FACULTY OF SOCIAL SCIENCES
SCHOOL OF LAW
Department of Public Law

Emmanuel Jonathan

PROTECTING RIGHT TO INTERNET ACCESS UNDER INTERNATION HUMAN RIGHTS LAW

Master's thesis

Supervisor
Dr. Merilin Kiviorg

Tallinn
2022

TABLE OF CONTENTS

Acknowledgements: Special thanks to my supervisor, Dr. Merilin Kiviorg, for her patience, encouragement and support through the rigorous research process. I would also like to thank Dr. Lauri Malksoo for the valuable contributions that helped shape my work. I appreciate the academic officer, Lehte Leesik, for always being helpful, and the library staff of the faculty of law and the Estonian National library for helping me find relevant materials. Lastly, I thank my grandmother who did not wait to see me finish this, for believing and in the light that education can bring.

INTRODUCTION

The internet more than any other invention revolutionized every sphere of human life and set the stage for unprecedented advancement in science and technology;[1] what started as research to interconnect computer networks soon became the bedrock for worldwide communication and information dissemination.[2] In a very short period, the internet has ushered in the era of digital media and communication, almost totally displacing more traditional media.[3]

The rapid growth of the internet came with legal and human rights implications. Hillary Clinton, former Secretary of State of the United States of America (U.S.A.) identified this new challenge birthed by the internet when she stated in 2010 speech that "we need to synchronize our technological progress with our principles…I talked about how we must find ways to make human rights a reality. Today, we find an urgent need to protect these freedoms on the digital frontiers of the 21st century."[4]

The debates on the implications of internet use on human rights, however, has engaged the minds of academics and policy makers since the mid-1990s with the debate mostly focused on the internet as a tool for social change.[5] In 2003, the discussions surrounding the implications of internet on human rights was brought to bear on the global stage under the auspice of the United Nations (U.N.) at the World Summit on the Information Society (WSIS). The summit brought together civil societies, government, and corporate representatives to adopt the WSIS

[1] Leiner, B.M. *et al.* A Brief History of the Internet, Association for Computing Machinery's Special Interest Group on Data Communications (ACM SIGCOMM) Computer Communication Review Vol 39, No.5, October 2009, p.22.
[2] *Ibid.,* p.22.
[3] Ling, J., and Yue, Z., Research on the Displacing Effect of the Internet on the Traditional Media, International Journal of Social Science and Humanity, Vol. 5, No. 7, July 2015, pp.589 – 590.
[4] Hillary Rodham Clinton, Remarks on Internet Freedom. Archives of the U.S. Department of State (2010), available at https://2009-2017.state.gov/secretary/20092013clinton/rm/2010/01/135519.htm (accessed 10.12.202)
[5] Jorgensen, R. F. Framing the Net – The Internet and Human Rights. Danish Institute for Human Rights, Edward Elgar Publishing Limited 2013, pp. 1 – 4.

Declaration of Principles.[6] The document, inter alia, reaffirmed the universality, indivisibility and interdependence of all human rights and made specific references to the right to freedom of expression in the information society.[7] The internet has since then been at the nucleus of several national and international policies on human rights.

In May 2011, the 17th session of the U.N. Human Rights Council (UNHRC) deliberated on the impact of the internet on the right to the freedom of expression. The United Nations special rapporteur on the promotion and protection of the right to freedom of opinion and expression released a special report that hinted at the classification of the right to internet access as a human right .[8] It was admitted for the first time that "the internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress" and that ensuring universal access to the internet should be a priority for all.[9] The 2011 session of the UNHRC also began to lay down background measures for acceptable levels of censorship.[10]

Also in 2011, leaders of the G8 at an event dubbed the "E-G8 conference" held in France adopted the "Deauville Declaration on the Internet."[11] Paragraph 2 of the document alluded to the then recent developments in the Middle East, North Africa and Sub-Saharan Africa and identified the role the internet could play in bringing about democratic reforms. The Deauville document consists of 21 declarations which has shaped internet policies relating to human rights over the years. Prior to the Deauville Conference, the first quarter of 2011 saw uprisings

[6] WSIS Declaration of Principles, Building the Information Society: a global challenge in the new Millennium Doc. WSIS-03/GENEVA/DOC/4-E, 12 December 2003, World Summit on the Information Society (WSIS) Geneva 2003 – Tunis 2005

[7] *Ibid.,* Article 3 & 4

[8] Report of the Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression, Frank La Rue, HRC, 17th Session, Agenda item 3 – Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 16 May 2011, UN Doc. A/HRC/17/27

[9] *Ibid.*

[10] WSIS Declaration of Principles, Article 56 – 59

[11] G8 Declaration Renewed Commitment for Freedom and Democracy. G8 Summit of Deauville - May 26 – 27 2011.

in North Africa and the Middle East popularly known as the "Facebook revolution" which demonstrated the power of social media in disseminating information and mobilising people withing a short period of time.[12]

Right to internet access as used in the context of this thesis referes to ability to connect to the internet and also the protection and enjoyment of human rights on the internet. The goal of this paper is to analyse and determine the current position of the access to internet in international human rights law and its implications on the established rights to freedon of expression and information; and the right to privacy and data protection. This paper seeks to explore the status of the right to internet access as a human right in international law. It analyses the *status quo* which tends to bend towards the acceptance of right to internet access as a derivative human right linked to right to freedom of expression and changing the understanding of the right to freedom of expression, information, privacy and data protection. The thesis would also explore the new argument for right to internet access to be considered a stand-alone right under International Law.

The thesis is written against the background on the continued clampdowns by State agents on internet rights and freedom in different countries of the world. With the internet being increasingly perceived as a tool for organisation of people, the rights and privileges associated with it are bound to be abused if not properly regulated, hence the urgent need for the actualisation of international structures for a uniformed protection of internet rights and freedom. The novelty this thesis introduces is the appraisal of the development of right to internet access through the current five resolutions of the UNHRC on the promotion, protection, and enjoyment of human rights on the internet.[13] The thesis also introduces a

[12] Jorgensen, R. F., *op cit.*, p. 1.
[13] HRC Resolutions 20/8, 26/13, 32/12, 38/7, and 47/16.

comparative analysis of the regional legislations and judicial precedents in Africa, the Americas, Asia, Europe, and Oceania into the discussion by exploring the unique regional approaches and understanding of the right to internet access. The thesis will emphasize the duty of the State to protect internet infrastructure and ensure accessibility of the internet and demonstrate how right to internet access has a direct bearing on the actualisation and enjoyment of the rights enshrined in International Bill of Human Rights.

The research questions this paper seeks to answer are - (i) What is the status of the right to internet access under International Law? (ii) What are the criteria a stand-alone right should fulfil? (iii) Can the right to internet access be considered a stand-alone or derivative right under International Law? (iv) what are the implications of right to internet access on right to freedom of expression, information, privacy and data protection? And (v) What is the extent of regional and national protection of the right to internet access?

To answer these questions, the thesis adopts a qualitative and analytical method to explore existing literature and case law on the subject. A comparative approach is also employed to explain the unique circumstances and State practices in the regions of Africa, Americas, Asia, Europe and Oceania. Comparative analysis will be used ot evaluate the the different perseptions of the right to internet access at the regional level and how these affects the development of international law.

The research problem this paper seeks to answer is whether the current international law covers the right to internet access or there is a need for new international legislation specifically declaring a right to internet access. The thesis stems from the following hypothetical premises: (i) That the internet technology has brought about erstwhile unprecedented level of global interactions with far reaching consequences for international human rights law; (ii) The internet introduced new meanings and means to the realisation human rights and also presents itself as

the ultimate wand of censorship and infringements; (iii) Right to internet access is fast gaining recognition as a human right in itself, or at least, as a necessary means to the enjoyment of human rights; and (iv) Internet accessibility has grave implications on human rights in the modern world.

The thesis is divided into three chapters. The first chapter will introduce the right to internet access and elaborates on its current status under international law. It will appraise the different positions of scholars and experts on the debate on whether right to internet access is an implied right i.e., having roots in other established rights such as the right to freedom of expression or whether it can be considered a stand-alone human right.

The second chapter will evaluate the implications the right to internet access has on right to freedom of expression, information, privacy, and data protedction. The chapter will discuss the infringement of human rights on internet and the liabilities of State and private actors to guarantee the internet access and protection of human rights on the cyberspace. a The chaper will also analyse the internet as a public sphere and associated human rights that need protection online.

The third chapter will discuss different global perspectives to internet access and promotion and protection of human rights on the internet through a comparative analysis of the situation in Africa, the Americas, Asia, Europe and Oceania. Asia and Oceania are discussed together because they are regions without established regional human rights systems, however, the Association of Southeast Asian Nations (ASEAN) and the Arab League are discussed briefly. The chapter will discuss the extent of internet penetration in each region, the applicable regulations, extent of government control and censorship, and precedents of the courts.

1. RECOGNITION OF NEW HUMAN RIGHTS IN INTERNATIONAL LAW

1.1. How are New Rights Recognised?

The Universal Declaration of Human Rights (UDHR) is a landmark document; for the first time in history, a common standard was codified as the internationally acceptable standard of human rights despite widespread scepticism by some human rights commentators.[14] The United Nations General Assembly (UNGA) by adopting the UDHR, exercised the powers conferred on it by the UN Charter,[15] and also cemented its role as an international legislative authority from 1949 to 1966 with the adoption of different international instruments especially the International Covenant on Civil and Political Rights (ICCPR) with its two optional Protocols and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[16]

Just around the period when computer science was evolving as a discipline and long before the internet as we know it today came to be, Richard Bilder argued that "in practice, a claim is an international human right if the United Nations General Assembly says it is."[17] The UNGA however, with the adoption of new instruments proclaimed new rights which do not necessarily have footing in the UDHR or even the ICCPR and the ICESCR which together make up the International Bill of Human Rights.[18] This proliferation of human rights by the UNGA and several other international bodies raised the question of whether there are any criteria for a new right to fulfil before they are considered human rights in international law and whether the UNGA is still the arbiter of human rights on the international scene.[19]

[14] Altson, P. Control Conjuring Up New Human Rights: A Proposal for Quality Control, The American Journal of International Law (1984), Vol. 78, No. 3, pp. 607-621.
[15] Article 13 (1) b, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.
[16] Altson, P., p.609.
[17] Bilder, R., Rethinking International Human Rights: Some Basic Questions, Wisconsin Law Review (1969) No.1, pp. 551-608.
[18] Altson, P., p.607.
[19] *Ibid*.

1.2. Are there Criteria to be Fulfilled?

Philip Alston noted that the absence of an established procedure for the recognition of new rights created a situation where almost any international body, including those lower in hierarchy to the UNGA, could proclaim new rights without giving consideration for its implications.[20] He argued that the process by which the plethora of new rights are proclaimed does not put into consideration implications of the proposed innovation, objections and comments from governments, specialized agencies and non-governmental organizations (NGOs). These as resulted in many so-called new rights being vague and aspirational in nature.[21]

Altson rightly projected in his 1984 paper that "in the course of the next few years, UN organs will be under considerable pressure to proclaim new human rights without first having given adequate consideration to their desirability, viability, scope or form." He argued for the adoption of substantive requirements for the recognition of new rights and proposed that the new right must reflect the following:

1. Reflect a fundamentally important social value.
2. Be relevant, inevitably to varying degrees, throughout a world of diverse value systems.
3. Be eligible for recognition on the grounds that it is an interpretation of UN Charter obligations, a reflection of customary law rules or a formulation that is declaratory of general principles of law.
4. Be consistent with, but not merely repetitive of, the existing body of international human rights law.
5. Be capable of achieving a very high degree of international consensus.

[20] *Ibid*
[21] *Ibid*

6. Be compatible or at least not clearly incompatible with the general practice of states; and
7. Be sufficiently precise as to give rise to identifiable rights and obligations.[22]

On a cursory look, the right to internet access will fall short of some the above listed requirements. For example, on the requirement of relevance, as much as the internet is one of the most important inventions in recent times, it is yet to be part of the reality of about half of the globe's population. According to Statista, the percentage of the world population that possesses internet access are just about 59.9 percent which is roughly 4.66 billion internet users as of 2021.[23] The reason for this poor numbers is due to economic factors like poverty, inadequate funding, or political reasons like government unwillingness to allow meaningful and free internet access. It would therefore be difficulty to categorize right to internet access as a fundamental human right when not everyone has the agency and capacity to enjoy this right.

Altson went further to propose and analyse various procedural requirements suggested by authors like Professor Schacher and organizations like the International Labour Organization (ILO) and the International Law Commission (ILC).[24] He argued that a defined procedure for recognition of new rights will ensure uniformity and guaranty that the proclamation of new rights follows a prescribed procedure controlled by the UN system thereby separating the wheat from the chaff.[25] Based on the ILO and ILC procedural models, Altson concluded that a good procedure for proclaiming new human rights by the UNGA would put the following into consideration:

i. The desirability of obtaining inputs from a wide variety of sources.

[22] Altson, P., p. 615.
[23]Joseph Johnson, Worldwide Digital Population Statista, 2021 available at https://www.statista.com/statistics/617136/digital-population-worldwide (accessed 15.01.2022)
[24] Altson, P., p. 618.

ii. The need for these inputs to be addressed to as many as possible of the qualitative or substantive issues.

iii. The need to establish several phases in the process of considering the proposal to allow adequate time for analysis, consultation, reflection, and revision prior to the proclamation of any new right.

iv. The desirability of providing for expert input, first, from the UN Swcretariat, and second, from an expert group constituted either on an ad hoc basis or within the framework of the Commission or its Sub-Commission or of the General Assembly itself.[26]

The key takeaway from the litany of academic arguments and proposals best summed up or perhaps even leads back to Richard Bilder's position that "in practice, a claim is an international human right if the United Nations General Assembly says it is."[27]

1.3. Is Right to Internet Access Stand-alone or Implied Right?

One of the questions that have engaged academics and policy makers regarding the status of right to internet access in recent years is whether this right is a stand-alone or implied right.[28] If a stand-alone right, it will mean that the right to internet access is an autonomous right independent of human rights contained in the International Bill of Rights. If an implied right, it will mean that it is only a derivative right or at best a precondition for the enjoyment of other rights like the right to freedom of expression, information, and privacy. To answer this question, Oreste Polliccio in his paper "The Right to Internet Access: *Quid Iuris*?" differentiated human rights from fundamental rights.[29] He posited that human right speaks the language of international law as contained in the Bills of Right, fundamental rights speak the

[26] Altson, *supra*.
[27] Bilder, R., *supra*.
[28] Pollicino. O, 'The Right to Internet Access *Quid Iuris?'* in Arnauld A.V. *et al.* (eds.), The Cambridge Handbook of New Human Right, Cambridge University Press (2020) pp. 263 – 275.
[29] *Ibid* pg. 264.

language of constitutional law and enforceable by constitutional courts of a sovereign State.[30] This means so called new rights like the right to internet access, can have different degree of acceptance and enforceability, depending on the region or country where it is put to trial.

