration of human rights values in the development of internet standards and protocols⁴. However, there are also other SDOs that understand its scopes only in a technical manner, not dealing with possible negative effects, nor with the need to respect human

² Article 19, Internet Standards Almanac. Available at: <https://almanac.article19.org/>.

³ IETF. Human Rights Protocol Considerations (hrpc). Available at: <https://datatracker.ietf.org/rg/hrpc/about/>.

⁴ For an ethnographic analysis of recent efforts in the IETF's efforts to consider human rights in the development of the protocols, see: Corinne Cath-Speth. The technology we choose to create: Human rights advocacy in the Internet Engineering Task Force. Telecommunications Policy, V. 45, Issue 6, July 2021. Available at: <https://linkinghub.elsevier.com/retrieve/pii/S0308596121000483>

rights. There are several and important challenges to be addressed in general before thinking some specific provisions to each different standard-setting bodies.

Although the discussions that take place in these forums seems to be essentially technical, they are also profoundly political. For example, the role of SDOs to strengthen privacy in certain technologies or the balance between the more complex encryption systems and the anonymity of the users. In any case, before starting to discuss the internal changes that must be made in the SDOs, we understand that some preconditions must be established, mainly regarding the aspects of openness, transparency, and broad participation of civil society organisations and human rights experts, including defining how the dialogue with the international human rights system takes place.

Since there is not a single type of SDOs, we understand that we need major and structural changes in the institutional arrangement in some cases, and that in other cases specific adjustments would comply with these important preconditions. The different institutional openness to discuss the political and human rights implications that goes beyond the standard-setting development. If from one side, the structural changes are needed to comply with human rights, other specific changes are needed to allow the participation of other actors in these processes, that can bring other perspectives and permitting the reflection of the consequences of the technical aspects being discussed, as we discuss in the next topic. We understand that just defining the need to have a Human Rights Impact Assessment (HRIA) is not enough. Despite the need for the HRIA as an important tool for assessing risks to human rights, we understand that many of the solutions must be more structural in terms of how the organisation deals with human rights in general.

We consider that the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework are valuable also in the case of standard-setting organisations, since at the UN Level and at the National Level, States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms; and business enterprises must comply with all applicable laws and to respect human rights.

Recommendation: Standard developing organisations should respect, protect, and fulfil human rights and fundamental freedoms, as a precondition to discuss its role and scope in protecting human rights. We urge the High Commissioner to recommend o standard development organisations that each organisation assess its capacity to take into account concerns regarding human rights and take the necessary steps in order to comply with the minimum preconditions to discuss human rights.

Meaningful participation from the Global South

Questions from OHCHR:

What are common obstacles to effectively integrating human rights considerations in technical standard-setting processes for new and emerging digital technologies?

How accessible are standard-setting processes and processes for new and emerging digital technologies for a broad range of stakeholders, in particular for civil society organizations and human rights experts? By which metrics is “access” measured in this context?

What are the challenges faced by various stakeholders in their meaningful and sustainable participation in technical standard-setting processes for new and emerging digital technologies?

In which ways do these challenges differ depending on the standard-setting organization concerned?

We understand that the challenges to participation are important in understanding human rights implications of technical standard-setting processes. There are different barriers to access of these discussions and forums by civil society organisations, for example, lack of adequate information about the membership and its costs, knowledge on how to participate and engage with other participants, knowledge on how or when CSO are allowed to speak to assembled participants, and knowledge to overcome the difficulties in keeping track of information in a long-time process, travelling, costs, and other problems.⁵

For instance, women are no more 15% that participates in IETF. Latin America, as a region does no more than 2%.⁶ According to existing data from IETF⁷, it is possible to say that participation from regions such as Latin America or Africa, as well as the general participation of women, is still very marginal. The report of the IETF coordination presented in 2021, showed that participation continues to be predominantly from the United States (38.9%), followed by China (9.7%), Germany (7.2%), United Kingdom (4.8%), Japan (3.9%), Canada (3.6%), India (3.4%) and France (2.9%). To bridge the gap, we understand that it is necessary to recognise the structure and geopolitical logic of these forums. The countries that participate the most are the same ones where the dominant corporations are located, with the capacity to develop state-of-the-art technologies.

In some other instances, the discussion on whether it would be possible or necessary for civil society to participate has frequently taken place. For example, in the latest discussions held

⁵ In general, see: Juliana Guerra, *¿Podemos reducir las barreras de participación?* (In Spanish). Available at: <https://www.derechosdigitales.org/17071/podemos-reducir-las-barreras-de-participacion/>

⁶ Idem, ibidem.

⁷ IETF document statistics (all documents). Available at: <https://www.arkko.com/tools/allstats/>

at the Plenipotentiary of the International Communications Union (ITU)⁸. Even though CSOs can become Sector Members of the ITU, membership fees are required and there is no guarantee that fee waivers or affordances will be offered, which increases the sense that there are barriers to participation.⁹ We understand that there are huge barriers to participate from the Global-South. This can reduce participation from Global South organisations in the long term, since we saw that it's not only to participate in a specific meeting or conference that means that we have **meaningful participation**.

