

# INTERNET RIGHTS ARE HUMAN RIGHTS FREEDOM OF EXPRESSION, FREEDOM OF ASSOCIATION AND DEMOCRACY: NEW ISSUES AND THREATS

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## INTRODUCTION

The links between ICTs, human rights and democratisation appear undeniable.<sup>1</sup> The use of ICTs for democratic processes has grown and is increasingly powerful. From the Philippines in 2001, where text messages helped topple the government by directing 700,000 demonstrators to the People's Power Shrine to demand the resignation of President Estrada, to the use of mobiles by civil society to monitor national elections in Kenya (2007), Belarus (2006) and Ukraine (2004), as well as the Sudanese protesters in Cairo (2005-2006).<sup>2</sup> Then, in early 2011 an unprecedented series of events took place leading to revolutions in Tunisia, Egypt and mass civil movements for democracy in the Middle East and North African region. Many concluded that the advent of new ICTs had created new opportunities for advancing democracy, not only in states that are not democratic, but in all states, where diverse forms of democracy continue to evolve.

But at the same time as the promises of the use of ICTs for freedom of expression, freedom of association and democratisation are being realised, new challenges have emerged. This paper explores current issues and considers the implications for HRDs. The paper includes, as an appendix, a case study based on research in Malaysia by the Open Network Initiative Asia Gender Research Team October 2009, *Gender Research Framework: Internet Censorship and Surveillance Practices A Gendered Perspective to Internet Censorship and Surveillance in Malaysia*.<sup>3</sup>

The paper concludes with a call for a fresh look at the foundations of the IGF and human rights -- in light of the issues raised -- and for human rights to be the main theme of the IGF in 2012.

1. Cowling, Leslie, "Theoretical Study- ICTS and Development in Africa" in Association for Progressive Communications *ICTs for Democracy Information and Communication Technologies for the Enhancement of Democracy – with a Focus on Empowerment* (Swedish International Development Agency, 2009) [www.Sida.se](http://www.Sida.se)

2. Ibid, at 31-32.

3. *Gender Research Framework: Internet Censorship and Surveillance Practices A Gendered Perspective to Internet Censorship and Surveillance in Malaysia*. Open Network Initiative Asia Gender Research Team October 2009, Association for Progressive Communication.

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## Freedom of expression and freedom of association: a critical nexus

Which matters more: freedom of expression or freedom of association? Articles 19 and 20 of the Universal Declaration of Human Rights guarantee freedom of expression (FX) and association (FA). The placement of these alongside each other is no accident: the two freedoms are inextricably linked. The nexus between FX and FA is, in part, because of the link between individual rights and freedoms and their collective expression: the use of individual freedoms in collective democratic processes, public places, and human rights movements. For human rights defenders (HRDs) this link is critical and made clear in the Declaration on Human Rights Defenders 1998.<sup>4</sup>

The Declaration affirms, for example, that for the purpose of promoting and protecting human rights everyone has the right individually, and in association with others, at the national and international levels, to meet or assemble peacefully, to form, join and participate, and communicate with NGOs. The Declaration also affirms that everyone has the right to seek, obtain, receive and hold information about all human rights, to develop and discuss ideas about human rights, and to make submissions to public bodies. Limitations on these rights and freedoms must comply with international human rights law.

In the IGF and related processes there has been a general tendency to rely on these rights, rather than argue for the creation of new rights and freedoms. Horner points out, for example that by the end of the first phase of WSIS in 2003, civil society organisations general agreed “that advocacy for communications rights did not necessarily require the establishment of new legal standards.... Civil society groups also generally agreed that “communications rights” was a useful umbrella term encompassing the range of rights relevant to communications in modern society, including their positive dimensions.<sup>5</sup>

But articulation of how these existing communication rights applied in relation to the internet was needed.