Countries like Ecuador,[31]Greece,[32] and Portugal[33] have included the right to internet access in their constitutions, thereby making it a fundamental right with the backing of the domestic court. Article 35(6) of the Portuguese Constitution for example states that "everyone shall be guaranteed free access to public-use computer networks, and the law shall define both the rules that shall apply to cross-border data flows and the appropriate means for protecting personal data and such other data as may justifiably be safeguarded in the national interest."[34]

In other instances, recognition of the right to internet access came through judicial pronouncement. In the case of Faheema Shirin R. K. v State of Kerala,[35] the India State of Kerala High Court held that the right to internet access is a component of both the basic right to education and the right to privacy protected by Article 21 of the Constitution.[36] In the Hadopi case,[37] the French Constitutional Council held that disconnecting internet access was excessive punishment for repeat offenders who illegally download copyrighted works even though it did not recognise an obligation on the part of the French government to provide internet to citizens as a social right. In the more recent case of Kalda v Estonia,[38] the European Court of Human Rights (ECtHR) ruled that denying a prisoner access to the Internet may amount to a violation of Article 10 of the European Convention on Human Rights (ECHR). It is important to note that Europe is the region the widest internet connection and access in the world. The decision

[30] *Ibid* pg. 264.
[31] Art. 16 *Constitución Política de la República del Ecuador*, 20 October 2008.
[32] Art. 5(2) The Constitution of Greece, 18 April 2001.
[33] Art. 35 Constitution of the Portuguese Republic, 25 April 1976.
[34] *Ibid*.
[35] No. 19716 of 2019.
[36] The Constitution of India, 26 January 1950.
[37] Conseil Constitutionnel, 2009–580 DC, 10 June 2009.
[38] Appl. no. 17429/10, judgment, 19 January 2016.

of the court will most likely be different in Africa where more than half the population is without internet access.[39]

While right to internet access may have varying degrees of constitutional safeguards under domestic laws, the position of international law towards implied or derivative right hinged on the protection afforded to the right to freedom of expression. The earliest call for the recognition of right to internet access under international law referred right to Article 19 of the UDHR and similar provisions under regional statutes.[40] The United Nations Human Right Council (HRC) has taken particular interest in the promotion and protection of the enjoyment of human rights on the internet. So far, five resolutions of the HRC have been passed on the internet. The subsequent paragraphs of this chapter will further discuss the derivative nature of the right to internet access under international law and the HRC resolutions in details.

1.4. Right to Internet Access in the United Nations System

Human rights are universally binding norms and can be described as elastic and not static, hence, it is expected that various new rights will spring up in accordance with human development. The elasticity of human rights is more exemplified by the dynamism inherent in the different categories of rights recognized in various jurisdictions. A good example is the recognition of the right to abortion as it is established in accordance with the Convention on the Elimination of Discrimination Against Women (CEDAW) wherein some scholars have identified that the denial of the right of a woman to undergo abortion is an act of discrimination against the woman's right to her choice with respect to equality to men.[41]

---

[39]Worldometer, Africa Population, available at https://www.worldometers.info/world-population/africa-population/ (accessed on 04.02.2022).

[40] Cali B., 'The Case for the Right to Meaningful Access to the Internet as a Human Right in International Law,' ' in Arnauld A.V. *et al.* (eds.), The Cambridge Handbook of New Human Right, Cambridge University Press (2020) pp 276 – 283.

[41] Briefing Paper, 'Safe and Legal Abortion is a Woman's Human Right' Center for Reproductive Rights, New York, 2004 available at http://reproductiverights.org/wp-content/uploads/2018/08/Safe-and-Legal-Abortion-is-a-Womans-Human-Right.pdf (accessed 04.02.2022).

Several scholars have identified the fact that human rights evolution and revolution[42] is an ongoing phenomenon,[43] hence, the call for right to internet access to be recognized as a human right. The UNHRC being the lead arm of the United Nations on human rights issues is saddled with the development of human rights such that the council is at liberty to deliberate on new issues that are vital for the development of the subject internationally. As a result, the right to internet access having gained traction over the years became a focal point for discussion due to the importance and utility of the internet in everyday life. Interestingly, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression released a special report in 2011 that served as a watershed in the quest for the recognition of the right to internet access as a human right. [44] In the special report it was stated that the access to internet is a "catalyst" to the enjoyment of the right to freedom of expression as enshrined in Article 19 of the Universal Declaration of Human Rights.[45]

It's important to note that the special rapporteur identified that Article 19 of the UDHR was drafted with the view to allow infusion of future technological development.[46] To be clear, it is expedient to reproduce the content of the said Article 19 for easy reference. Article 19 of the UDHR provides:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[47]

---

[42] Lauren P.G., The Evolution of International Human Rights: Visions Seen Phila, University of Pennsylvania Press (3rd ed., 1998)., p. 366.
[43] *Ibid.*
[44] Report of the Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression, Frank La Rue, HRC, 17th Session, Agenda item 3 – Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 16 May 2011, UN Doc. A/HRC/17/27.
[45] *Ibid.*, para 22, p 7.
[46] *Ibid.*
[47] Article 19, UDHR.

From the wordings of this article, the right to seek, receive and impart information and ideas appears prominently. Of course, the drafters of the UDHR did not have the luxury of the internet while they were drafting.[48] However, the drafters of the UDHR were visionaries as they put into consideration and incorporated future technological developments in the wordings of Article 19.

Following Frank La Rue's special report in 2011, the United Nations started taking a series of steps towards considering the proposition of the report to make the right to internet access a human right. Since the 2011 report, the UNHRC has gone on to pass 5 non-binding resolutions on the promotion, protection, and enjoyment of human rights on the internet:

1.4.1. HRC Resolution 20/8 on the Protection and Enjoyment of Human Rights on the Internet:[49]

Resolution 20/8 was adopted without a vote on 5th July 2012 by the 20th session of the HRC. The resolution built on the previous HRC Resolution 12/16 on freedom of opinion and expression[50] and UNGA Resolution 66/184 on information and communications technologies for development,[51] which laid the foundation for the recognition of the importance of access to internet in the promotion and protection of the right to freedom of opinion and expression. The resolution asacknowledged that the internet is pivotal infrastructure of the information society, adopted the outcome of the World Summit on the Information Society Forum 2011, admitted that 'management of the internet should be multilateral, transparent and democratic, with the full involvement of Governments and the private sector,' inter alia.

[48] University Systems of Georgia, Online Library, 'A brief history of the internet' available at https://www.usg.edu/galileo/skills/unit07/internet07_02.phtml (accessed 04.02.2022).
[49] A/HRC/RES/20/8, HRC 20th Session, Agenda item 3 - Promotion and protection of all human rights, civil, political, economic, social and cultural rights.
[50] A/HRC/RES/12/16, HRC 12th Session, Agenda item 3, 2009.
[51] A/RES/66/184, UNGA 66th Session, Agenda 16.

Resolution 20/8 is the first of its kind specifically focused on the promotion, protection, and enjoyment of human rights on the internet. The resolution specifically affirmed "that the same rights people have offline must also be protected online in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Right."[52] The resolution went further to call upon State parties to promote the development of media, information and communications facilities in all countries in addition to ensuring the enjoyment of human rights on the internet and in other technologies.[53]

1.4.2. HRC Resolution 26/13 on the Protection and Enjoyment of Human Rights on the Internet:[54]

HRC Resolution 26/13 was adopted with a vote on 26th June 2014 by the 26th session of the HRC. It referenced the previous HRC Resolution 20/8 and in addition – HRC Resolution 23/2 on the role of freedom of expression in women's empowerment;[55] UNGA Resolutions 68/167 on the right to privacy in the digital age[56] and 68/198 on information and communications technologies for development [57] respectively; and HRC Decision 25/117 on the panel on the right to privacy in the digital age.[58] The resolution also took note of the Global Multi-stakeholder Meeting on the Future of Internet Governance held in Sao Paulo[59] months before the adoption of Resolution 26/13.

[52] Article 1 HRC Resolution 20/8.
[53] Article 3 & 5 HRC Resolution 20/8.
[54]A/HRC/RES/26/13, Agenda item 3 - Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development 2014.
[55] A/HRC/RES/23/2, Agenda item 3 - The role of freedom of opinion and expression in women's empowerment, 2013.
[56] A/RES/68/167, Agenda item 69 (b) - The right to privacy in the digital age, 2013.
[57] A/RES/68/198, Agenda item 68/198 - Information and communications technologies for development, 2013.
[58] A/HRC/DEC/25/117, Agenda item 3, Panel on the right to privacy in the digital age.
[59] NETmudial, Global Multistakeholder Meeting on the Future of Internet Governance, 23 and 24 April 2014, available at https://netmundial.br/ (accessed 07.02.2022).

The HRC Resolution 26/13 introduced new themes into the discussions around the enjoyment of human rights on the internet. Emphasis was made on how access to internet provides opportunities and promote inclusive education globally and closes the digital divide.[60] It encouraged States to ensure the internet remains open and that security concerns should be addressed in line with human rights obligations and with regards for freedom of expression, association, and privacy.[61] HRC Resolution 26/13 stressed the importance of combating hate speech on the internet[62] and also considered the importance of government and stakeholder engagements, including the contributions of the academia in protecting human rights and fundamental freedoms online.[63]

1.4.3. HRC Resolution 32/12 on the Protection and Enjoyment of Human Rights on the Internet:[64]

HRC Resolution 32/12 was adopted with a vote on 1st July 2016 by the 32nd session of the HRC. The resolution alluded to the previous HRC resolutions on the protection and enjoyment of human rights on the internet in addition to HRC Resolutions 28/16 on the right to privacy in the digital age,[65] 31/7 on the rights of the child: information and communications technologies and child sexual exploitation,[66] Sessions of the Internet Governance Forum held in Joao Pessoa,[67] UNGA Resolutions 70/184 on information and communications technologies for development[68] 70/125 containing the outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World

[60] Article 4, HRC Resolution 26/13.
[61] Article 5, HRC Resolution 26/13.
[62] Article 6, HRC Resolution 26/13.
[63] Article 7. HRC Resolution 26/13.
[64] A/HRC/RES/32/13, HRC 32nd Session, Agenda item 3 - Promotion and protection of all human rights, civil, political, economic, social and cultural rights, 2016.
[65] A/HRC/RES/38/7, HRC 38/7, Agenda item 3 - The right to privacy in the digital age, 2015.
[66] A/HRC/RES/31/7, Agenda item 3 - Resolution adopted by the Human Rights Council, 2016.
[67] Internet Governance Forum (IGF) 2015, available at https://www.intgovforum.org/multilingual/content/igf-2015-4 (accessed 07.02.2022).
[68] A/RES/70/184, Agenda item 17 - Information and communications technologies for development, 2015.

Summit on the Information Society,[69] and 70/1 on the adoption of the 2030 Agenda for Sustainable Development.[70]

The HRC Resolution 32/12 recognised that 'privacy online is important for the realization of the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association.'[71] The resolution for the first time also introduced the theme of gender to the discussion on digital divide; it recognised that disparities existed between men and women as relates to access to internet and called for women empowerment through digital education.[72] Reference is also made to Articles 9 and 21 of the Convention on the Rights of Persons with Disabilities[73] and States are enjoined to steps are taken to promote access to internet for persons with disabilities.[74] The Resolution called out the intentional disruption of access to information online as a violation of international human rights laws[75] and also condemns all human rights violations including gender-based violence committed against persons for exercising their human rights and fundamental freedoms on the internet.[76] It called on the UN High Commissioner for Human Rights to make wide consultations and prepare a report on ways to bridge gender digital divide from a human rights perspective.[77]Lastly, it identified the internet as 'an important tool for fostering citizen and civil society participation, for the realization of development in every community…'[78]

[69] A/RES/70/125, Agenda item 17 - Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society, 2016.
[70] A/RES/70/1, Agenda items 15 & 116 - Transforming our world: the 2030 Agenda for Sustainable Development, 2015.
[71] Preamble, HRC Resolution 32/12.
[72] Articles 6, 9 & 13, HRC Resolution 32/12.
[73] Article 7, HRC Resolution 32/12.
[74] Article 7, HRC Resolution 32/12.
[75] Article 10, HRC Resolution 32/12.
[76] Article 9, HRC Resolution 32/12.
[77] Article 13, HRC Resolution 32/12.
[78] Article 15, HRC Resolution 32/12.

1.4.4. HRC Resolution 38/7 on the Protection and Enjoyment of Human Rights on the Internet:[79]

HRC Resolution 38/7 was adopted without a vote on 5th July 2018 by the 38th session of the HRC. In addition to all the preceding related resolutions, HRC Resolution 38/7 referenced HRC Resolution 34/7 on the right to privacy in the digital age,[80] UNGA Resolution 71/199 also on the right to privacy in the digital age,[81] Guideline Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework,[82] The report of the Office of the UN High Commissioner for Human Rights on the "Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective,"[83] Session of the Internet Governance Forum held in Geneva[84] and also noted the launch by the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) of "a process to develop an internet universality indicator framework to assess the contribution to sustainable development from an internet based on respect for human rights, openness and accessibility to all and guided by multi-stakeholder participation."[85]

HRC Resolution 38/7 brought globalisation and the concern for terrorism into the sphere of discussions on right to internet access. It identified the need to supress terrorism in the interest of the public and called on States to ensure that measures taken to fight terrorism are in accordance with international laws. The Resolution emphasized that technologies that protect confidentiality through encryption and anonymity are important to guaranteeing the right to privacy, freedom of expression, peaceful assembly, and association on the internet.[86] In

[79] A/HRC/RES/38/7, Agenda item 3 - The promotion, protection and enjoyment of human rights on the Internet, 2018.
[80] A/HRC/RES/34/7, Agenda item 3 - The right to privacy in the digital age, 2017.
[81] A/RES/71/199, Agenda 68 (b) – The right to privacy in the digital age, 2017.
[82] HR/PUB/11/04; endorsed by the HRC in its resolution 17/4 of 16.06.2011.
[83] A/HRC/35/9, Agenda item 2 and 3, 2017.
[84] IGF 2017, available at https://www.intgovforum.org/multilingual/content/igf-2017 (accessed 07.02.2022).
[85] Preamble, HRC Resolution 38/7.
[86] Article 9, HRC Resolution 38/7.

addition to the previous recognition of digital divide between men and women, HRC Resolution 38/7 for the first time recognised digital divides between and within countries.[87] It further condemned all human rights violations against persons for exercising their human rights on the internet and called for State accountability.[88]

HRC Resolution 38/7 recognised that violations of women's right online deters women from using information and communications technologies, thereby widening the existing gender digital divide.[89] The Resolution expressed concerns about how the internet can help spread propaganda and incite violence, hatred and discrimination.[90] It also identified the arbitrary collection and use of personal data as violation of human rights[91] especially as it relates to the safety and unlawful surveillance of journalists[92] and called upon States to make the necessary regulatory reforms concerning personal data and online privacy to meet the internationally acceptable standards.[93]

