

Derechos Digitales contribution on the High-level Panel on Digital Cooperation call for input

About Derechos Digitales

Derechos Digitales is an independent non-governmental organisation, founded in 2005, with main offices in Santiago de Chile. Our aim is the defence and promotion of fundamental rights in the digital environment in Latin America using advocacy tools among policymakers, private companies and the general public.

a) What are the key values that individuals, organizations, and countries should support, protect, foster, or prioritize when working together to address digital issues?

- **Human dignity:** the value of inherent dignity of every human, a founding principle in human rights instruments, needs to be prioritized. This means the consideration of each person, and each group of individuals, as inherently rational and free, and not as means to the goals of states and companies.
- **Collaboration:** the participation of different stakeholders, not just by providing input but by working together, means not only better results and more legitimacy, but a respect for the value of working towards common goals.
- **Diversity:** a broad range of views and perspectives should be taken into account in digital cooperation, reflecting differences in culture, language, socio-economic backgrounds, sensibilities. Most importantly, a diverse range of interests is needed to allow for a fair and equal participation in the benefits of the digital era.
- **Trust:** this means that all participants in processes of digital cooperation must be able to share and work together freely, confident in the reliability and honesty of their counterparts, and in that their actions are carried out in good faith. This requires the respect for other values, such as transparency and openness, as well as mechanisms to verify the information provided by all participants.
- **Openness:** this means dealing in participative process without concealing information, interests or intentions, frankly discussing processes and outcomes, as well as allowing for cooperative approaches and for changes in direction when facing challenges that are new or were not previously considered.
- **Transparency:** the production, provision and promotion of information that is truthful, complete and accessible to all other actors involved in digital issues, including private parties, states, civil society organizations, and all interested individuals. This includes the provision of information not only relevant to the subjects at hand, but also about the institutions and the persons working therein as it may be needed.

- **Accountability:** there must be clear, effective and easily accessible mechanisms to review, monitor and evaluate the information provided and the processes that address digital issues, and there must be also mechanisms to remedy the harm created by them, as well as hold responsible those who have not participated with respect to fundamental human rights and values in those processes.
- **Sustainability:** the processes concerned with addressing digital issues must be established in a way that allows for constant participation by all interested actors, and not as mechanisms to be adopted one time. This involves the need to assist financially the underfunded groups and individuals, as well as maintaining channels of communication and processes of review and evaluation of any outcomes and outputs.

b) What principles should guide stakeholders as they cooperate with each-other to address issues brought about by digital technology?

Respect for human rights. Cooperation must promote the respect for human rights, both offline and online, in accordance with international human rights obligations, including the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, and the Convention on the Rights of Persons with Disabilities. Cooperation must highlight global and regional human rights instruments, increasing awareness of their content.

Acknowledgment for local and social context. Digital issues require a relevant engagement with local realities and needs. The use of ICTs cannot be regarded as silver bullet to address structural social problems from the sole perspective of technology, without deeper engagement with the historical, social, economic, political and cultural context of the population intended to be served by the ICTs solutions. Meaningful engagement with local actors, as well as special consideration for asymmetries in accurate information, are necessary to address contextual differences.

Technical cooperation, scientific collaboration, and technological capacity building. Cooperation should promote the transfer of knowledge to the communities in which ICTs are implemented in order to foster critical engagement with the technology and foster subsequent innovation under the control of those communities. Legal restrictions set by rules such as intellectual property rights should be overcome to foster participation and collaboration.

Multi-stakeholder and inter-disciplinary approach. Cooperation should consider in all cases a multi-stakeholder involvement with meaningful instances of participation for all concerned communities. ICTs solutions fostered by cooperation should be evaluated from a multi-disciplinary perspective that incorporates social sciences and technical expertise for participation in design and implementation.

Freedom of information. Cooperation should foster ICTs that allow exercise of the right to access, share, create and distribute information of any kind without further restrictions than the legally established, in accordance with international human rights obligations, taking into special account the value of the right to receive information and the needs for transparency and openness.

Accessibility. Cooperation should promote the design, development, production and distribution of accessible ICTs solutions. This means that all policies that allow for solutions implementing ICTs should make them accessible for all communities, including the adoption of measures to allow all individuals, especially for underserved communities and marginalized groups, to enjoy the benefits of ICTs.

Culture and linguistic diversity. Cooperation should respect, protect and promote cultural and linguistic diversity in all its forms. Mechanisms to promote and foster inclusion of diverse actors should be adopted, including measures to overcome barriers for meaningful participation. Diverse participation must be guaranteed and evaluated in every step of each process.

Enabling of sustainable development and innovation. Cooperation should foster the implementation of ICTs solutions that allow the full realization of internationally agreed sustainable development goals. Cooperation should be structured to provide tools for meaningful participation of the communities affected by the ICTs solution to participate in their development processes.

Security, stability and resilience of ICTs. Cooperation should promote the development of ICTs solutions that are secure, stable and resilient by design and the information exchange between different stakeholders to allow trustworthy ICTs solutions implementations.