The APC Charter of Internet Rights, for example, affirms the UDHR and defines its application in online contexts, including freedom from censorship, the right to online organising and protest, and freedom to express opinions and ideas when using the internet.<sup>6</sup> The Charter of Human Rights and Principles for the Internet, developed by the Internet Rights and Principles Coalition, similarly includes the freedom to protest, freedom from censorship, the right to information, and the freedom of the media.<sup>7</sup> The IRPC Charter refers to the right to “form, join, meet or visit the website or network of an assembly, group, or association for any reason” and calls for access to assemblies and associations using ICTs not to be blocked or filtered.<sup>8</sup>

With the IGF foundations built upon freedom of expression and communication rights, it is timely to look at new and emerging issues affecting interference with these rights. This paper argues that interference is increasing, particularly by governments and on the grounds of protecting human rights of all citizens. This next section considers some current issues in relation to freedom of expression and association and considers implications for HRDs.

## Current issues

### Access and Infrastructure

Access to the internet is a multi-faceted concept and includes access to infrastructure and content, including content creation and sharing.<sup>9</sup> A strong human rights environment is needed if infrastructure regulation is to enable access, particularly in developing countries, where the links between freedom of expression, freedom of association and access are also multi-faceted. For example, as Jillian York notes:<sup>10</sup>

While filtering and other means of restriction affect the ability to access content, access to the physical and technical infrastructure required to connect to the

4. Declaration on Human Rights Defenders (adopted by the United Nations General Assembly 9 December 1998). See in particular articles 5-7, 12-14, 17 and 18.

5. Lisa Horner, *Information and Communication Rights in David Souter (ed) APC ICT Policy Handbook (2008), Chapter 5 at 28.* Initiative Asia Gender Research Team October 2009, Association for Progressive Communication.

6. APC Internet Rights Charter, Theme 2: Freedom of Expression and Association (APC, November 2006) www.apc.org

7. The Charter of Human Rights and Principles for the Internet, Internet Rights and Principles Coalition (2010).

8. Ibid.

9. Frank La Rue “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” (26 April 2011, A/HRC/17/27).

10. Jillian York, “Introduction” in *Global Information Society Watch* (APC and Hivos, 2011).

internet can also be used by governments as a means of restricting the free flow of information and limiting individuals' ability to associate and organise. While in many cases, low internet penetration is a sign of economic or infrastructural challenges, it can also be an intentional strategy by governments attempting to restrict citizens from accessing information or developing civil society. Though this strategy is best exemplified by Cuba and North Korea—where the majority of citizens are barred entirely from accessing the internet—dozens of countries with the capability to do so have slowed or stifled the infrastructural development necessary to expand access.

Evidence is also emerging about the impact on rights and freedoms from interference with access to mobile technology and user generated content (UGC). Comninos points out that while UGC “can be a powerful tool in the hands of social movements campaigning for democracy and human rights” it is “the infrastructures through which this content flows [that] have proved to be areas of contestation between pro-democracy and pro-incumbent groups.” This contested area is not one where civil society’s power is equal to that of governments.

New forms of crack-downs on dissent are emerging for example, by inhibiting the flow of information during protests, as well as by using UGC to track down protesters and arrest, detain and harass them. Governments in the MENA region were able to take advantage of advanced internet filters to block content during the uprisings including internet blackouts, slowdowns and filtering. Online restrictions on freedoms of expression and association were linked with offline human rights violations with arrests, detentions and harassment of those involved in the creation and dissemination of UGC.<sup>11</sup>

Such restrictions not only affect HRDs. They also limit the ability of others to know what is happening, gain access to knowledge and create their own content.

New challenges are also emerging as governments move

services online. For example, standards bodies are making decisions that directly affect human rights when they make decisions on the design of electronic voting systems, access to government information and the availability of government services online.<sup>12</sup> Design decisions underlying such standards also structure technologies that create the informal conditions in which people can engage in the public sphere on line. Similarly, standards choices in relation to encryption can determine the extent of user privacy and the right to be free from unwarranted surveillance.<sup>13</sup>

## Mobile Technology

New research demonstrates that mobile technology is also influencing the exercise of freedom of peaceful assembly and association. The mobile phone is transforming access to the internet, content creation, and communication in diverse ways in many parts of the world.<sup>14</sup> But a new “mobile divide” looks likely to emerge in the next 3-5 years since, as Southwood notes, in the countries of Sub-Saharan Africa, and most developing countries, the majority of mobile handsets are basic phones, with limited functionality.<sup>15</sup> SMS remains a primary form of communication, but in general its use is also limited by low literacy levels. In comparison, over half of mobile phone users in developed countries are likely to have a smart phone in the next 3-5 years.