1.4.5. HRC Resolution 47/16 on the Protection and Enjoyment of Human Rights on the Internet:[94]

HRC Resolution 47/16 is the most recent and perhaps the most important of all the HRC Resolutions on the protection and enjoyment of human rights on the internet. It is *sui generis* being the first to be adopted on the 13th July 2021 by a record vote of 43 in favour,[95] 0 against and 4 abstentions.[96] HRC Resolution 47/16 like similar resolutions before it, referenced the

[87] Article 5 (a) – (d), HRC Resolution 38/7.
[88] Article 10, HRC Resolution 38/7.
[89] Article 11, HRC Resolution 38/7.
[90] Article 15, HRC Resolution 38/7.
[91] Article 17, HRC Resolution 38/7.
[92] Article 12, HRC Resolution 38/7.
[93] *Ibid.*
[94] A/HRC/RES/47/16, Agenda item 3 - The promotion, protection and enjoyment of human rights on the Internet, 2021.
[95] Argentina, Armenia, Austria, Bahamas, Bahrain, Bangladesh, Bolivia (Plurinational State of), Brazil, Bulgaria, Burkina Faso, Côte d'Ivoire, Cuba, Czechia, Denmark, Fiji, France, Gabon, Germany, India, Indonesia, Italy, Japan, Libya, Malawi, Marshall Islands, Mauritania, Mexico, Namibia, Nepal, Netherlands, Pakistan, Philippines, Poland, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay and Uzbekistan.
[96] Cameroon, China, Eritrea and Venezuela.

previous resolutions and decisions in addition to HRC Resolutions 42/15 on the right to privacy in the digital age,[97] 44/12 on freedom of opinion and expression,[98] UNGA Resolutions 70/125 containing the outcome document of the high-level meeting of the Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society,[99] 75/176 on the right to privacy in the digital age,[100] and 75/202 on information and communications technologies for development.[101] The resolution also welcomed a proposed 18th Francophonie summit themed "Connectivity in diversity: digital technology as a vector of development and solidarity in the French-speaking space."[102]

HRC 47/16 brought COVID-19 pandemic[103] into the discussion on right to internet access. It recognised the "importance of access to information and communications technology for the full enjoyment of human rights, strengthening democracy, the rule of law and empowering civic engagement, for attaining the Sustainable Development Goals and for the response to and a sustainable, inclusive and resilient recovery from the coronavirus disease (COVID-19) pandemic, and also recognizing the need to bridge digital divides."[104]

The resolution noted that more than half of the global population, especially the female gender lack access to the internet and the global pandemic further aggravated inequalities and widened existing digital gaps.[105] It also called on all stakeholders in the information and technology sector to consider the impact of COVID-19 pandemic in the effort to close the digital divides

[97] A/HRC/RES/42/15, Agenda item 3 - The right to privacy in the digital age, 2019.
[98] A/HRC/RES/44/12, Agenda item 3 - Freedom of opinion and expression, 2020.
[99] A/RES/70/125, Agenda item 17- Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society, 2015.
[100] A/RES/75/176, Agenda item 72 (b) - The right to privacy in the digital age, 2020.
[101] A/RES/75/202, Agenda item 16 - Information and communications technologies for sustainable development, 2020.
[102] Later held in Tunisia in November 2021; Article 7, HRC Resolution 47/16.
[103] According to the World Health Organization, COVID-19 or Coronavirus is an infectious disease caused by the SARS-CoV-2 virus.
[104] Preamble, HRC Resolution 47/16.
[105] Article 8, HRC Resolution 47/16.

and give keen attention to the poorest and most vulnerable people by ensuring digital inclusion and accessibility.[106]Another request was made for the UN High Commissioner for Human Rights "to study the trend in Internet shutdowns, analysing their causes, their legal implications and their impact on a range of human rights, including economic, social and cultural rights, through robust consultations with stakeholders and building on previous reports, and to present a report thereon to the Human Rights Council at its 50th session."[107]

1.5. Status Quo

The status of right to internet access within the United Nations is that of a derivative right, i.e., inferred from the broad interpretation of the right to freedom of expression.[108] It is not a stand-alone human right with the backing or enforcement of law, at least not yet. For the right to internet access to be categorized as a human right, it will have been deliberated upon and backed by an enforceable agreement of the UNGA. Admittedly, the right to internet access enjoys the status of fundamental right in the constitution of many countries,[109] this however has no bearing on the United Nations. However, the resolutions appraised above indicates that the right to internet access as a human right is gaining traction and has an impact on regional approaches to human rights which will be discussed in the last chapter of this thesis.

[106] Article 6, HRC Resolution 47/16.
[107] Article 17, HRC Resolution 47/16.
[108]Pollicino. O, 'The Right to Internet Access *Quid Iuris?'* in Arnauld A.V. *et al.* (eds.), The Cambridge Handbook of New Human Right, Cambridge University Press (2020) pp. 263 – 275.
[109] *Ibid.*

2. INTERNET ACCESS AND RELATED HUMAN RIGHTS

2.1. Right to Freedom of Expression and Information

The concept of the right to freedom of expression and information is one which is deeply enshrined in modern society.[110] This chapter discuss the human rights that need protection on the internet and the lawful restrictions to access and internet contents. The regulation of content raises issues with regards the definition of internet as a public sphere and associated rights of expression online. The chapter will examine and conclude on the definition of the internet as a public sphere and the extent to which protection rights of expression online are to be guaranteed.

The UDHR, as earlier stated, makes an express provision that everyone is entitled to the right of the freedom of opinion and expression, the right to opinion and expression is furthere extended to include the right to seek, receive and impart ideas and information as well as the inherent right to hold opinions without any interference.

In a similar way Article 19 of the ICCPR posits that every person is to be entitled to the right to hold opinions without interference, the right to express opinion, seek, receive, and impart information. The covenant, however, recognizes a limitation of this right to the extent where the right affects matters related to the reputations of others and matters of national security, public order, morals, security, and health.[111]

The right to freedom of expression encompasses all types of speech, whether oral or written, as well as media liberties, whether it be in print or online, and all art forms. This right, however, is not an unrestricted leeway to make all manner of expressions. In the case of Handyside v.

[110] Article 19, United Nations (UN) General Assembly, Universal Declaration of Human Rights (UDHR), 10 December 1948, General Assembly Resolution 217 A; see also Article 19, UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, General Assembly Resolution 2200A (XXI).
[111] Art. 19 (3) ICCPR.

UK,[112] the European Court of Human rights held that the right to express opinion and impart information include those expressions which would "offend, shock or disturb the state or any sector of the population."[113]

Freedom of speech and expression has become increasingly important because of the Internet's potential as an interactive and global medium. Simultaneously, the human rights commitments that states have agreed to have taken on new dimensions.[114] Though it could not have been anticipated at the point of the drafting of the UDHR or other human rights treaties, that the phrase "through whatever means" would later include the internet technology; the phrase renders the right to freedom of expression dynamic and adaptable to new forms of expression.

The ECtHR in the case of Stoll v. Switzerland[115] held that the "freedom of expression is one of the key foundations for a democratic society and one of the primary prerequisites for its evolution and for each individual's self-fulfilment."[116] The freedom of opinion, expression and information therefore are cornerstones of any democratic society, thus making the internet a relevant part of the concept of democracy in any society, this view has been enunciated in recent resolutions of the UNHRC[117] and the ACPHR.[118] The ACPHR resolution on freedom of information and expression on the internet stipulated that the rights to which persons are entitled to offline, are also to be protected on the internet, laying specific emphasis on the right to free speech, opinion and expression. In its legal precedents also, the European Court applies

[112] Application No. 5493/72, 07.012.1986.
[113] *Ibid.*, at para. 49.
[114] Cuceranu D. Aspects of regulating freedom of expression on the Internet, Oxford, 2008 p 179.
[115] Application No. 69698/01, para. 101 10.12.2007.
[116] *Ibid.*, at para. 101
[117] HRC Resolution 32/20, at para. 1.
[118] ACHPR/Res.362, Resolution on the right to freedom of information and expression on the internet in Africa, 2016.

the same criteria to the interpretation of Article 10 of the European Convention on Human Rights.[119]

The concept of freedom of information is also integral to the provisions on the right to freedom of expression which is often referred to as a right to access information especially those held by public bodies.[120] Public bodies in this context are state owned organisations, entities or establishments charged with public functions. In the case of Mavlonov and Sa'di v. Uzbekistan,[121] the 95th Session of the UN Human Rights Committee decided that freedom of information extends to access to any information on media platforms.[122] The committee also stated that individuals also have the right to determine whether governmental agencies, private bodies, or entities have or may control their personal information. Individuals have the right to have their records corrected if they contain erroneous personal data or have been gathered or handled in violation of the law. In the same spirit, the UN Human Rights Committee decided of Zheludkova v. Ukraine,[123] that a convict serving a prison term has the right to see his health files.

In the case of Yildirim v. Turkey[124] the ECtHR went further than the Human Rights Committee when it held that the creation and distribution of websites in a Google Sites group represents a manner of exercising freedom of expression, and that Article 10 of the European Convention provides freedom of expression to everyone.[125] These rules apply not only to the content of the information being presented, but also to how it is transmitted. The Court further reaffirmed that Article 10 protects not only the right to transmit information but also the right of the public to

[119] COE, ECHR as amended by Protocols Nos. 11 and 14, 04.11.1950, ETS 5.
[120] *Ibid.*, para. 18.
[121]Communication No 1334/2004, U.N. Doc. CCPR/C/95/D/1334/2004.
[122] *Ibid.*, para. 8.4.
[123] Communication No 726/1996, U.N. Doc. A/58/40, Vol. II.
[124] Application No. 3111/10, 18.12.2012.
[125] *Ibid.*, para. 49.

receive it. Simply put, the right to Freedom of information extends to the right of the public to be informed by a free press. In this light, the issue of Internet connection is critical for today's full enjoyment of freedom of expression, since it allows for both receiving and sharing of information and ideas. It is worth noting that the ECtHR admitted in Mouvement Raëlien Suisse v. Switzerland[126] that it interprets the ECHR "in light of current circumstances," and that it must consider the internet's dynamic characteristics as a "modern means of conveying information."[127]

A free press and independent media, free of government interference, are an essential component of democratic societies. Most of modern press and media are now internet based. A critical media serves as a tool for democratization and promotion of public conversation on the key challenges that a society faces.[128] The free press serves an important monitoring and accountability function by providing a place for public dialogue and subsequently contributing to public discussion. This feature assumes that journalists have a legal right to access public information.

2.2.1. Expression on the internet and the web as a public sphere

The Internet has opened new avenues for freedom of speech and expression while also posing new challenges. Is this to say that online freedom of expression may be regarded a new freedom? No, because the inclusion of the phrase 'through any other media' in Article 19 ICCPR of 1966 and in regional instruments like Article 10 ECHR, as well as the judicial decisions of international courts, demonstrates the flexibility of freedom of speech to technical and social change.

[126] Application No. 16354/06, 13.07.2012.
[127] *Ibid.*, para. 33.
[128] Human Rights Committee (12.09.2011), General Comment No. 34, CCPR/C/GC/34, para. 13; See also Harris, D.J., *et al.* Law of the European Convention on Human Rights, Oxford, (4th ed.), 2018 p 465.

The World Wide Web (WWW) is commonly referred to as the “information superhighway;” it is a public sphere that, like a public park, is open to anyone, but it is also a commercial sphere governed by private corporations. Public spaces on the web are in the form of websites or cyber assemblies which may be commercial sites offering items or advertisements, non-profit organizations such as NGOs, or individuals' blogs to mention a few.

Information extraction is an individual activity in a public domain, like obtaining data in the physical world, but with widely divergent techniques due to the information's digital form. Individuals who want to look for or acquire specific information might use search engines to do it on a global scale. This contrasts with visiting a travel agency, where information retrieval is constrained by physical constraints.

Accord to Habermas, the physical public sphere has the following major properties among others:

1. Individuals could only escape information to a limited amount when going around in the physical sphere, as media such as signs, posters, photos, and sound (mass media) exerts a significant influence on us.
2. In the public realm, people interact physically with each other, and communication is usually based on the physical presence of at least two individuals.
3. Physical appearance, talents, voice, and age influence how communication is made.[129]

The internet, on the other hand, has the following features:

1. Individuals can use the public web allowing them to share or receive information.
2. People interact with each other virtually rather than physically.
3. People have a greater degree of control over which information they get.

[129] Habermas, J. The Structural Transformation of the Public Sphere, Oxford, Polity Press 1989.

4. People have a greater degree of control over which information they avoid.

Being in the public cyber realm is a more private act than being in the physical sphere, as seen above. On the flip side, acting on the cyber realm can potentially have a wider reach, because published contents are searchable and accessible to the entire globe. These properties of internet are a significant element of its distinguishing attributes.

While conveying a message, the individual has much less influence over the impact of their expressions because there is no way to manage the group of consumers, unlike in the physical realm in which the individual would know to whom his message is addressed to. The knowledge discovery process has the opposite property, people in cyberspace have more influence over the messages they collect since they are more actively seeking information.

While relating internet to public setting, Lessig emphasizes the need for users to "digitally divert their gaze,"[130] allowing them to deal with a wide variety of potentially objectionable information in the same manner they would when strolling down the street. Unlike the physical world, however, the cyberspace is not divided into sectors such as red-light districts or familial neighbourhoods, therefore people may not have the same ability to distinguish between safe and less safe regions. They do, however, have new ways to circumvent information because of the above-mentioned properties of positive information extraction. Due to the accessibility of the cyberspace, it also makes challenging or distressing expressions readily accessible. People only meet a small portion of the available knowledge in the physical world, however in cyberspace, a wider range of expressions and contents is available. One might claim that freedom of speech and expression in cyberspace serves as a reality check for how much diversity a society can realistically handle.

[130] Lessig, L. Code and Other Laws of Cyberspace, New York, Basic Books 1999.

The web world also has semi-public domains which includes chatroom, listserv, and threads. Using Habermas' definition of public sphere, arrangements are public when they, in contrast to closed or exclusive affairs, are open to all, in the same sense of public places or public houses.[131] Semi-public domains are public in the sense that they have been open to the public, but they are managed by private entities, unlike actual public gatherings. Cyber assemblies are generally structured around a theme, and administrators or "virtual door staff" can be present to supervise debates and restrict statements that are inappropriate for the discussion thread. As a result, the service or content provider's define topics, potential audience, or moral/ethical criteria to specify the authorized forms expressions. Given that the internet lacks public space equivalent to roads in the material realm, cyber assemblies play an important function as communal gathering places.