Open and distributed architecture of ICTs. Cooperation should promote the design and implementation of open and distributed technologies that better support secure, stable, resilient, reliable and trustworthy ICTs solutions.

Transparency and accountability. Cooperation should provide high level of transparency regarding the criteria under consideration to promote the implementation of specific ICTs solutions and how the human rights impact assessments of those technologies in a particular context is being made. Cooperation should be responsible to conduct research prior and after the ICTs solution implementation to collect evidence of their impact in the exercise of human rights. Cooperation should be hold accountable for the promotion of ICTs solution implementation without prior assessment of the regulatory, social and political context where specific ICTs solutions are promoted.

Evidence driven. Cooperation should be fuelled by concrete context specific quantitative and qualitative evidence about the positive impact for sustainable development and human rights enjoyment of ICTs solutions implementation.

Measurable Impact. Cooperation must be subject to monitoring and periodic review and evaluation of its processes and outcomes. The impact of each process must be given concrete measures of success, with mechanisms for timely follow-ups to assess their success. From the outset, goals should be set to be able to measure such impact.

c) How can these values and principles be better embedded into existing private and/or public activities in the digital space?

The application of international human rights law should be the guiding force to embed these values and principles. Mandatory human rights impact assessments should be a requirement regardless private or public implementation of the cooperation.

Cooperation provides economic support to the development of ICTs solutions to solve wide range of systemic issues that are confronted by specific States or groups of population. That economic support should be tied to the commitment with total fulfilment of the values and principles proposed here, especially those related to diversity and openness.

New instruments or expert documents, akin to the UN Guiding Principles for Business and Human Rights, could be developed to clarify the principles applicable to cooperation.

International bodies such as the World Bank and the different regional development banks should embrace the values and principles proposed here in their investment allocation efforts explicitly.

II. Methods & Mechanisms

a) How do the stakeholders you are familiar with address their social, economic, and legal issues related to digital technologies? How effective or successful are these mechanisms for digital cooperation? What are their gaps, weaknesses, or constraints? How can these be addressed?

There are currently no consistent practices in public or private entities to conduct human rights impact assessments of the implementation of ICTs solutions. Although the private sector has a clearer road map provided by the UN Guiding Principles, there is no consistent application and no mechanisms of enforcement. State actors lack of a specific instrument regarding cooperation

principles and often fail to fulfil their international human rights obligations when it comes to the cooperation for the ICTs solution implementation.

Even if cooperation is moved by altruistic values to collaborate with the leap-frogging of developing countries, developed countries and their companies are the ones that set the priorities, including the model for economic development. Cooperation should find a way to better connect and provide technical support to allow developing countries define the role of the cooperation in their own strategies including their poverty reduction strategies.

Derechos Digitales views with concern a number of initiatives (as biometric identification systems, predictive criminal systems, electronic voting, facial recognition cameras in public spaces, interoperability of data between public services, digital banking, among others) that are promoted and financed through instances of international cooperation that stimulate the development and incorporation of ICTs in public policy or improve State efficient, without comprehensive assessment of their impact on the exercise of human rights, such as: privacy, freedom of expression, the right to peaceful assembly, and the right not to be discriminated.

We believe that a responsible cooperation aligned with sustainable development objectives requires that investment decisions in the development and implementation of such technologies be developed in a decision-making process that is as transparent as possible and evidence supported.

We believe that international cooperation should stimulate a market for the provision of transparent technologies that is committed to respect for human rights. Thus, investment in technologies must be accompanied by requirements for public and private entities that are recipients of international cooperation funds to define clear and specific regulatory frameworks for the conditions of use of such technologies in a manner compatible with the exercise of human rights, including going beyond the minimum legally required in some countries with less regulatory development in these matters, as well as ensuring mechanisms of independent control, transparency and accountability to citizens.

Likewise, we believe that guidelines for the development of selection criteria for ICT providers that conform to a standard of probity and unrestricted commitment to human rights could be formulated from the mechanisms of international cooperation.

b) Who are the forgotten stakeholders in these mechanisms? How can we strengthen the voices of women, the youth, small enterprises, small island states and others who are often missing?

Even though civil society organizations benefits from funding coming from digital cooperation, there is a whole stage of priority setting of digital cooperation agenda that lacks participation of civil society actors, and even from the developing countries where cooperation often focuses. Developed countries, international bodies, philanthropic foundations or private companies define digital cooperation agendas, in general, without meaningful engagement with civil society organizations in the places where the cooperation will be later carried out.

c) What new or innovative mechanisms might be devised for multi-stakeholder cooperation in the digital space?

Participatory mechanisms could be developed as part of the cooperation strategy design. Acknowledging the freedom of each cooperation body to design its own agenda, the strategic process will benefit of an early consultation of multistakeholder representatives from the geographies that the cooperation is intended to cover and embedded it in the decision making process at early stage. New collective bodies with rotating, accountable members from different constituencies and with transparent processes, as part of the UN system, can serve that purpose.