In this area, too, the links between FX and FA are clear. Southwood concludes that the additional functionality of rich feature phones (such as those with limited functionality for internet access) and smart phones (essentially a small, hand held PC) has resulted in high levels of user generated content. Citizens can author their own media, take pictures of what is happening around them and post text accounts of events they are witnessing.<sup>16</sup> This has had the effect of giving space to a diversity of voices and issues that historically may have been ignored.<sup>17</sup> Again, the links between FX and FA

11. *Comninos, Goliath and the mouse: Twitter revolutions and cyber crackdowns* (APC 2011) at 9.

12. Laura DeNardis, *Open Standards: opening standards, opening human liberty*, Global Information Society Watch 2009 (Association for Progressive Communication and Hivos, 2009) 31 at 32..

13. Laura DeNardis, *Open Standards: opening standards, opening human liberty*, Global Information Society Watch 2009 (Association for Progressive Communication and Hivos, 2009) 31 at 32..

14. Russell Southwood, *Policy and regulatory issues in the mobile internet*, (Association for Progressive Communications, May 2011). [www.apc.org](http://www.apc.org)

15. *Ibid*, at 1.

16. *Ibid*, at 2

17. Cowling, above n 1, at 2..

appear, as Cowling says:<sup>18</sup>

The benefits from a rights perspective are clear. Hybrid media offer an opportunity to expand and enlarge the voice of marginalised people, and to raise issues and expose violations of human rights, on mainstream platforms. The possibility of debate effectively expands the public sphere, and holds the potential for enhanced democratic interaction.

### The New Norm: interference with communication rights

Citizen journalism and crowdsourcing applications offer new ways to empower citizens and facilitate freedom of association and democratisation.<sup>19</sup> The use of ICTs for human rights monitoring, documentation and democratic advocacy is growing, although it is not without challenges.<sup>20</sup> Recent protests and uprisings in MENA were characterised as “Twitter revolutions” and “Facebook revolutions” due to the widespread use of UGC distributed over social networks by protestors, activists and supporters of protests as well as by those following events around the globe. Many have commented on the power of social media in the hands of protesters and activists, but how are states responding?

Deibert<sup>21</sup> and others argue that it is clear the balance of power has shifted and that new norms have emerged in internet and information control techniques.<sup>22</sup> No longer do democratic governments shy away from stating they are actively pursuing internet regulation. Instead, such governments are actively promoting regulation, invoking their obligations as States to protect human rights – increasingly on the grounds of security, child pornography or prevention of criminal activity. Other governments are embracing the new technology and using it in new ways to infiltrate, carry out surveillance and disrupt the activities of HRDs moving to second and third generation forms of

internet control technique which interfere with or violate human rights.<sup>23</sup>

Control of freedom of expression and access to content may have already emerged as a new norm. By 2010, for example, OpenNet Initiative estimated that a staggering half a billion internet users (or about 32%) experience some form of national-level content restriction. York notes that “even in states where access remains low—such as in Ethiopia, where internet penetration hovers around 0.5%—governments fearing the democratising power of the internet are preemptively putting additional restrictions in place. As of 2011, more than forty-five states have placed restrictions on online content.” Libya barred access for most citizens from February 2011. Iran has announced plans to create an in-country intranet, signalling its intent to withdraw from the global internet.

In the wake of the London riots in 2011, the British Prime Minister was quick to assert that control of access to the internet and social networking sites was a legitimate option for the British authorities to consider. In a statement in reply, the Chinese state-run news agency Xinhua stated: <sup>24</sup>

“We may wonder why Western leaders, on the one hand, tend to indiscriminately accuse other nations of monitoring, but on the other take for granted their steps to monitor and control the Internet ...For the benefit of the general public, proper Web-monitoring is legitimate and necessary.”