2.2.2. Protection of freedom of expression on the internet

The biggest prospective obstacles to freedom of speech may be observed in conceptual differences backed by various jurisdictions, as well as technological innovations that bring new options for freedom of expression but also for repression. Furthermore, the obligations of private actors such as ISPs, as well as the rights of users, also need to be clarified. The problem is determining what is in the public interest and then ensuring that it is recognized and supported by private players on a regional and global scale.

Sovereign states bear the primary duty for ensuring freedom of expression on the internet but by adopting a multistakeholder model.[132] All other stakeholders, including international organizations, the commercial sector, and civil society are also expected to contribute and serve as watchdogs for internet governance. Freedom of expression is critical in the quest to create a people-centered, inclusive, and development-oriented information society that respects and

[131] *Ibid.*
[132] *Ibid.*

upholds the Universal Declaration of Human Rights, as well as the universality, indivisibility, interdependence, and interrelationship of all human rights and fundamental freedoms. Similarly, to how the Internet facilitates the exercise of human rights, freedom of expression facilitates the exercise of civil, political, economic, social, and cultural rights.

John P. Barlow in his 1996 Declaration of Cyberspace Independence stated that the global social space must "…be inherently independent of the tyrannies you (states) want to impose…"[133] Only a limited, clearly restricted exceptions to freedom of expression can be made based on state practices and case law of the courts of law and the UN's quasi-judicial organizations. Any such exception must pass the three-part test of legality, necessity, and proportionality in the pursuit of legitimate goals.

2.3. Right to Privacy and Data Protection

Individual privacy and secrecy are so important to forming relationships with others and maintaining the human sense of self. Given that the need for privacy is a basic human attribute, the concept of a right to privacy stems from our deep desire to live a dignified life. Although the idea of privacy has an ethereal element to it that makes it impossible to explain, people have an instinctual desire to know that they can keep some things hidden from others. Humans have a natural demand for privacy, even in the absence of extreme circumstances. Privacy as a notion has been acknowledged in a social as well as a legal sense in most societies since time immemorial, perhaps because of that inherent desire. Today, the right to privacy is seen as a distinct human right with universal characteristics that merits legal recognition and protection, albeit the scope of such protection is still evolving.

[133] Barlow, J. P., A Declaration of the Independence of Cyberspace, 08.02.1996 Davos, available at https://www.eff.org/cyberspace-independence (accessed 08.03.2022).

Privacy in its totality may be described as the ability and capacity of a person to exercise control over the intimacies of person identity and information about them. Daniel Solove identified six major areas of privacy:

1. The right to be left alone.
2. Limited access to a person – the capacity of a person to protect themselves from unwanted access by others.
3. Secrecy – the ability to keep certain matters hidden from others
4. Control over personal information – the ability to exercise control over information about oneself.
5. Personhood – the protection of one's personality, individuality, and dignity.
6. Intimacy – control over, or limited access to, one's intimate relationships or aspects. [134]

The international community has long recognized the right to privacy as a human right. An examination of the basic international human rights agreements finds that privacy is referenced in most of them; Article 12 UDHR, Article 17 ICCPR, and Article 17 ECHR,[135] are some of the international statutes that prominently featured the right to privacy. The Banjul Charter[136] notably did not include the right to privacy.

The UN Human Rights Committee issued a General Comment on Article 17 of the ICCPR, which embodies the right to privacy, discussing and clarifying concepts including "arbitrary interference," "family," "home," and "correspondence."[137] The phrase "unlawful" as it occurs in Article 17 implies, according to the Human Rights Committee, that no one's privacy can be invaded unless it is justified by law. In the case that a breach of a person's privacy is required,

[134] Solove, D.J., Understanding Privacy, Harvard University Press, 2009, p 13.
[135] As amended by Protocols Nos. 11 and 14, 04.11.1950, ETS 5.
[136] Doc. CAB/LEG/67/3/Rev.5 (1981), 5, 21 ILM 58 (1982).
[137]UNHRC, ICCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 08.04.1988.

"responsible public authorities shall only be entitled to request such information pertaining to an individual's private life as is necessary in the interests of the public as defined under the Covenant."[138]The collecting of personal information is also addressed in the General Comment, which states that such collection must be regulated by law.[139]

The General Comment further underlines that privacy rights are not absolute under Article 17 of the ICCPR.[140] In addition to the General Comment, the European Convention on Human Rights and the Universal Declaration of Human Rights also restrict the scope of protection, acknowledging that there are competing interests to which the right to privacy must give way.[141] As a result, states may legitimately limit an individual's rights to preserve the rights of others, the general welfare, public order, morality, and the security of all citizens.[142] These limitations, however, may not render the right null and void.

The right to privacy has gradually gained global recognition as a basic human right. In addition to being covered in the most significant international and regional human rights treaties, practically every constitution in the world, as well as the general laws and jurisprudence of those nations without codified constitutions, includes some component of the right to privacy.[143]

While the right to privacy is not absolute and must give way when other community interests are at issue, a balancing test must consider the right's universality and the activities it protects. Privacy is recognized as a vital part of human dignity under international law.[144] The advent of new technologies that ease the invasion and interference with an individual's privacy has

[138] *Ibid* ., para 3, 7 & 10.
[139] *Ibid.*, CCPR General Comment.
[140] *Ibid*., para 7-9.
[141] Article 8 ECHR.
[142] Art. 32 (1) ICCPR, Art. 29 (2) UDHR.
[143]Diggelmann, O. and Cleis, M.N., How the Right to Privacy Became a Human Right, Human Right Law Review, Vol. 14, 2014 pp. 441-458.
[144] *Ibid.*

heightened the necessity for suitable protections. A contextual study of the possible infringements that technology allows and the resources available for protection is required to establish the impact of new technologies on the right to privacy and to propose acceptable remedies. Such an analysis necessitates first examining how technological advancement has affected individuals' behaviour and society in terms of privacy, and then devising appropriate solutions to address privacy concerns in a way that balances the benefits of technological advancement with the individual's right to privacy.

2.3.1. The internet and its impact on the right to privacy and data protection

The developments in technology have led to a notable increase in breach of data. The quest for electronic commerce and information technology must be balanced against the demands of a democratic society and its responsibility to defend individual citizens' rights. The truth is that technology that may intrude on one's privacy also hold the promise of new prospects for knowledge, affluence, and security.

Historically, privacy legislation has evolved in lockstep with technological advancements, continuously reforming itself to address the privacy dangers posed by new technologies. The information revolution, on the other hand, has occurred at such a rapid pace and has affected so many aspects of privacy legislation that the traditional, adaptive legislative and judicial process has failed to handle digital privacy issues appropriately and quickly. The recent generation has witnessed technical advancements on par with, if not greater than, the industrial revolution.

Every contact with the internet and social media platforms, as well as every credit card purchase, bank withdrawal, and magazine subscription, is digitally recorded and connected to users. All this data can be distributed instantly and cheaply throughout the world if it is collected in networked databases. Individuals have limited control over how their data is

collected or used; most consumers are unaware of what information on them has been gathered or how it is being used.[145]

While all these developments have an impact on information, they also have an impact on autonomy due to the intrusion of digital technology and the internet into one's everyday life. When practically every action leaves a digital trail, government and private surveillance becomes more about "data mining," which is "the intelligent search for new information in existing masses of data."[146]

Furthermore, since the Internet retains and makes available all forms of previously obtained information without any kind of filter, users' privacy is eventually compromised. The current condition of privacy legislation has been extensively documented in that it does not consider new technological breakthroughs or reflect social and individual concepts of privacy.[147] The proliferation of internet availability and access has made it one of the most important instruments for communication, commerce, and research. The Internet is continually changing for even more innovative uses, thanks to the rapid development of new technology and applications. The internet, on the other hand, lacks many of the safeguards and control measures seen in systems like landline telephone due to its relative infancy in broad deployment. Unauthorized gathering and storage of information about internet activity have emerged as one of the major dangers to online privacy.

Database servers retain and catalogue highly specific information about the user and his or her use of the internet with each keystroke and page that is opened. Many websites utilize 'cookies,' which are little files that are stored on a user's computer or mobile device and permit

[145] Solove, D.J., *supra.*
[146]Slobogin, C., Government Data Mining and the Fourth Amendment, The University of Chicago Law Review, Vol. 75 (1), 2007, pp. 1 – 21.
[147]Nissenbaum H., Privacy in Context: Technology, Policy, and the Integrity of Social Life, Stanford Law Books, 2010, p 186.

the collection of extensive information about the user, frequently without the user's knowledge or agreement. Websites that demand personal data before usage and others that collect information in conjunction with transactions, all of which are easily subject to theft and misuse, are adding to the quantity of personal data gathered. Personal data on users is gathered with disturbing detail by sites like Google, Yahoo, Twitter, Facebook, and LinkedIn to mention a few. These companies can find out where user log on from, their browsing habits, and their personal and professional contact information. The acquisition and preservation of this data is a major cause of worry, although it has also been requested by governments for security reasons.

2.4. Access to Internet and Restriction of Online Contents

The ability to exercise human rights online is contingent on having access to the internet. In this way, the internet is a human rights facilitator. However, access is only one of two levels of access, with the physical dimension or infrastructure being the most often known. The right to access online content is distinct from internet access. Assuring both poses unique, but intertwined, human rights issues. Access to the internet connectivity and subsequently unfiltered access to material are prerequisites for using the Internet as a facilitator for other human rights.[148]

The fact that ISPs do not discriminate against types of material is a crucial aspect in ensuring that everyone has access to it. The notion of network neutrality, or not discriminating based on content, is inextricably related to freedom of speech as an enabler of human rights on the internet.

[148]Report of the Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression, Frank La Rue, HRC, 17th Session, Agenda item 3 – Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, including the right to development, 16 May 2011, UN Doc. A/HRC/17/27.

There seem to be significant problems in practice in relation to constraints on or meddling with freedom of expression online, such as censure through filtering or blocking of online content. However, the guidelines for restrictions remain the same, as per the principle "what applies offline, also applies online." The UNHRC affirmed this principle in its landmark resolution on the preservation, promotion, and enjoyment of human rights on the Internet in July 2012.[149] In his influential 2011 report on the obligations arising from Article 19 of the ICCPR, Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, argued that, like offline content, any limitation of internet content levied as an extraordinary measure should always pass a three-part, cumulative test:

1. To fulfil the criteria of predictability and openness, it must be guaranteed by legislation.
2. It must aim to achieve one of the goals outlined under Article 19 of the ICCPR, namely, to preserve others' liberties or reputations, national security or public order, health, or morals; and
3. It must be both required and the least disruptive way of achieving the desired result (principle of proportionality).

However, these criteria are applicable in the case where a government seeks to restrict the right through legislative means but does not consider self-regulation by private parties.

2.4.1. Criteria for Restriction of Internet Access

The right to freedom of expression is not absolute. The use of freedom of expression entails obligations and responsibilities that are triggered by exercising freedom of speech according to Article 19 of the ICCPR As a result, the right is subject to specific limitations. Three requirements must be satisfied to justify the restrictions on the freedom of expression online. The measure must:

[149] A/HRC/RES/20/8., *supra.*

1. Be lawful (legality)
2. Seek one or more legitimate goals (legitimacy)
3. Be required in a democratic society, with necessity meaning proportionality to the legitimate goal sought (necessity).[150]

In the 2012 case of Yildirim v. Turkey,[151] the ECtHR considered whether interference with the applicant's right to freedom of expression was required by law, pursued legitimate goals, and was necessary in a democratic society, as required by Article 10 paragraph 2 of the ECHR. The fact that the internet had now become one of the primary ways of exercising the right to freedom of speech and information was cited by the Court as an aggravating element in evaluating the illegality of the Turkish authorities' actions. The Court did not refute that there would be a valid justification for the constraint premised on Turkish law in the case of the website in question, but it found that the limitation was disproportionally excessive, impacting the free expression of a third party as a collateral effect, and therefore unnecessary to accomplish the legitimate consequence.[152]

Also in the case of Delfi AS v. Estonia,[153] the ECtHR was asked to decide if the award of damages against the Applicant (an internet news portal) for offensive comments posted by an anonymous third party violated the ECHR provision on freedom of expression. The ECtHR upheld the decision of the Estonian courts and held that the applicant company, by allowing non-registered users to make public comments, have assumed responsibility for such

[150] Art. 19 (3) ICCPR.
[151], Application No. 3111/10.
[152]*Ibid*., para 66.
[153] Application No. 64569/09, judgement 10.10.2013.

comments.[154] The ECtHR also held that measures taken to filter or prevent defamatory comments by anonymous users on a public internet forum is justifiable and proportionate.[155] Interference is only necessary in a democratic society when it conforms to a pressing societal need in line with laws and established Court's precedence. The function of the court of law is to examine the action taken in the context of the entire case and decide whether the actions taken are appropriate towards the pursuit of legitimate goals.