On the contrary, it takes time to engage and to CSO and experts from the Global South, these barriers are much higher. Even in technical standard-setting that are open, which works horizontally and collaboratively, where participation is free and is done in a personal capacity, and where consensus is sought while maintaining a respectful and inclusive work environment, there are many difficulties in sharing human rights concerns and needs, and even to join to the debates and processes. When we talk about language, for example, we are not talking about the possibility of just understanding the language – English mainly, but also the possibility of actively participating in the discussion.

To open participation from CSO, transparency regarding the discussions, documents and how to engage are some of the basic features that we have to guarantee. From my perspective, we need to foster participation from CSOs because discussing the possibility to engage and listen to civil society organisation in these spaces is not an option. It is a mandatory aspect of this development. From one perspective, we understand that some of these bodies has a relatively open space for participation, but even though the costs, the language and the lack of different perspectives make it difficult to civil society organisations from other countries, to participate in a meaningful way.

Also, there are gaps participation in the national sphere, that would allow stakeholders to influence States decisions and positions to be defended in these international forums or in the technical standard bodies. At the national level, we would like to emphasise two points. The first is the openness to participation in standard-setting organisations at the national level. This is an important way of engaging CSO and human rights experts. The second question is regarding the openness to multi-stakeholder participation, including CSO, at the discussions in defining the Member State position at the international level.

For instance, the Brazilian case is very interesting in this way. The Brazilian Communications Commissions (CBCs) oversee organizing the work in the international telecommunication forums. The CBCs institutional arrangement, defined in the Anatel

⁸ See: Sheetal Kumar. Key takeaways from the 2022 ITU Plenipotentiary. Available at: <https://www.gp-digital.org/key-takeaways-from-the-2022-itu-plenipotentiary/>.

⁹ See, in general: Article 19. Navigating the ITU: Four Routes for Civil Society Engagement. December 2017. Available at: <https://www.article19.org/wp-content/uploads/2018/01/2018.01.04-Ways-to-Engage-Mini-Brief-FINAL-VERSION.pdf>; ITU, Membership. Available at: <https://www.itu.int/hub/membership/become-a-member/>

Resolution no. 753 from 23 June 2022, is open to public and private segments, academia, technical community, individual experts, and CSOs. The regulation also provides specific attribution to the CBCs to seek and encourage permanent dialogue with civil society entities and representatives of companies in the sector to build the sectoral repercussion strategy.

Of course, there are some good practices that we can refer. For instance, guidance for beginners (examples: TAO from IETF¹⁰, that is translated to several languages¹¹ and guides from civil society¹²), active onboarding, translating the main documents, having national and regional pre-discussions, mentorship and fellowships, newsletters, specific discussions to education and facilitation of participation to strengthen diversity.

However, we understand that that the forms of participation must be clear and precise, with regard to the possibility of participation by civil society, with the possibility of promoting specific moments either when formally joining the organisation or through specific bodies of the organisation that have the function of assist and monitor the participation of members of civil society, with a specific focus on gender and in countries of the Global South.

Another point to highlight is the importance of generating data about the spaces of standardisation. At least in the IETF, who have opened the conversation about it, for example in the IETF Data Analysis Workshop¹³ and with the process of establishing a research group (at IRTF) on how to research and analyse standards bodies (RASPs) that will meet at the next IETF meeting.

Recommendation:

1. We understand that all entities within the UN Organisation that have standard-setting attributions to fulfil their individual mandates should:
 - a. publish the exact procedures for civil society organisations and human rights experts to participate in the processes, as an example what already happens with ECOSOC status at the UN.
 - b. provide clear and inclusive forms of participation for human rights experts and CSOs from the Global South.
 - c. foster the participation of civil society organisations at the national level in defining the priorities, contributions, and positions of Member States to be

¹⁰ IETF. The Tao of IETF. Available at: <https://www.ietf.org/about/participate/tao/>

¹¹ IETF. The Tao of IETF – Translations. Available at: <https://www.ietf.org/about/participate/tao/tao-translations/>

¹² Mallory Knodel, Joey Salazar and Mehwish Ansari. A Guide to the Internet Engineering Task Force (IETF) for Public Interest Advocates. Article 19 and CDT. Available at: <https://cdt.org/wp-content/uploads/2023/02/CDT-Art19-Guide-to-the-IETF-2023-02-10-final.pdf>

¹³ IAB. Show me the numbers: Workshop on Analyzing IETF Data (AID), 2021. Available at: <https://www.iab.org/activities/workshops/aid/>.

defended at the multilateral level.

- d. Review the transparency of its processes, especially for civil society organisations and human rights experts who do not have access to standardisation process documents.
2. States should take steps in order to enhance the transparency, accountability and participation in the process of defining international participation in multilateral technical standards processes.
 3. Standard-setting organisations should be transparent, open to civil society organisations, human rights experts and, most importantly from the Global South. We urge the High Commissioner to recommend these principles to standard development organisations.
 4. Standard-setting organisations should have inclusion as an external or internal policy within the standardisation process, allowing and expanding the participation of CSOs and experts in human rights, mainly with a focus on people from the Global South (fostering inclusion programs, participation grants, sustained funding, mentorships, fellowships, and dealing with the different learning curve).