There are an increasing number of these examples. Pakistan, for instance, has recently moved to ban encryption of software (including email) with severe security and privacy implications for human rights activists as well as journalists.<sup>25</sup> The Pakistan Telecommunications Authority (PTA) directive, issued on 21 July 2011, orders ISPs and mobile phone companies to implement the Monitoring & Reconciliation of International Telephone Traffic Regulations 2010, by prohibiting and reporting all

18. Cowling, *above n 1*, at 26.

19. Lisa Horner, A human rights approach to the mobile internet, (Association for Progressive Communications, April 2011). [www.apc.org](http://www.apc.org)

20. Alex Comninos, *Twitter revolutions and cyber-crackdowns: the use of user-generated content and social networking in the Arba Spring and beyond*, (Association for Progressive Communications, June 2011) [www.apc.org](http://www.apc.org)

21. Deibert, R., Palfrey, J., Rohozinski, R. & Zittrain, J. (Eds.) (2011). *Access Controlled: The Shaping of Power, Rights, and Rule in Cyberspace*. MIT Press.

22. *Ibid*, at 6.

23. *Ibid*

24. For critique see Rebecca MacKinnon, “Squelching social media after riots bad idea” 15 August 2011 <http://edition.cnn.com/2011/24>.

25. <http://www.article19.org/resources.php/resource/2719/en/pakistan:-ban-on-encrypted-software-a-violation-of-freedom-of-expression>

users sending encrypted information over the internet. The effect of such a ban would be felt widely since encryption is used in Pakistan to provide secure banking and e-commerce, as well as to bypass the PTA's regular blocking of websites.

Government interference with SMS messaging for "security reasons" is also frequent: whether in the Kashmir region in India, Cameroon, Ethiopia, or Mozambique, and amidst post-election violence in Kenya. In some cases interference is on a massive scale such as in India where bulk messages services were banned for 10 days in Allahabad, effectively shutting down services to 36 million users.<sup>26</sup>

Government policy making remains varied with inconsistent and sometimes simply irrational policies. Southwood notes that some developing country governments have differentiated between controlling the use of SMS and the internet on the basis that one is a mass medium and the other is not:<sup>27</sup>

For example, postpaid subscribers in Kashmir can use SMS but prepaid subscribers cannot. Cameroon's government chose to close down Twitter by SMS for a period but not Twitter on a PC. Other governments have sought to control certain types of internet software (Facebook, Twitter) that are available on PC, mobile and tablet because they see them as politically threatening to their own survival.

Further pressure has been placed on freedom of association by government policies on registration to enable surveillance of internet use, including in public places. York, for example, notes that a number of countries, including South Korea, have attempted:<sup>28</sup>

... to track users by requiring government identification to use certain websites or to enter cybercafés. Government-enabled or sponsored attacks on infrastructure or individual websites have become increasingly common. And more recently, governments aware of the internet's organising potential have taken to implementing "just-in-time" blocking – limiting access to sites during specific

periods of election or protest, or worse, arresting bloggers and social media users or shutting down the internet entirely as has occurred in Egypt, Libya, and Syria.

Governments are also increasingly requiring the private sector, including internet intermediaries, to exercise gatekeeper functions at their direction. For example, demands by governments for social networking platform providers to regulate the political activities of members appear to be increasing. Comminos refers to Facebook policies resulting in the Facebook pages of political activists being shut down:<sup>29</sup>

The We are all Khaled Said Facebook page, which played an important role in the cyber-arena of the 25 January revolution in Egypt, was opened in June 2010 but was shortly afterwards closed down by Facebook because the user who opened the account El Shaheed was using a moniker rather than a real name. Whilst this should come as no surprise – Facebook makes it explicitly clear that the use of fake names or monikers is not allowed on the platform and are a violation of the terms of service – many have questioned whether Facebook closures of certain pages have political motivations. In the United Kingdom in April 2011 a group of students from University College London, called UCL Occupation, protesting over fee increases and cuts to higher education funding, claimed that in 12 hours Facebook had deleted over 50 Facebook profiles of activists in the UK. In contrast, it appears that Facebook and Twitter have on the whole not interfered with the use of their platforms for protests in the MENA region. These examples however serve to remind activists that, at the end of the day, it is the social networking platforms or content platforms on which the content is hosted that have ultimate control over their online content.