[154] *Ibid.* para 65.
[155] *Ibid.*

3. GLOBAL PERSPECTIVES AND APPROACHES TO RIGHT TO INTERNET ACCESS

3.1. Africa

Africa has the least internet access penetration compared to other regions of the globe.[156] There is nowhere else where the global 'digital divide' is more evident than Africa. Digital divide is the access gap between the technological haves and have-nots.[157] According to a 2020 estimate by Internet World Statistics, only 39.3% of the population of Africa has access to internet compared to the global average of 58.8%[158] despite Africa's over 1.3 billion people accounting for about 16.72% of the global population.[159] Admittedly, internet and telecommunication in Africa is largely at infancy stage with the exception of South Africa, however, Africa is the fastest growing region in terms of access to internet in recent years.[160] This is due technological advancement and spread of internet access through mobile access which does not require costly infrastructure like the fixed-line internet connections.[161]

Internally, Africa also has its own digital divide with a large percentage of the population with access to internet being concentrated in wealthier and politically stable countries like South Africa, Egypt, Mauritius, Namibia, Seychelles, Morocco, Tunisia, Botswana, and Cape Verde.[162] In recent years, Kenya and Nigeria are leading the pack of developing African countries with large internet web traffic emanating from mobile phones[163] and could soon join

[156]Warf, B., Uneven Geographies of the African Internet: Growth, Change, and Implications, African Geographical Review, Vol. 29 (2), 2010 pp. 41-66.
[157]Hilbert, M., The end justifies the definition: The manifold outlooks on the digital divide and their practical usefulness for policy making, Telecommunication Policy, Vol. 35(8), 2011 pp.715-736.
[158]Internet World Statistics, Internet Users Statistics for Africa, 202, available at https://www.internetworldstats.com/stats1.htm#africa (accessed 02.04.2022).
[159]Worldometer, Africa Population, available at https://www.worldometers.info/world-population/africa-population/ (accessed on 04.04.2022).
[160]InvestmentMonitor: African e-Connectivity Index 2021: The final frontier and a huge opportunity, available at https://www.investmentmonitor.ai/tech/africa-connectivity-index-2021 (accessed 04.04.2022).
[161] *Ibid.*
[162] Sarker A., Pick J. and Johnson J., Africa's digital divide: Geography, policy, and implications, 2015 Regional Conference of the International Telecommunications Society (ITS): "The Intelligent World: Realizing Hopes, Overcoming Challenges", Los Angeles, USA, 25th-28th October, 2015, International Telecommunications Society (ITS), Calgary http://hdl.handle.net/10419/146339.
[163] InvestmentMonitor: African e-Connectivity Index 2021 *Ibid.*

the club of countries with universal internet coverage. Internet access in Africa has some interesting patterns to it; only South Africa has similar connectivity compared to developed countries of the world. This closely followed by North African countries like Tunisia, Morocco, and Egypt.[164] Tourism dependent countries like Seychelles and Mauritius also have wide internet coverage. This shows that there is an economic incentive to most countries with wide internet coverage in Africa and demonstrates that wide internet coverage does not necessary translate to guaranteed freedom on the net. A good example is Egypt which ranks very low in terms of internet freedom despite having good internet infrastructure.[165]

Obstacles to the enjoyment of right to internet access in Africa can be economical or political. Economic challenges like poor infrastructures, low level of computer literacy, high cost of internet availability and poor power supply could be major challenges for internet access, however, the focus of this research is the political or legal obstacles towards the enjoyment human rights on the internet. Political obstacles to right to internet access usually concern the issue of censorship laws and the breach of the right to freedom of speech.[166]

The most remarkable event that highlighted the power and importance of the internet for a free society is the Arab Spring which started with the Tunisian revolution in the early 2010s and quickly spread to other countries including Egypt and Libya.[167] Bodunde *et al* succinctly noted that "The first implication that the use of internet had on the Arab Spring was the political sensitisation of the Arabs' populace against the autocratic rule of their leaders which was followed by mass negative reaction of the people. It also upset the political order of the Arab

[164] *Ibid.*
[165] Freedom House: Internet freedom score, available at https://freedomhouse.org/countries/freedom-net/scores (accessed 05.04.2022).
[166]Benedek, W., and Kettemann M.C., Freedom of expression and the Internet' Council of Europe Publishing, 2013 p18.
[167] Bodunde D.O. *et al*, The Power of Internet and the Security Implication for the Transformation of Political Power in the Arab Spring Crises, International Journal of Research, and Innovation in Social Science (IJRISS), 2010 Vol. III, Issue V, p.289.

Spring, causing political instability and unrest in the region. Another implication is that it facilitated regime change in Tunisia, Libya, Egypt and other regions of the Arab Spring."[168] The government of the concerned countries responded with brute force to clampdown on the Arab Spring. In Hosni Mubarak's led Egypt, the government shutdown the internet several times in 2011 in a bid to supress anti-government protests. This moves crippled access to basic emergency services such as ambulance and police thereby increasing the number of injured and dead protesters.[169]

Another way in which rights of citizens in African States are being infringed upon is through digital surveillance and registration of prepaid Subscriber Identity Module (SIM) cards which is compulsory in many African countries.[170] This allows the government to track the movement of SIM card owners and even tap into and listen on phone calls. This infringes on the right to privacy and freedom of expression. These infringements are often carried out under the guise of preventing fraud and fighting terrorism.[171] ISPs play a key role in both the blocking of individual websites or entire internet access by manipulating Border Gateway Protocols (BGP). This is easy to execute in African countries where there are few BGPs or where the State has a monopoly over internet access or undue control over the ISPs.[172] In Ethiopia and Cameroun for example, the government went as far as shutting down the web under the guise of maintaining public order. While in Nigeria, the State banned the popular social medium called "twitter" after the President's tweet was deleted for going against the medium's user policy.[173]

---

[168] *Ibid*

[169]Nyokabi D.M. *et al,* The right to development and internet shutdowns: Assessing the role of information and communications technology in democratic development in Africa, Global Campus Human Rights Journal, Vol.3, 2019 p 158.

[170]Roberts, T. *et al,* Surveillance Law in Africa: A Review of Six Countries, Institute of Development Studies, Research Report, 2021 p. 11.

[171] *Ibid.*

[172] *Ibid.*

[173] DW News, Nigeria lifts ban on Twitter after 7 months 13.01.2022, available at https://www.dw.com/en/nigeria-lifts-ban-on-twitter-after-7-months/a-60405062 (accessed 06.04.2022).

3.1.1. Regulations in Africa

54 States members of the African Union (AU) have ratified the African Charter on Human and Peoples' Right (Banjul Charter) except for Morocco which pulled out of the AU in 1984 prior to the coming into force of the charter.[174] Most countries in Africa have also ratified ICCPR and ICESCR.[175] Article 19 of the ICCPR and Article 9 of the Banjul Charter guarantees the right to freedom of expression. The Banjul Charter, unlike other regional instruments, did not make any provisions for the right to privacy, this however is provided for by Article 17 of the ICCPR. Both the ICESCR and the Banjul Charter make provision for social and economic rights which can be negatively affected by denial of access to internet as demonstrated in the government clamp downs during the Arab Spring and End SARS protests in North Africa and Nigeria respectively.[176]

In addition to the International Bills of Rights and the Banjul Charter, the AU in 2014 adopted the Convention on Cyber Security and Personal Data Protection (Malabo Convention).[177] So far, only 14 member States of the AU have signed the Malabo convention and only 8 have ratified and rightly deposed the instruments of ratification with the Chairperson of the African Union. Article 36 of the Malabo convention provides that "this Convention shall enter into force 30 days after the receipt by the Chairperson of the Commission of the African Union of the 15th instrument of ratification." Therefore, even though the Malabo Convention has been domesticated and in force in 8 AU members States,[178] it is yet to enter into force and have a continent-wide application in line with its article 36 of the Convention.

[174] Morocco pulled out of the OAU in 1984 to protest the admission of Western Sahara into Union. Morocco however rejoined the AU in 2017 and is yet to sign or ratify the ACHPR.
[175] Comoros has signed but not ratified the ICCPR and ICESCR
[176] Powell C.H., Schonwetter T., Africa, the internet, and human rights, in Susi M. (ed.), Human Rights, Digital Society and the Law – A Research Companion, Routledge (2019) pp. 319 -336.
[177] Adopted by the 23rd Ordinary Session of the Assembly held in Malabo, Equatorial Guinea on 27th June 2014
[178] Angola, Ghana, Guinea, Mozambique, Mauritius, Namibia, Rwanda, Senega

The Malabo Convention is the most important legal instrument bordering on right to internet access in Africa. Article 25 (3) of the Convention states that "in adopting legal measures in the area of cyber security and establishing framework for implementation thereof, each State Party shall ensure that the measures so adopted will not infringe on the rights of citizens guaranteed under the national constitution and internal laws, and protected by international conventions, particularly the African Charter on Human and Peoples' Rights, and other rights such as freedom of expression, the right to privacy and the right to fair hearing, among others."[179]

The Malabo Convention contains leeway provisions that allow States to monitor or even share internet communications. Article 13 of the Malabo Convention for example, makes provisions for basic principles governing the processing of personal data based on consent and legitimacy and listed the situations under which consent may be waived. The Malabo Convention requires State Parties to control the internet through the agency of a National Cyber Authority.[180] A major failing of the Malabo Convention however is that it does not stipulate any limit to the powers of the proposed National Cyber Authorities.[181] The Assembly of the A.U. adopted the Model Law on Access to Information for Africa in 2013[182] which is almost a total reproduction of the Inter – American Model Law on Access to Public Information adopted by the General Assembly of the Organisation of American States (O.A.S.) earlier in 2010.[183] The Inter-American Model Law is discussed in details in the section on the Americas.

There are also several soft laws applicable to the right to internet access in Africa. They include: the Windhoek Declaration on Promoting an Independent and Pluralistic African Press of 199

[179] Article 3, Malabo Convention.
[180] Article 25 (2) Malabo Convention
[181] Uchenna J.O., The African Union Convention on Cybersecurity: A Regional Response towards Cyber Stability? Masaryk University Journal of Law and Technology, Sept 2018, p. 103.
[182] AU Model Law on Access to Information for Africa, 2013 available at https://www.achpr.org/legalinstruments/detail?id=32 (accessed 06.04.2022).
[183] Barreto M.B. and Sears A.M., Implementing a Model Access to Information Law in Africa: Lessons from the Americas, in Shyllon, O. (ed), Model Law on Access to Information for Africa and other regional instruments: Soft law and human rights in Africa , Pretoria University Law Press, 2018 ch. 3 of p. 50.

1,[184] followed ten years later by the African Charter on Broad casting of 2001. The African Commission on Human and Peoples' Right (ACHPR) on its on part first adopted the African Platform on Access to Information (APAI) Declaration in 2017[185] and then the Declaration of Principles on Freedom of Expression and Access to Information in Africa in 2019.[186]

Earlier in 2014, a group of 23 Civil Societies drew up the African Declaration on Internet Rights and Freedom which has received endorsements form 44 African countries and 9 non-African countries so far.[187] The African Declaration on Internet Right and Freedom is perhaps the most ambitious law on right to internet access so far. C.H. Powell and Tobias Schonwetter[188] noted that the African Declaration established a link between poverty and information poverty which is not addressed in the Malebo Convention.[189] The African Declaration preamble stated that it was "intended to elaborate on the principles which are necessary to uphold human and people's right on the internet, and to cultivate an internet environment that can best meet Africa's social and economic development needs and goals."[190] The Declaration goes further to place the obligation on African States to provide accessible and affordable internet connection. Although the Declaration is fast gaining recognition in Africa, it is still yet aspirational and a soft law.

3.1.2. Judicial Precedents in Africa

The African Court of Justice and Human Rights (ACJHR) which is the primary judicial arm of the African Union[191] has not made any pronouncement on right to internet access or the Malebo

[184] Under the auspices of UNESCO and Newspaper Journalist, Windhoek – Namibia 29th April – 3 May 199.
[185] adopted on 19 September 2011, following a motion by Advocate Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People's Rights.
[186] At the 65th Ordinary Session of the ACHPR, Banjul – The Gambia 21 October – 10 November 2019.
[187] African Declaration on Internet Rights and Freedoms, List of Endorsement, available at https://africaninternetrights.org/en/endorsements (accessed 07.04.2022).
[188] Powell C.H., *supra.*
[189] *Ibid*. p 334.
[190] *Ibid*. p332.
[191] The ACJHR is a merger of the African Court on Human and People's Rights and the Court of Justice of the African Union founded in 2004.

Convention, however, the Court of Justice of the Economic Community of West African States (ECOWAS) in the case of Amnesty International Togo & 7 Ors v The Togolese Republic[192] held that the shutting down of the internet during a protest against the extension of the president's term of office was contrary to Article 9 of the Banjul Charter, Article 19 (2) of the ICCPR, Article 66 (2) of the ECOWAS Treaty[193] and Article 25 and 26 of the Togolese Constitution.[194] The Court established that internet access falls within the definition of the right to freedom of expression. The Applicant argued that "access to internet is not *stricto senso* a fundamental human right but since internet service provides a platform to enhance the exercise of freedom of expression, it them becomes a derivative right that is a component to the exercise of the right to freedom of expression."[195] The Court agreed with the applicant's argument and decided that Togo violated the right to freedom of expression. The Court also ordered Togo to take necessary measures to prevent a reoccurrence and put in place safeguards in accordance with international human rights instruments.

Similar to the case before the ECOWAS Court, the East Africa Law Society has initiated a case against the Republic of Uganda before the East African Court of Justice (EACJ).[196] The Applicants contend that the Ugandan governments actions in shutting down internet during the January 2021 elections violated Article 6 (d), 7(2) and 8(1) (c) of the Treaty for the Establishment of the East African Community.[197] It is safe to assume the EACJ will reach the same conclusions as the ECOWAS Court if consideration is given to Article 9 and 19 of the Banjul Charter and ICCPR respectively.

[192] JUD No: ECW/CCJ/JUD/09/20, 25.06.2020
[193] Revised Treaty of the Economic Community of West African States, 24.07.1993.
[194] *Constitution de la IVe République*, 14.10.1992.
[195] *Ibid*. p 11.
[196] EALS v Uganda, Ref. No. 12 of 2021.
[197] As amended 14.12.2006 and 20.08.2007.

At the individual State level, the Zimbabwean Supreme Court in in the case of Retrofit v. Posts and Telecommunications Service[198] held that the state-owned telecommunication company's monopoly over mobile telecommunication was illegal and unconstitutional. Interestingly, the Zimbabwean Supreme Court also relied on the Applicant's (a private company) right to freedom of expression to reach its decision. In the more recent case of Primedia Broadcasting v Speaker[199] where the South African State Security Agency jammed internet and telecommunications signals just before the then President Jacob Zuma addressed the parliament, thereby preventing journalist from reporting the address in real time without the approval of the parliament; the South African Court of Appeal held that the obstruction of telecommunications signal is illegal because it interfered with the function of the parliament. The Court went to state that the Security Agency's action went against the constitutional principles of freedom of expression, free press, transparency, and accountability.[200]

3.2. The Americas

The Americas is a unique region of the United Nations because it made up of two continents and the Caribbean islands. According to the International Telecommunication Union's (ITU) estimate, 13.2% of the world population live in the Americas and about 81% of the almost 1 billion people in the Americas have access to the internet, a figure surpassed only by Europe's 87%.[201] All the 35 independent countries that make up the Americas are members states of the Organisation of American States (OAS) have ratified the OAS Charter.[202] Also all independent countries of the Americas are members of the Inter-American Commission on Human Rights (IACHR)[203] however, not all member states accept the blanket jurisdiction of the Inter-

[198] 1995 (2) ZLR 199
[199] (784/2015) (2016) ZASCA 142, 29.10.2016.
[200] Ibid p. 9 – 11
[201]ITU, Measuring digital development: Facts and figures 2021, available at https://www.itu.int/en/ITU-D/Statistics/Pages/facts/default.aspx (accessed 12.04.2022).
[202] OAS Member States available at https://www.oas.org/en/about/member_states.asp (accessed (12.04.2022).
[203] *Ibid.*, Founded in 1959.

