



Access Now Feedback on the Structural Elements UN Global Digital Compact

8 March 2024

Introduction

Access Now is an international organisation that works to defend and extend the digital rights of individuals and communities at risk around the world. Through representation worldwide, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions, and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organisation, Access Now routinely engages with the United Nations (UN) in support of our mission to extend and defend human rights in the digital age.¹

We are pleased to provide feedback on the structural elements of the UN Global Digital Compact (GDC) as outlined in the GDC co-facilitators letter dated 23 February 2024.² Our feedback was officially submitted on 8 March 2024 via the form provided on the Office of the Secretary-General's Envoy on Technology.

Do you consider that key priorities for a Global Digital Compact are captured in the structural elements circulated?

Disagree.

If you selected 'disagree' or 'strongly disagree' please specify which different or additional priorities should be addressed in the Global Digital Compact.

Spyware and unlawful targeted surveillance poses adverse impacts on fundamental rights. The GDC should implement a call for an immediate moratorium on the export, sale, transfer, use, and servicing of targeted digital surveillance technologies, until rigorous human rights safeguards are in place, and ban said technology and its vendors where they facilitate or enable human rights abuses.

Biometric surveillance tools have the capacity to identify, follow, single out, and track people everywhere they go, undermining human rights. Experts agree that no technical or legal safeguards could ever fully eliminate the threat they pose. The GDC should prohibit the use of facial recognition and remote biometric recognition technologies that enable mass surveillance and discriminatory

¹ Access Now, available at, <https://www.accessnow.org/>, accessed March 2022.

² Permanent Mission of Sweden to the United Nations, New York and the Permanent Mission of the Republic of Zambia to the United Nations, Possible Elements of a Global Digital Compact, 23 February 2024, available at: https://www.un.org/techenvoy/sites/www.un.org.techenvoy/files/240223_Co-Facs_Invitation_Letter_Second_Round_Consultations_FINAL.pdf

targeted surveillance in public and publicly accessible spaces by government agencies, without exemptions for law enforcement, criminal investigation, border control, counter-terrorism, and security agencies. The GDC should further prohibit government agencies, especially law enforcement agencies, from using and accessing data and information derived from the use of these technologies by private companies and other private actors. They should furthermore prohibit the use of these technologies by private entities in public spaces, publicly-accessible spaces, and places of public accommodation, where such use could enable mass surveillance or discriminatory targeted surveillance.

Section 2: Principles. Please provide comments and recommendations, if any

Human rights and sustainable development are intertwined. According to the Danish Institute for Human Rights, over 90% of the United Nations (UN) Sustainable Development Goal (SDGs) targets are connected to international human rights and labour

(<https://www.humanrights.dk/learning-hub/content-topic/sustainable-development-human-rights/sustainable-development-goals-sdgs>). The GDC should reaffirm the human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant human rights instruments. Access Now and other civil society organizations have maintained that the GDC “should recognise that the effective implementation and international human rights law framework is a necessary precondition to ensure the achievement of the Agenda 2023, and that adherence to both is necessary to ensure the realisation of an open, free and secure digital future for all” (<https://www.apc.org/en/pubs/pact-future-joint-civil-society-input>)

Principle 4 recommends “Advance an inclusive, open, safe, digital future for all.” Access Now prefers the term “secure” over “safe,” which often carries connotations of child protection and parental responsibility. For example, see the “Kids Online Safety Act” currently in the US Congress and the UK Online Safety Act, which news reports show is intended primarily to protect children (see, e.g. <https://www.wired.com/story/the-uks-controversial-online-safety-act-is-now-law/>). We believe that promoting this form of digital safety is better done in more specific contexts, and that a broad global statement like the GDC should use less context-specific language. In its place, we would recommend language grounded in foundational human rights documents, like the Universal Declaration of Human Rights, which does not speak to “safety” but does speak in Article 3 to “the right to life, liberty and security of person,” as well as “the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” We would therefore recommend replacing “safe” with “secure.” Indeed, “secure” is used in the Section 4 Commitments and Actions.

We would likewise support a principle extolling access to information, freedom of expression, and protections for those engaging in journalism. For example, Principle 6 may be adapted to read: “Advance inclusive access, including [information,] knowledge, research and capacity, to digital

technologies”; and adding a Principle to “Ensure robust access to information through protections for journalism, media workers, and the integrity of public discourse online.”

Principle 8 could be strengthened to encourage minimization of data collection and processing, and better center the most vulnerable, to read, “Promote responsible [DELETE: and interoperable] data governance [to protect privacy and the integrity of information and communications online]”. If the goal of language on interoperability is to increase anti-competitive measures, for example between private data controllers and the public sector, and to ensure the free flow of information, we suggest a more targeted Principle aimed at those ends.

The proposed GDC principles recognize the role and responsibility of the private sector. The GDC should therefore recognize the responsibilities of the private sector in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs). This includes the responsibility to foster respect for human rights in the context of new and emerging digital technologies and undertaking human rights due diligence processes to identify, prevent, mitigate and address violations of rights, including by conducting human rights impact assessments when designing, developing or placing into the market their digital products and services (including artificial intelligence systems). Human rights impact assessments of digital systems should always include meaningful consultation with civil society actors and other experts to complement technical knowledge, throughout the lifecycle of the products, services, and markets involved.

Section 3: Commitments. Please provide comments and recommendations, if any.

Commitment (3) “Advancing data governance” should recommend: “minimize collection, processing, and retention of sensitive personal data, and continually assess and strengthen all data security measures, including encryption.”

On commitment (4) regarding Artificial Intelligence (AI), we suggest adapting language from the recent consensus resolution passed at UNGA78 on digital technologies ([A/RES/78/213](#)), “recognizing that certain applications of new and emerging digital technologies are not compatible with international human rights law, and noting that uses of new and emerging digital technologies that impact the enjoyment of human rights may lack adequate regulation and governance mechanisms,” and affirming “that human rights and fundamental freedoms must be respected, protected and promoted throughout the life cycle of artificial intelligence systems.” This is recommended to be accomplished through “human rights due diligence, including regular, comprehensive human rights impact assessments of digital technologies, including artificial intelligence, throughout their life cycle... ensuring effective remedies as well as human oversight, accountability and legal responsibility.” Further, “to prevent harm to individuals caused by artificial intelligence systems and to refrain from or cease the use of artificial intelligence applications that are impossible to operate in compliance with international human rights law or that pose undue risks to the enjoyment of human rights.” The

resolution also calls “upon the private sector and all relevant stakeholders to ensure that respect for human rights is incorporated into the conception, design, development, deployment, operation, use, evaluation and regulation of all new and emerging digital technologies.”

Section 4: Follow-up. Please provide comments and recommendations, if any.

The GDC should also further support the UN Secretary-General’s proposal for a Digital Human Rights Advisory Mechanism facilitated by the Office of the High Commissioner for Human Rights, which would “provide practical guidance on human rights and technology issues, building on the work of the human rights mechanisms and experts, showcase good practices and convene stakeholders to explore effective and coherent responses to legislative or regulatory issues” (<https://indonesia.un.org/sites/default/files/2023-07/our-common-agenda-policy-brief-gobal-digi-compact-en.pdf>)

Connections between existing forums, including World Summit of the Information Society+20 Review, NETMundial, RightsCon and the Internet Governance Forum (IGF), should be prioritized. The IGF is designed as an open and inclusive forum and should not be replaced or encroached upon by another forum.

Any additional comments.