In addition, some private companies are playing gatekeeper roles as either content producers or

26. Southwood, above n 14, 5-7.

27. Southwood, above n 14, 16.

28. York, above n 10.

29. Comminos, above n 11, 12-13.

distributors in relation to political content. For example, Apple initially banned the app of Pulitzer Prize-winning cartoonist Mark Fiore on the grounds that Apple's terms and conditions limited material which "ridicules public figures" and in Apple's reasonable judgment may be found objectionable, for example, material that may be considered obscene, pornographic or defamatory".<sup>30</sup> Such private contractual terms seek to limit freedom of expression, yet may be more restrictive than limitations permitted under Articles 19 or 20 of the UDHR which restrict limits on, for example, parody and satire. Concerns were also raised in 2011 about the use of location devices and possible risks to freedom of movement and to HRDs.

Private sector companies can also impose or be complicit in limits to free expression particularly when obliged to follow domestic law in foreign countries. In countries where restrictions to online content are the norm, this results in aiding government censorship. York, for example, notes that:<sup>31</sup>

Between 2006 and 2010, Google censored its search results at the behest of the Chinese government, while Microsoft continues to do so. And several companies—including American companies Cisco and SmartFilter, and Canadian company Netsweeper—allow their filtering software to be used by foreign governments. These concerns also extend to platforms that host user-generated content.

York points out that there is also evidence that governments are restricting access from users outside of their countries using what is known as geolocal IP blocking. "This tactic has a variety of uses, from media content hosts like Netflix and Hulu blocking users outside of the US in compliance with copyright schemes, to American companies blocking access to users in sanctioned countries like Syria and Iran."<sup>32</sup>

Social media platforms, such as Twitter and Facebook, as well as being possible instruments of protest, can also render users vulnerable to state surveillance. For example, these platforms, when combined with facial recognition technology, have been used by security and

intelligence agencies to identify and locate activists and protesters. Police in the United Kingdom were able to use this technique to quickly identify alleged offenders following the London riots and encouraged members of the public to identify and name individuals. Civil society groups expressed concern that British Prime Minister, David Cameron, blaming social media and websites for the London riots, indicated the government would "look at whether it would be right to stop people communicating via these websites and services when we know they are plotting violence, disorder and criminality".<sup>33</sup> Other civil society groups subsequently called on government officials, who met with some private sector social media and communications companies in the light of the Prime Minister's comments, to also meet with civil society groups and have open, transparent and democratic processes for any consideration of moves to restrict freedom of expression and association.<sup>34</sup>

Deibert also notes that a "third generation" of internet control or interference with access to information has also emerged. This is the active use of covert forms of surveillance and monitoring of HRDs. Comminos highlights this with examples of the use by governments of sock-puppets (fake identities) and astro-turfing (fake grass roots organisations) to create pseudo movements, infiltrate legitimate organisations and conduct surveillance. Comminos highlights these strategies and tactics and calls on HRDs to be aware of these tactics, build capacity to detect and respond to them, encouraging documentation and monitoring so that new trends can be exposed and resistance strategies shared.

## New forms of resistance

Just as new forms of interference with FX and FA online and offline have emerged, so have new forms of resistance. In Kenya, for example, interference with the internet during post election violence in 2005, gave birth to the Ushahidi project which helped to track and map violent incidents in the country using both PCs and mobile phones. Disabled women have used the

30. Southwood, above n 14, 8-9.

31. Ibid.

32. York, above n 10.

33. Association for Progressive Communications and GreenNet <http://www.apc.org/en/news/london-riots-social-media-does-not-cause-social-pr>

34. Index on Censorship (and others) <http://www.indexon-censorship.org/2011/08/joint-letter-to-home-secretary-on-social-media-blackouts/>

internet to overcome difficulties of mobility and access to find each other and form national disabled women's networks in Bangladesh, Nepal and India.<sup>35</sup> Linking online and offline activism, disabled women in Bangladesh's National Council of Disabled Women, have formed human chains against police officers who do not register reports of crimes, and have succeeded in obtaining more prosecutions for crimes against all women. Sex workers in India and throughout South Asia have used technology to aid their efforts in organising and demand their voices be part of women's human rights movements and democratic processes. The use of ICTs for increasing marginalised voices in democratic spaces is growing.