American Court of Human Rights (IACtHR); only 22 of the member states accept the full jurisdiction of the IACtHR,[204] while Domica and Jamaica have ratified but yet to recognise the jurisdiction of the Court, Trinidad and Tobago withdrew from the jurisdiction of the court in 1999.[205]

Despite having one of the most internet coverages of the UN regions, the countries that make up the Americas have distinct problems as regards internet access. The North American countries of Canada and the United States of America are bedevilled by emerging issues like the use of geo-locational information, facial recognition and biometric tracking, internet of things and the right to be forgotten like the situation in Europe.[206] On the other hand, Latin American countries and the Caribbean countries are battling with issues of universal access, censorship, affordability, minority protection and non-discrimination close to the situation of nascent democracies of African and Asia.[207] Most people in the Americas live in countries rated "partly free" or "free" by the Freedom on the Net reports[208] or the OpenNet Initiative (ONI)[209] with the exception of Venezuela that has substantial censorship regime in place and Cuba with a totally suppressive internet surveillance regime.[210]

[204] Antigua and Barbuda, The Bahamas, Belize, Canada, Cuba, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and United States of America have not ratified or recognized the jurisdiction of the IACtHR; see What is the IACtHR? available at https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en (assessed 02.05.2022).
[205] The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States, IACtHR Advisory Opinion OC – 26/20 of 9.11.2020 requested by the Republic of Colombia.
[206]Stewart D.P., The approach of North American courts towards the internet, in Susi M. (ed), Human Rights, Digital Society, and the Law – A Research Companion, Routledge, 2019 pp. 337 – 356.
[207] Puccunelli O.R., Latin American human rights jurisprudence and practices towards the internet, in Susi M. (ed) Human Rights, Digital Society, and the Law – A Research Companion, Routledge 2019 Ch. 24 pp. 371 – 383.
[208]Freedom House, Freedom on the Net Reports, available at https://freedomhouse.org/report/freedom-net (accessed 06.04.2022).
[209] ONI, Regional Overviews, available at https://opennet.net/regional-overviews (accessed 06.04.2022).
[210] *Ibid.*

3.2.1. Regulations in the Americas

Only 25 member states of the O.A.S. have ratified the American Convention on Human Rights (ACHR).[211] Notably, the U.S.A. signed the ACHR in 1977 but is yet to ratify it.[212] Canada and most of the English-speaking Caribbean countries are yet to sign the ACHR. Canada opted not to sign over the anti-abortion clause in Article 4 (1) of the ACHR while Venezuela and Trinidad and Tobago both denounced the Convention; Venezuela accused the IACtHR and the IACHR of interfering with its domestic affairs and Trinidad denounced the ACHR over prohibition of death penalty contained in Article 4 (5) of the ACHR.[213]

In addition to the International Bill of Rights, the human rights duties of the member States of the IACHR stems from the OAS Charter,[214] the American Declaration of the Rights of Man[215] and the ACHR. Unlike the Banjul Charter, the ACHR made a specific provision for the right to privacy.[216] Article 13 of the ACHR provides for the freedom of though and expression, "this right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."[217] Article 14 of the ACHR went on to introduce a "right of reply" which allows anyone injured by offensive information to reply or make correction using the same communication outlet the offensive information was made.

In 2010, the General Assembly of the O.A.S. adopted the Model Inter-American Law on Access to Public Information.[218] The Model Law made specific provisions for the scope and

[211] Pact of San Jose, Costa Rica, 2210.1969.
[212] Loveland J.M., 40 Years: It's Time for U.S. Ratification of the American Convention on Human Rights, Seattle Journal for Social Justice 2020, Vol. 18 (2) pp. 129 – 184.
[213]Concepcion N.P., The Legal Implications of Trinidad and Tobago's Withdrawal from the American Convention on Human Rights, American University International Law review 2001, Vol. 16 (3) pp. 847 – 890.
[214] Charter of the Organization of American States, 30.04.1948.
[215] IACHR, American Declaration of the Rights and Duties of Man, 02.05.1948.
[216] Article 11, ACHR.
[217] Article 13 (1) ACHR.
[218] 4th Plenary Session, AG/RES. 2607 (XL-O/10) 08.06.2010.

meaning of right of access to information.[219] The Model law grants individuals the right to make request for information held by government authorities in any format including digital or electronic formats.[220] The Model made provisions for three broad grounds of private interests, public interests and breach of confidence in communication (privileged information) upon which authorities may deny access to information.[221]

The Model Law did not give a blanket power to the national authorities. Article 46 and 47 of the Model Law makes provisions for internal and external appeal of the decisions of the public authority respectively. The external appeal goes to the National Information Commission of the concerned State.[222] The burden of proof lies on the concerned public authority to show that the information requested falls within the exceptions contained in Article 41 of the Model Law. Chapter VI of the Model Law went on to establish the Information Commission with full legal personality to implement the provisions of the law,[223] proposed the composition of the Commission,[224] duties and power,[225] criteria for appointments into the Commission,[226] remuneration,[227] and tenure of office.[228] The Model Law went on to propose criminal and civil liabilities for wilful obstruction of right of access to information.[229] Although the Model Law has been adopted by the General Assembly of the O.A.S., individual member states still have to implement the law to take effect in their territories. The Model Law of the O.A.S. probably influenced the drafting of a similar legislation by ACHPR for Africa.[230]

---

[219] Art. 1 (a) – (h), 5 (a) – (g) Model Inter-American Law on Access to Public Information.
[220] *Ibid.*
[221] Art. 41 (a) – private interests; Article 41 (b) – public interests; Article 41 (c) – breach of confidence in communication.
[222] *Ibid.*,Article 47 (1).
[223] *Ibid.*,Article 55 (1) – (4).
[224] *Ibid.*,Article 56 (1) & (2).
[225] *Ibid.*,Article 62 (a) – (f) .
[226] *Ibid.*, Article 57 (a) – (d).
[227] The Commissioners are paid salary equivalent of a high court judge; Article 59 (1) Model Inter-American Law.
[228] The Commissioners have a 5-year tenure; Article 60 Ibid
[229] Article 65 – 67 Ibid
[230] Barreto M.B. and Sears A.M., *Supra*

The office of the Special Rapporteur for Freedom of Expression of the IACHR published in 2017 the "Standards for a Free, Open and Inclusive Internet"[231] after wide consultations. The 90 paged document made provisions for guiding principles which include free and open internet, access, multi-stakeholder governance, and non-discrimination.[232] Chapter II of the document dealt extensively with the right to freedom of though and expression making references to American Declaration of the Rights of Man and the ACHR.[233] Chapter III discussed the right to access to information making references to Model Inter-American Law on Access to Public Information and other international standards on right to access information.[234]Chapter IV discussed the right to privacy and protection of personal data.[235] The Standards for a Free, Open and Inclusive Internet is however a soft law and a persuasive authority like the African Declaration on Internet Rights and Freedom.

Article 6 of the Standards for a Free, Open and Inclusive Internet recognised that "the relevance of the Internet as a platform for the enjoyment and exercise of human rights is directly tied to the architecture of the web and its governing principles, including the principles of openness, decentralization, and neutrality… and special characteristics of the Internet should be taken into account before making any regulation that would affect its architecture or interaction with society."[236] The document recognised that some member states have already enacted laws that guarantee net neutrality[237] and adopted the European Commission's exceptions to the principle

[231] Edison Lanza, Special Rapporteur for Freedom of Expression; OEA/Ser. L/V/II CIDH/RELE/INF.17/17 15.03.2017.
[232] *Ibid.*, Chapter 1.
[233] *Ibid.*
[234] *Ibid.*
[235] *Ibid.*
[236] *Ibid* p. 13.
[237] Argentina, Brazil, Chile and Mexico, U.S.A., and Paraguay.

of net neutrality which allows for reasonable traffic management by preventing impending serious crimes and obstruction of access or distribution of child pornography.[238]

3.2.2. Judicial Precedents in the Americas

Unlike the ACJHR, the IACtHR has made several decisions on cases relating to the right to internet access and the protection and enjoyment of human rights on the internet even though individuals cannot bring matters directly before the IACtHR like the ECtHR and ACJHR.[239] In the case of H.R. Case of Escher v. Brazil[240] the IACtHR was asked to decide whether wiretapping of farmers and land reform activists by Military Police in the Brazilian state of Paraná is unlawful and an infringement of the right to freedom of expression and privacy. The case provided the Court with an opportunity to analyse the American Convention's rights to privacy and freedom of association in depth, as well as the limitations to these rights. The IACtHR in its judgement recognised the internet as a faster means of information dissemination and order Respondent State to publish the judgment of the court in its official gazette, a national newspaper and internet.[241]

In the case of Fontevecchia and D'Amico v. Argentina[242] the IACtHR decided that the state has a responsibility to defend the right to privacy through positive acts, which may include, in some situations, the adoption of measures to ensure that private life is protected against intrusion by public authorities, individuals, or private institutions, such as the media which is now largely internet based. In Kimel v. Argentina where the IACtHR had to decide the instances for permissible surveillance, the court relied on Article 13 (2) of the ACHR to insist

[238] European Commission. Regulation Framework of the electronic communications. Regulation of the European Parliament and the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012. 11 September 2013. Page 27.
[239] Puccunelli O.R., *supra.*
[240] Preliminary Objections, Merits, Reparations, and Costs, IACtHR Series C, No. 200, 06.06.2009.
[241] *Ibid.*, para. 42 – 43.
[242] Merits, Reparations, and Costs, IACtHR Series C, No. 238, 29.11.2011.

of the prohibition of a-priori censorship of publications including those made on the internet, i.e., censored contents must be clearly defined by substantive and procedural law beforehand.

In U.S.A. where the jurisdiction of the IACtHR has not been embraced, the Supreme Court held in the case of Reno v ACLU[243] held that the First Amendment protections afforded to books and print media extends to the internet and that the internet is a free speech zone. In the same spirit, the Canadian Supreme Court R v Spencer[244] decided an individual has a right to privacy and anonymity on the internet and that a warrantless search of a premises or computers are presumptively unreasonable unless it can be proven that the search was authorised by law, that the authorizing law is reasonable and that the search was conducted in a reasonable manner. Stewart D.P.[245]observed that the U.S.A. approach to right to privacy on the internet is framed in the language of the individual's right not to be interfered with, while that of Canada is in terms of individual autonomy and control over personal data similar to what is obtainable in Europe.[246]

3.3. Asia and Oceania

According to the United Nations Statistics Division Geo-scheme (UNSD), 49 UN members, 1 observer and 5 other states make up the region of Asia. It is the most diverse region of the U.N. and home to about 59.76% of the global population.[247] Asia has the second lowest internet penetration in the world at about 64% as at 2021.[248] Digital divide is also very visible in Asia

[243]521 U.S. 844.
[244]2014 SCC 43, (2014) 2 SCR 212.
[245]The approach of North American courts towards the internet, *supra*.
[246] *Ibid* p.353.
[247]World Population Review, Asia Population 2022, available at https://worldpopulationreview.com/continents/asia-population (accessed 08.04.2022).
[248] Statista, Internet penetration rate in Asia compared to the global penetration rate from 2009 to 2021, available at https://www.statista.com/statistics/265156/internet-penetration-rate-in-asia/ (accessed 08/04.2022).

with some countries having more than 90% internet penetration[249] while some have as low as 30%.[250]

Oceania is the smallest region in the of the UNSD classification; there are just 14 sovereign countries and several dependencies amounting to just 0.54% of the global population.[251] Oceania is very diverse and has its own digital divide; Countries like Australia and New Zealand have high internet penetration of 86.5% and 90.8% respectively,[252] while countries like Solomon Islands and Micronesia have internet penetration rate of as low as 34.1% and 20.8% respectively.[253]

Asia and Oceania are the only two of the five regions of the United Nations yet to establish working regional human rights systems. For the Asian region, diversity seem to be a major impediment to the actualisation of a regional human rights system as it appears regional homogeneous clusters would rather establish sub-regional mechanisms than come under an Asia-wide instrument.[254] The Arab League for example, took steps towards the development of a human rights protection mechanism with the Arab Charter of Human Rights in 2004 and the establishment of the Arab Committee of Human Rights in 2009, however, the Arab Charter is considered to be inconsistent with international human rights standards and there are also concerns about independence of the Arab Committee on Human Rights.[255]

[249] Countries like Japan and South Korea.
[250] Countries like India, Pakistan, and Sri Lanka.
[251] Worldometer, Oceania population available at https://www.worldometers.info/world-population/oceania-population (accessed 08.04.2022).
[252] *Ibid.*
[253] *Ibid.*
[254]The Role of Regional Human Rights Mechanism, A publication of the Directorate-General For External Policies, European Parliament 2010 p5.
[255] UN News, "Arab rights charter deviates from international standards, says UN official" (30 January 2008) available at https://news.un.org/en/story/2008/01/247292-arab-rights-charter-deviates-international-standards-says-un-official (accessed 08.04.2022).

The Association of Southeast Asian Nations (ASEAN) also took laudable steps in recent times towards a sub-regional human rights system. In 2009 ASEAN established the ASEAN Intergovernmental Commission on Human Rights (AICHR)[256] to promote cooperation and protect human rights among its ten member states but there was no political will to enact a human rights convention or a sub-regional court not until the 21st ASEAN summit held in Phnom Penh, Cambodia[257] that the ASEAN Human Rights Declaration (AHRD) was adopted.[258] The ASEAN human rights instruments like that of the Arab League has been widely condemned as fatally flawed and falls short of universal human rights standards.[259] There is therefore no unifying continent-wide human rights regional instrument in Asia, just as the approaches to right to internet access is very diverse across the region.

3.3.1. Regulations in Asia and Oceania

Satoshi Yakodaido noted that "it is unrealistic to imagine a common Asian culture, and there is no such thing as Asian Law as a legal system comparable to civil law or common law in Europe. Asian countries think very differently about human rights and human dignity."[260] Only about half of the Asian population have access to internet and most of them live in countries with not free internet or pervasive censorship regimes.[261] The subsequent paragraphs will examine sample regulations from countries rated as "free, partly-free, and not free by O.N.I.

Israel is one of the countries rated as "free" in Asia by O.N.I.[262] The country remains one of the global leaders for new internet technologies and has progressive laws are regards human

[256]Hara A.E., The Concerns and Sustainability of ASEAN Intergovernmental Commission on Human Rights (AICHR); Sustainable Future for Human Security – Society, Cities and Governance, Springer Nature Singapore Pte 2018 Ch. 49.
[257] 17 – 20 November 2012.
[258] 18.11.2012, Hara A.E., *supra*.
[259]International Commission of Jurists, The ASEAN Human Rights Declaration: Questions and Answers, available at https://www.icj.org/wp-content/uploads/2013/07/ASEAN-leaflet-240713.pdf (accessed 18.11.2012).
[260] Yokodaido S., Asian human rights law, jurisprudence, and practices toward the internet in Susi, M. (ed) Human Rights, Digital Society, and the Law – A Research Companion, Routledge 2019 Ch.23 p. 354.
[261] Ibid p.355.
[262] ONI - Israel, https://opennet.net/research/profiles/israel; other free countries in Asia include Japan, Philippines, and Laos.

rights on the internet. In 2007, the Orthodox Jewish party proposed a censorship legislation targeted at pornography, however, the law was subsequently rejected by the legislations committee.[263] In India, internet is "partly- free,"[264] the government in 2013 started the Central Monitoring System (CMS)[265] which gives the authorities the legal backing to access any online communications directly. Many scholars are of the view that the CMS is a major threat to right to privacy and freedom of expression in India.