III. Illustrative Action Areas

The Panel plans to explore, among others, the following areas where greater digital cooperation is required:

- inclusive development and closing the digital gap
- inclusive participation in the digital economy
- data
- protection of human rights online, particularly of children, women and marginalized communities
- human voice and participation in shaping technological choices and architecture
- digital trust and security
- building the capacity of individuals, institutions and governments for the digital transformation.

a) What are the challenges faced by stakeholders (e.g. individuals, Governments, the private sector, civil society, international organizations, the technical and academic communities) in these areas?

Important gaps are present across the board, and it is key to address them all in conjunction, given that those gaps are a byproduct of the role that each stakeholders has in society, both at the local and at the global level.

In the case of individuals, civil society, academia and the technical community, there are important gaps with regards to the knowledge and connection of the expertise of the other communities. This is related to their spheres professional development, as well as for the lack of common spaces to debate common subjects. A lack of collaborative approach is also prevalent.

The private sector faces some challenges related to how internalize the cost of human rights enhancing standards and be more open in their internal procedures without compromise their business confidentiality, given that for digital issues some big companies are continuously singled out, while others are only concerned or have enough resources to secure the fulfilment of the minimum standards set by law. This puts human rights fostering (beyond mere regulatory compliance) in a second place, and disconnects from the needs promoted by other actors.

In a different order of issues, there are many times in which the private sector holds a relevant interest in the cooperation programs as a way to advance in the opening of new markets for the sell of the technologies provided by them. In those cases, the relationship with international cooperation bodies or efforts should be a lot more transparent in the way in which any technical cooperation with private companies take place and how this engagement influence the decision making process about promotion of specific technologies as part of cooperation programs. More attention also should be given to the implementation of effective multi-stakeholder participation in any instance of participation provided to private sector, in order to balance the influence of them in the international cooperation decision-making processes.

For governments, apart from the issue of some lack of tradition for meaningful multi-stakeholder participation in decision-making process, there is a challenge to generate data, and in particular, relevant and accurate information to inform decision-making processes. This involves the participation of different actors, as well as inter-disciplinary approaches for the generation of evidence that can serve to address digital issues properly.

Civil Society organizations frequently also struggle with ready access to data sets from private companies and State bodies that provide more detailed information about how data collection is being executed and how data is used. There is a natural alliance on this with Academia but especially in the Global South this type of research is still rare.

Finally, economic capacity to sustain the engagement with international cooperation bodies or initiatives usually lack for governments and civil society representatives from less developed countries. The cooperation process should consider this support as part of the cooperation initiative itself in order to contribute to its effectiveness and legitimacy.

b) What are successful examples of cooperation among stakeholders in these areas? Where is further cooperation needed?

Several examples of cooperation, with diverse levels of success, can be found in the experience of Derechos Digitales. Those include the Global Network Initiative, the Freedom Online Coalition Working Groups, the global Internet Governance Forum’s work outside its conference (including the Youth IGF, the Dynamic Coalitions, and the regional and national forums), the Internet and Jurisdiction Policy Network, and the NetMundial conference.

Below we identify some issue areas where further digital cooperation, guided by the values and principles outlined above, will be valuable:

- Digital markets/platforms regulation, including user data use and content curation and moderation – particularly following the report of the UN Freedom of Expression Special Rapporteur that addresses the regulation of user-generated online content (A/HRC/38/35).
- Deepening the UN Guiding Principles for Business and Human Rights to translate them in more tailored guidelines in the use of different ICTs with specific impacts in human rights exercise, for example surveillance technologies.
- Cybersecurity strategy development (to ensure cybersecurity policy is human rights-respecting), and capacity building among civil society and local authorities or municipalities. Good example of this type of initiatives is the work that has been conducted by OAS in the Americas.
- Unifying and harmonizing the multiple current efforts on AI & Ethics, as: the Future of Life Institute’s AI Principles and Open Letter on AI, the Toronto Declaration on Equality and Non-Discrimination in Machine Learning, the Council of Europe’s Charter for AI in judicial systems, and the Universal Guidelines for Artificial Intelligence, among others. Digital trust and security including in approaches to strengthen user trust and security which are user-focused, incorporate privacy by design principles, and foster human agency and choice.

c) What form might cooperation among stakeholders in these areas take? What values and principles should underpin it?

Existing working groups or dynamic coalition inside already established initiatives aforementioned should be used to foster digital cooperation. UN bodies and existing forums should be used to foster future digital cooperation driven by the values principles such as those listed above, especially those centered around putting human dignity and human rights at the center, and diversity and inclusion as fundamental parts of collaboration.

In some cases, as it has been proposed for content moderation regulation, Stable bodies of rotating members from different stakeholders, and periodic meetings, could be created to address specific issues that require a multi-stakeholder permanent and resolute/consultive approach.

In case the High-level Panel on Digital Cooperation should want to expand in any of the aforementioned points, please reach us at mariapaz@derechosdigitales.org

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