Government suppression of access to the internet is being actively resisted by users and can have unintended effects or precisely the opposite effect of government intentions:

Hours after the internet had gone back up, Egyptian security forces arrested, detained and harassed bloggers and Facebook and Twitter users who had shared content or publicised and attended events, such as Wael Ghonim, head of marketing of Google Middle East and North Africa, who was detained for seven days. Following these events, a popular view on Tahrir Square reflected in UGC was that many protesters were going to stay in the square until either they were defeated and arrested or Mubarak stepped down. For many, this was not only out of conviction, but also because they were content creators themselves or had created footprints on social networks. Many were afraid that in light of the arrests, detentions and alleged beatings of content creators, they had themselves become victims and they imagined being arrested if they returned home. This case demonstrates that crackdowns on ICT will not necessarily serve to quell revolutions and can in fact stoke them. It also demonstrates the amount of danger and vulnerability that activists had exposed themselves to online.<sup>36</sup>

HRDs are not scurrying under their keyboards and many are continuing to demand and advocate for human rights. But while it is relatively easy for HRDs to get around filtering and content blocking, it is much more difficult to organise in this new environment.<sup>37</sup> HRDs must be more engaged with their own personal security, monitoring privacy settings, conditions of use and when setting up new accounts, constantly monitoring changes in terms and conditions of use over time. Comninos emphasises having good processes for data back up and mirroring of content, the use of alternatives to Facebook, using https: and end to end encryption to minimise surveillance as well as anonymity tools, including proxies, VPNs, and TOR to protect the identity of content creators as well as circumventing internet filtering and censorship systems.

## Conclusion

This paper has considered the nexus between freedom of expression and freedom of association. The links between ICTs, human rights and democratisation are undeniable.<sup>38</sup> But these are also under increasing and significant threat, not only in states that are not democratic, but in all states, where the diverse forms of democracy continue to evolve. Freedom of expression does not matter more than freedom of association – the two are inextricably linked and interdependent. ICTs are no substitute for the processes of communications and information sharing and organising – but they can strengthen these processes. For these effects to be sustainable we must be alert to the new challenges and the ever shifting contexts, both on line and offline, in which those processes are taking place.

The increasing use of human rights arguments by States as the reason for controlling access to the internet (and the implications for freedom of expression, association and democratisation) demands responses from HRDs, policy makers and civil society. As Leslie Cowling states:

While new ICTs make human rights violations possible by states, corporations and individuals with fraudulent intent, these violations are not inherent and inevitable

35. Geetanjali Misra *Looking In, Looking Out: Starting the Count, Count Me In!* Conference Paper, Creating Resources for Empowerment in Action, April 2011, Kathmandu, Nepal).

36. Comninos, above n 11, at 9.

37. Ibid.

38. Association for Progressive Communications *ICTs for Democracy Information and Communication Technologies for the Enhancement of Democracy – with a Focus on Empowerment* (Swedish International Development Agency, 2009, www.Sida.se)

consequences of the technologies themselves. Rather, the new forms of human rights violations are the effect of (politically) expedient decisions by states and non-state actors to impact on ICT users in this way, and are similar in intent to violations experienced in traditional media. This makes the state vulnerable to countervailing actions and campaigns – such as the emerging internet rights campaigns – to bolster human rights in the information society, using international protocols and human rights instruments and policing mechanisms.

The implications for the foundations of the IGF, including communication rights, are profound. For these to be explored in multi-faceted ways and with multi-stakeholder perspectives and inputs, human rights should be the main theme of the IGF in 2012.





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