18% of the world population live in China and it is rated as "not free" in terms of internet freedom.[266] China operates one of the most pervasive internet surveillance regimes in the entire world.[267] The Chinese "real-name system" started in 2003 which requires ISPs to compel users to provide their real identity information, similar to the compulsory SIM registration in many African countries discussed earlier, has been widely condemned by human rights experts.[268] The laws in Australia and New Zealand are similar to what is obtainable in Europe as the legal system is largely influenced by the common law of the United Kingdom.[269]

3.3.2. Judicial Precedents in Asia and Oceania

There is no Asia-wide or Oceania-wide human rights judicial body like that of Africa, the Americas and Europe and Asian countries vary in their approaches to human rights issue.[270] The Indian Supreme Court in the case of Shreya Singhal v Union of India[271] evaluated Section 66(A) of the Indian Information and Technology Act[272] and held that it is in violation of the

[263] *Ibid.*
[264]Other partly free countries are Pakistan, Indonesia, South Korea, and Bangladesh.
[265]Litton A., The State of Surveillance in India: The Central Monitoring System's Chilling Effect on Sefl-Expression, Washington University Global Studies Law Review, 2015 Vol. 14 (4) pp. 799 – 822.
[266] ONI – China, https://opennet.net/research/profiles/china-including-hong-kong; other not free countries include Iran, Bahrain, Saudi Arabia, Syria, United Arab Emirate and North Korea.
[267]Zheng H., Regulating the Internet: China's Law and Practice, Beijing Law Review, 2013 Vol. 4 (1) pp. 37 – 41.
[268] *Ibid.*
[269]Castles A. C., The Reception and Status of English Law in Australia, available at https://www.austlii.edu.au/au/journals/AdelLawRw/1963/1.pdf (accessed 09.04.2022).
[270] *Ibid.*
[271]AIR 2015 SC 1523; Writ Petition (Criminal) No. 167 of 2012.
[272] No 21 of 2000 notified on 17.10.2000.

freedom of speech and expression guaranteed by Article 19 of the Constitution of India[273] even if such expression was made over the internet.

In China, the Supreme People's Court in 2017 established the first Internet Court in the technology hub of Hangzhou[274] to try public interest cases related to the internet, online copyright issues, disputes related to online commerce *inter alia*. Two other internet courts in Beijing and Guangzhou have been established since 2017.[275] These courts enforce China's pervasive surveillance regime and employs the use of artificial intelligence (AI) to decide most of the cases brought before it.[276]

3.4. Europe

Europe has the highest rate of internet penetration of all the regions in the world at 87%.[277] About 9.8% of the total world population live in Europe[278] and Europe is closer to closing the digital divide and achieving gender parity as regards the internet access more than any other continent.[279] The European system of human rights is also the oldest and the most advanced regional human rights protection system with its established judicial mechanism that has recorded laudable success in the enforcement of its decisions.[280]

The European system traces its origin to 1950 when the Council of Europe (COE) drafted the Convention for the Protection of Human Rights and Fundamental Freedoms now known as the European Convention on Human Rights (ECHR).[281] The Council of Europe was created shortly

[273] 26.01.1950
[274]China Justice Observer, China establishes three internet courts to try internet-related cases online: Inside China's internet courts Serie -01, available at https://www.chinajusticeobserver.com/insights/china-establishes-three-internet-courts-to-try-internet-related-cases-online.html (accessed 10.04.2022).
[275] *Ibid.*
[276] Vasdani T., Robotic justice: China's use of Internet courts, available at https://www.lexisnexis.ca/en-ca/ihc/2020-02/robot-justice-chinas-use-of-internet-courts.page (accessed 10.04.2022).
[277]ITU, Measuring digital development: Facts and figures 2021, available at https://www.itu.int/en/ITU-D/Statistics/Pages/facts/default.aspx (accessed 10.04.2022).
[278]Worldometer, Europe Population, available at https://www.worldometers.info/world-population/europe-population (accessed 11.04.2022).
[279] ITU, *supra.*
[280] Smith, R.K.M., International Human Rights (8th Edition), Oxford University Press, 2018 pp.84 – 92.
[281] ETS 5, 04.11.1953.

after World War II and currently has 46 member States following the suspension of Russia.[282] The human rights system in Europe involves the COE, Commissioner for Human Rights and European Court for Human Rights (ECtHR). Also in Europe is the European Union (E.U.), European Union Agency for Fundamental Rights and the OSCE Office for Democratic Institutions and human Rights.

Most of the countries in Europe have free or selective censorship internet regimes except for Russia that is rated "partly free" and Belarus that is rated "not free" by O.N.I.[283] The Russian Bloggers Law of 2014[284] considered bloggers with more than 3,000 daily readers to be part of the mass media and made it compulsory for such bloggers to disclose their identity.[285] Two years later, the Yarovaya Law of 2016[286] prohibited anonymity online and permitted the authorities to gain access to the data of ISPs and other internet service providers.[287]

Also, the law on Systems on Operational Investigation Activity (SORM)[288] which originally gave power to authorities to monitor telecommunication transmissions has been re-enacted as SORM-II to allow for monitory of internet traffic too. In Belarus, the government has a monopoly over internet services and 70% of Belarusian internet traffic is processed through Russian SORM-II.[289] The Belarusian government also employs advance surveillance tools to monitor the activities of political dissidents and journalists.[290]

[282]COE, Council of Europe suspends Russia's right of representation, available at https://www.coe.int/en/web/portal/-/council-of-europe-suspends-russia-s-rights-of-representation (accessed 15.04.2022).
[283] *Ibid.*
[284] Nos. 97 – FZ.
[285] Dedov D., The Russian perspective on human rights protection online in Susi M. (ed), Human Rights, Digital Society, and the Law – A Research Companion, Routledge, 2019 Ch. 25 pp.384 – 396.
[286]Nos. 374 – FZ and 375 – FZ.
[287] *Ibid.*
[288] No. 144 – FZ.
[289]ONI, Belarus, available at https://opennet.net/research/profiles/belarus (accessed 15.04.2022).
[290] *Ibid*

3.4.1. Regulations in Europe

All the 47 COE member states are parties to the ECHR and are subject to the jurisdiction of the ECtHR prior to the suspension of Russia earlier mentioned.[291] All COE member states have also ratified the UNDHR, ICCPR and the ICESCR. Article 10 (1) of the ECHR guarantees the right to freedom of expression. This right includes the right to "receive and impart information and ideas without interference by public authority." Article 10 (2) ECHR goes on to stipulate the duties, responsibilities and exceptions attached to the right to freedom of expression.

In addition to the International Bills of Right and the ECHR, the COE in 1981 adopted the Convention for the Protection of Individuals with Regards to Automatic Processing of Personal Data (Convention 108).[292] The Convention 108 has been updated in recent times to meetup with modern realities, it is now known as "Convention 108+."[293] Article 1 of Convention 108+ states that the purpose of the Convention is to "protect every individual, whatever his or her nationality or residence, with regard to the processing of their personal data, thereby contributing to respect for his or her human rights and fundamental freedoms, and in particular the right to privacy."

The Convention applies to both public and private sectors[294] and spells out the duties of the parties.[295] Article 9 of Convention 108+ spells the rights of a data subject, the convention went on to stipulate exceptions and restrictions;[296]sanctions and remedies for breaches of data privacy;[297] rules for transborder flow of personal data;[298] and the roles of supervisory

[291] Wulff C.M., The jurisprudence of the ECJ and ECtHR regarding data protection in the internet, Susi M (ed) Human Rights, Digital Society, and the Law – A Research Companion, Routledge, 2019 Ch. 11 pp.163 – 177.
[292] COE Treaty Series 108; Argentina, Cabo Verde, Mauritius, Mexico, Morocco, Senegal, Tunisia, and Uruguay being non-members of the COE, also acceded to the Convention.
[293] Updated by the Decision of the Committee of Ministers at the 128th Session held in Elsinore, 18.05.2015.
[294] Article 3 Convention 108+.
[295] *Ibid.,* Article 4.
[296] *Ibid.,* Article 11.
[297] *Ibid.,* Article 12.
[298] *Ibid.,* Article 14.

authorities and convention committees.[299] The Committee of Ministers also in 2009 adopted the COE Convention on Access to official Documents (Tromsø Convention).[300] The Tromsø Convention is based on three a core principles:

1. Transparency of public authorities;
2. Self-development of people and the exercise of their fundamental human rights; and
3. Public's confidence in public authorities.[301]

The Tromsø Convention provides for a general right of access to official documents,[302] but limitations to this right may be justified only in narrowly circumscribed cases.[303] The spirit behind this is to encourage the Parties to reinforce domestic provisions that allow a more extensive right to access public documents.[304]

Although not a COE Convention, it will be a disservice to this chapter if the General Data Protection Regulation (GDPR)[305] of the EU is not discussed in terms of right to privacy and other human rights on the internet. To ensure the protection of consumer privacy, the EU drafted guidelines which are currently considered the most advanced data privacy-oriented regulation in the word.[306]

Personal data is defined by the GDPR as "any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be

[299] Art. 15, 22 & 23 *Supra.*
[300] COE Treaty Series 205; it entered into force on 01.12.2020 following the expression of intension to be bound by Convention by 10 member states.
[301] *Ibid.*
[302] Article 2 Tromsø Convention.
[303] *Ibid.*, Art. 4.
[304] *Ibid.*
[305] EU General Data Protection Regulation (GDPR): Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016.
[306] Albrecht J.P., How the GDPR will Change the World, European Data Protection Law Review, 2016 Vol. 2 (3) pp. 287 – 289.

identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person."[307] Data revealing a data subject's 'racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, or data concerning a natural person's sex life or sexual orientation' are all considered special categories of personal data under the GDPR.[308]

According to the GDPR, processing of personal data relating to criminal convictions and offences, or related security measures, is only permitted under official authority or when the processing is authorized by Union or Member State law that provides appropriate safeguards for data subjects' rights and freedoms. One of the more notable provisions of the GDPR in the protection of data is the provision of pseudonymized data, which according to the GDPR, is 'the processing of personal data in such a way that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organizational measures to ensure that the personal data are not attributed to an identified or identifiable natural person.' This forms one of the many steps which are necessary and relevant to the protection of persons in the regime of the internet.

The GDPR stipulates that where processing is to be carried out on behalf of a controller,[309] the controller must use only data processors who can provide sufficient guarantees to implement appropriate technical and organizational measures to ensure that processing complies with the

[307] Article 4 (1) GDPR.
[308] Article 9 GDPR .
[309] Article 4 (7) GDPR, A data controller is viewed a natural or legal person, governmental authority, agency, or other organization that, alone or collectively with others, decides the goals and means of processing personal data.

GDPR's requirements and protects the data subject's rights. Furthermore, without the controller's previous explicit or general written authorization, the data processor may not engage another data processor. When a sub-processor fails to meet its data protection responsibilities, the GDPR states that the first processor is completely accountable to the controller for that other processor's obligations.

In some cases, the GDPR compels data controllers or processors to appoint a data protection officer (DPO). When an organization is a public authority, or when its core activities include processing operations that require regular and systematic monitoring of data subjects on a large scale, or when special categories of personal data and data relating to criminal convictions and offences are processed on a large scale. Data controllers situated outside the EU who are involved in specific types of processing are required to appoint a representative based inside the EU in writing, with exceptions based on the amount of processing and kind of data.

With recognition of the privacy of data, the GDPR installs certain requirements necessary prior to any data being processed and these are identified as the legal grounds[310] for processing data:

1. Consent
2. When processing is necessary for the performance of a contract to which the data subject is a party or to take steps at the data subject's request prior to entering a contract.
3. Compliance with legal obligations to which the data controller is subject
4. To protect the vital interests of the data subject or another natural person.
5. Performance of a task conducted in the public interest or in the performance of a task conducted in the public interest or in the performance of a task conducted in the public interest[311]

[310] Article 5 (1) GDPR.
[311] *Ibid.*

Consent is recognized as a legal basis for processing personal data under the GDPR, which provides detailed information on how consent must be gained and revoked. Processing of specific categories of personal data is prohibited under the GDPR unless an exception applies, such as the data subject's explicit consent. When the data controller's legitimate interests do not outweigh the data subject's basic rights, the GDPR considers them to be lawful grounds for processing.

The GDPR recognizing that data transfers may happen in specific instances provides for the cases of data transfer. The GDPR enables personal data to be transferred to a third country or international organization that meets the EU Commission's criteria for sufficient data protection. The GDPR also includes specific criteria that the EU Commission will consider when determining the adequacy of a third country or international organization, such as rule of law, respect for human rights and fundamental freedoms, relevant third-country legislation, the existence, and effective functioning of an independent supervisory authority, and the third country's or international organization's international commitments.[312]

In the absence of an adequacy judgment or the applicable protections outlined below, the GDPR allows for the transfer of personal data to a foreign country or international organization if one of the following legal grounds applies:

1. Where a data subject has given express agreement to the intended transfer and acknowledged the potential risks of such a transfer due to insufficient protections
2. Where the transfer is required to conduct a contract between the data subject and the controller or to conduct pre-contractual procedures requested by the data subject
3. When the transfer is required for the conclusion or fulfilment of a contract between the controller and another natural or legal person in the data subject's best interests

[312] Article 44-50 GDPR.

4. When the transfer is required due to a compelling public interest.
5. Where the transfer is required for the establishment, exercise, or defence of a legal claim; or when the transfer is required for the establishment, exercise, or defence of a legal claim.
6. Where the transfer is required to safeguard the data subject's or another natural person's vital interests, and the data subject is physically or legally incapable of providing permission.[313]

3.4.2. Judicial Precedents in Europe

The ECtHR and the Court of Justice of the European Union (CJEU) have a vast precedent on the right to internet access when compared to any other region.[314]The ECtHR however, is the regional court with continent wide juridisction and the main focus of this chapter.[315] In the 2012 case of Ahmet Yildrim v. Turkey[316] where the Turkish court of first instance blocked access to a website for insulting the memory of Atatürk, the ECtHR held that there has been a violation of Article 10 of the ECHR and that the measure taken to prevent abuse was done arbitrarily. In Akdeniz v. Turkey[317] the court declared the Applicants' application inadmissible and explained that the mere fact that the Applicants couldn't access a streaming website which was taken down for copyrights violations does not amount to infringement of the rights guaranteed by Article 10 of the ECHR.

In case of Vladimir Kharitonov v. Russia[318] where the authorities blocked Internet Protocol (IP) addresses shared by several sites including the targeted one, blocked entire website

[313]*Ibid.*
[314]Gosztonyi G., The European Court of Human Rights: Internet Access as a Means of Receiving and Imparting Information and Ideas, International Comparative Jurisprudence (2020) Vol. (6) pp.134 – 140.
[315] *Ibid.*
[316] ECHR 458 (2012) 18.12.2012.
[317] App. No. 20877/10.
[318] App. No. 10795/14; similar decisions in OOO Flavus & Ors v. Russia App. Nos. 12468/15, 23489/15, & 19074/16, Bulgakov v. Russia App. No. 20159/15, and Engels v. Russia App. No. 61919/16.

because of a single page and blocked 3 online news outlets for covering events the government did not approve of; the ECtHR found that there has been a violation of Article 10 and 13 which provides for right to effective remedy. The ECtHR also decided that the measures taken in blocking IP addresses shared by several sites is disproportionate and arbitrary.[319]As regards access to information, the ECtHR in Kaida v. Estonia[320] held that the refusal of the Estonian authorities to grant a prisoner access to 3 internet websites containing legal information of Estonia and the COE amounted to a violation of Article 10 of ECHR.

In the recent *locus classicus* case of Big Brother Watch & Ors v the United Kingdom,[321] the ECtHR laid to rest many questions on government electronic surveillance. The case is so important that the Governments of France, Norway, the Netherlands, and the United Nations' Special Rapporteur on the promotion of the right to freedom of opinion and expression were allowed to intervene. The applications were brought as a were a direct fallout of the Edward Snowden revelations cconcerning the electronic surveillance programmes operated by the intelligence services of the United States of America and the United Kingdom. The Applicants complained about the scope and magnitude of the electronic surveillance programmes operated by the government of the UK. The applicants challenged three types of surveillance conducted by the Government Communications Headquarters, or GCHQ, Britain's signals-intelligence agency:

1. Bulk interception of communications under the TEMPORA program
2. Intelligence sharing and receipt in collaboration with the PRISM and Upstream programs run by the NSA; and

[319]ECtHR Research Division, Internet: case-law of the European Court of Human Rights 2015, available at https://www.echr.coe.int/Documents/Research_report_internet_ENG.pdf (accessed 19.04.2022)
[320]App. No. 17429/10.
[321]App. Nos. 58170/13,62322/14 &24960/15.

3. The obtaining of communications data from service providers.

The ECtHR Grand Chamber considered Articles 6,[322]8,[323] 10[324] and 14[325] in deciding that the United Kingdom's bulk data-collection programs violated human-rights law by failing to incorporate adequate privacy safeguards and oversight. The ECtHR however held that intelligence sharing did not violate international law in the light of the global reality of extremism and terrorism.

[322] Right to fair trial.
[323] Right to respect for private and family life.
[324] Freedom of expression.
[325] Prohibition of discrimination.

CONCLUSION

The purpose of this thesis is to determine whether the current international laws cover the right to internet access or whether there is a need for a new international legislation specifically declaring the right to internet access as a human right.

To solve the research problem and answer the research questions, the thesis started with an examination of how new rights are recognised under international law. The thesis analysed the criteria to be fulfilled before new rights are born. To answer the first and second research questions of "what is the status of the right to internet access under international?" and "can the right to internet access be considered a stand- alone or derivative right under international law?" The thesis explored existing literature and the development of international law around the internet. Specific analysis of the five resolutions of the UNHRC on the promotion, protection, and enjoyment of human rights on the internet. The thesis came to an empirical conclusion that right to internet access is a derivative right under international law.

It's worth noting that the UNHRC resolutions on the promotion, protection, and enjoyment of human rights on the internet advocate for a human rights-based approach to providing and expanding internet access; in other words, the resolution aims to make internet access a derivative right hinged on right to freedom of expression, information, and privacy. The claim that right to internet is a stand-alone human right is problematic in many regard. Firstly, the five resolutions passed by the United Nations Human Rights council are at best soft law as they do not possess the binding force of the law. Therefore, categorizing the right to the internet as a human right within the United Nations' ambits purely based on the resolutions is impossible.

Secondly, categorizing the right to internet access as a stand-alone human right seems problematic in its implementation as not every human in the world can access the internet neither is it available on the sole ground on being human, geopolitics and economic power of

the individual comes to play in determining whether such individual will have access to the internet and to what extent will censorship and civil liberties apply. While the author recognizes that the United Nations might be disposed to the classification of the right to internet access as a human right in the future, the world technological development has not progressed to such stage where internet access can be provided to all individuals.

Thirdly, the fundamental nature of human rights will be problematic for the implementation of a right to internet access. This is because, there have been increased agitations by policy makers around the world with respect to the rate violent extremism spreads due to the proliferation of the internet.[326] Hence, there has been an increased need in the regulation of the internet due to its many potentials of fuelling violent extremism which is one of the major issues the United Nations is saddled with curbing due to the duty of maintaining peace and security worldwide. In the wake of Michael Snowden scandal, for example, the European Court of Human Rights (ECtHR) in the case of Big Brother Watch and Others v. The United Kingdom[327] was confronted with deciding, inter alia, whether the mass surveillance and intelligence sharing by the United Kingdom (UK) and her allies violated international law. The ECtHR, putting into consideration several international laws including the 2013 UNGA Resolution 68/167 on the Right to Privacy in the Digital Age,[328] held in favour of the Respondent State (UK) that mass surveillance and intelligence sharing, against the backdrop of spike in global terrorism, did not violate international law.

A dilemma is thus presented if the United Nations proclaims the right to internet access a human right with the backing of international statute. The implementation of such right

[326] Edwards, C., and Gribbon, L., Pathways to Violent Extremism in the Digital Era, RUSI Journal 2013, No. 158 pp. 40–47.
[327] Judgment 25.5.2021 (GC) available at http://hudoc.echr.coe.int/ accessed (19.04.2022).
[328] UNGA Resolution 68/167, *supra.*

becomes extremely problematic as the United Nations would be torn between maintaining peace and security and implementing the rights of the violent extremist to utilize the internet to disseminate information in accordance with Article 19 of the Universal Declaration of Human Rights.

To answer the second research question of "what are the implications of internet access on rights to freedom of expression, information, privacy and data protection?" The thesis analysed how the internet provided a new platform for the enjoyment of the aforementioned rights; how the internet also became a tool for censorship and surveillance by government authorities. Applicable case laws on right to internet access were discussed to establish how judicial precedents have systematicall applied laws previously applicable to the press and old media to the internet and digital communication.

The thesis argued that the internet is now a public sphere where individuals have the same rights that apply offline; individuals should also have the right to access public information held on internet platforms. Individuals should also have the right to privacy and control over personal data even though the dynamics of control has changed in the internet era. The thesis also explored legimate limitations and the grounds for a justified restriction of online contents.

To answer the last research question of "what is the extent of regional and national protection of the right to internet access," the thesis adopted the UNSD geo-scheme regional classification to make a comparative analysis of the perception of the right to internet access in Africa, the Americas, Asia, Europe and Oceania, The thesis examined the extent of internet penetration in each region, the applicable regional statutes, and the precedents of the regional courts. As there are no regional human rights courts in Asia and Oceania, the thesis grouped the two region in to one sub-topic.

The thesis find that a new international statute specifically declaring a new right to internet access may not achieve the intended objective of protecting human rights on the internet and may amount to a wild goose chase with no practical relevance. This is because sovereign States will always act in line with the level of domestic perceptions and understanding of what human rights on and off the internet should be. A good example is Russia which despite being part a signatory to the COE Conventions, is closer to China in its approaches to human rights on the internet. Human rights on the internet therefore face a similar challenge as off the internet.

BIBLIOGRAPHY

Articles:

1. Albrecht J.P., How the GDPR will Change the World, European Data Protection Law Review, 2016 Vol. 2, No. 3.
2. Altson, P. Control Conjuring Up New Human Rights: A Proposal for Quality Control, The American Journal of International Law (1984), Vol. 78, No. 3.
3. Benedek, W., and Kettemann M.C., Freedom of expression and the Internet' Council of Europe Publishing, 2013.
4. Bilder, R., Rethinking International Human Rights: Some Basic Questions, Wisconsin Law Review (1969) No.1.
5. Bodunde D.O. *et al*, The Power of Internet and the Security Implication for the Transformation of Political Power in the Arab Spring Crises, International Journal of Research, and Innovation in Social Science (IJRISS), 2010 Vol. III, Issue V.
6. Concepcion N.P., The Legal Implications of Trinidad and Tobago's Withdrawal from the American Convention on Human Rights, American University International Law review 2001, Vol. 16, No.3.
7. Diggelmann, O. and Cleis, M.N., How the Right to Privacy Became a Human Right, Human Right Law Review2014, Vol. 14.
8. Edwards, C., and Gribbon, L., Pathways to Violent Extremism in the Digital Era, RUSI Journal 2013, No. 158.
9. Gosztonyi G., The European Court of Human Rights: Internet Access as a Means of Receiving and Imparting Information and Ideas, International Comparative Jurisprudence 202, Vol. 6.

10. Hilbert, M., The end justifies the definition: The manifold outlooks on the digital divide and their practical usefulness for policy making, Telecommunication Policy 2011, Vol. 35, No.8.
11. Leiner, B.M. *et al.* A Brief History of the Internet, Association for Computing Machinery's Special Interest Group on Data Communications (ACM SIGCOMM) Computer Communication Review 2009, Vol 39, No.5.
12. Ling, J., and Yue, Z., Research on the Displacing Effect of the Internet on the Traditional Media, International Journal of Social Science and Humanity, Vol. 5, No. 7.
13. Litton A., The State of Surveillance in India: The Central Monitoring System's Chilling Effect on Sefl-Expression, Washington University Global Studies Law Review 2015, Vol. 14.
14. Loveland J.M., 40 Years: It's Time for U.S. Ratification of the American Convention on Human Rights, Seattle Journal for Social Justice 2020, Vol. 18, No.2.
15. Nyokabi D.M. *et al*, The right to development and internet shutdowns: Assessing the role of information and communications technology in democratic development in Africa, Global Campus Human Rights Journal 2019, Vol.3.
16. Slobogin, C., Government Data Mining and the Fourth Amendment, The University of Chicago Law Review 2007, Vol. 75, No.1.
17. Uchenna J.O., The African Union Convention on Cybersecurity: A Regional Response towards Cyber Stability? Masaryk University Journal of Law and Technology 2018.
18. Warf, B., Uneven Geographies of the African Internet: Growth, Change, and Implications, African Geographical Review 2010, Vol. 29, No. 2.
19. Zheng H., Regulating the Internet: China's Law and Practice, Beijing Law Review, 2013 Vol. 4, No.1.

Books:

20. Cuceranu D., Aspects of regulating freedom of expression on the Internet, Oxford, 2008.
21. Habermas, J., The Structural Transformation of the Public Sphere, Oxford, Polity Press 1989.
22. Hara A.E., The Concerns and Sustainability of ASEAN Intergovernmental Commission on Human Rights (AICHR); Sustainable Future for Human Security – Society, Cities and Governance, Springer Nature Singapore 2018.
23. Harris, D.J., *et al.* Law of the European Convention on Human Rights, Oxford, (4th ed.), 2018.
24. Jorgensen, R. F. Framing the Net – The Internet and Human Rights. Danish Institute for Human Rights, Edward Elgar Publishing Limited 2013.
25. Lauren P.G., The Evolution of International Human Rights: Visions Seen Phila, University of Pennsylvania Press (3rd ed.,) 1998.
26. Lessig, L., Code and Other Laws of Cyberspace, New York, Basic Books 1999.
27. Nissenbaum H., Privacy in Context: Technology, Policy, and the Integrity of Social Life, Stanford Law Books, 2010.
28. Smith, R.K.M., International Human Rights (8th ed.), Oxford University Press, 2018.

Chapters:

29. Barreto M.B. and Sears A.M., Implementing a Model Access to Information Law in Africa: Lessons from the Americas, in Shyllon, O. (ed), Model Law on Access to Information for Africa and other regional instruments: Soft law and human rights in Africa , Pretoria University Law Press, 2018 ch. 3.

30. Cali B., ‘The Case for the Right to Meaningful Access to the Internet as a Human Right in International Law,’ in Arnauld A.V. *et al.* (eds.), The Cambridge Handbook of New Human Right, Cambridge University Press 2020, ch. 21.
31. Dedov D., The Russian perspective on human rights protection online in Susi M. (ed), Human Rights, Digital Society, and the Law – A Research Companion, Routledge, 2019 ch. 25.
32. Pollicino. O, ‘The Right to Internet Access *Quid Iuris?’* in Arnauld A.V. *et al.* (eds.), The Cambridge Handbook of New Human Right, Cambridge University Press 2020, ch. 20.
33. Powell C.H., Schonwetter T., Africa, the internet, and human rights, in Susi M. (ed.), Human Rights, Digital Society and the Law – A Research Companion, Routledge 2019, ch. 21.
34. Puccunelli O.R., Latin American human rights jurisprudence and practices towards the internet, in Susi M. (ed) Human Rights, Digital Society, and the Law – A Research Companion, Routledge 2019 ch. 24.
35. Stewart D.P., The approach of North American courts towards the internet, in Susi M. (ed), Human Rights, Digital Society, and the Law – A Research Companion, Routledge, 2019, ch.22.
36. Wulff C.M., The jurisprudence of the ECJ and ECtHR regarding data protection in the internet, Susi M (ed) Human Rights, Digital Society, and the Law – A Research Companion, Routledge, 2019 ch. 11.
37. Yokodaido S., Asian human rights law, jurisprudence, and practices toward the internet in Susi, M. (ed) Human Rights, Digital Society, and the Law – A Research Companion, Routledge 2019, ch. 23.

Case-law:

Africa:

38. Amnesty International Togo & 7 Others v The Togolese Republic, JUD No. ECW/CCJ/JUD/0920, 25.06.2020, ECOWAS Court of Justice.

39. EALS v Uganda, Ref. No. 12 of 2021, East African Court of Justice.

European Court of Human Rights:

40. Akdeniz v. Turkey, App. No. 20877/10, 11.03.2014.

41. Big Brother Watch & Ors v the United Kingdom, App. Nos. 58170/13,62322/14 &24960/15, 25.05.2021.

42. Bulgakov v. Russia App. No. 20159/15, 23.06.2020.

43. Delfi AS v Estonia App. No. 64569/09, 10.10.2013.

44. Engels v. Russia App. No. 61919/16, 23.06.2020.

45. Handyside v. UK Application No. 5493/72, 07.012.1986.

46. Kaida v Estonia, App. No. 17429/10, 19.01.2016.

47. Mouvement Raëlien Suisse v. Switzerland, Application No. 16354/06, 13.07.2012.

48. OOO Flavus & Ors v. Russia App. Nos. 12468/15, 23489/15, & 19074/16, 16.11.2020.

49. Stoll v. Switzerland Application No. 69698/01, 10.12.2007.

50. Vladimir Kharitonov v. Russia, App. No. 10795/14, 23.06.2020.

51. Yildirim v. Turkey, Application No. 3111/10, 18.12.2012.

Inter-American Court of Human Rights:

52. H.R. Case of Escher v. Brazil, IACtHR Series C, No. 200, 06.06.2009.

53. Fontevecchia and D'Amico v. Argentina, IACtHR Series C, No. 238, 29.11.2011.

Canada:

54. R v Spencer, 2014 SCC 43

France:

55. The Hadopi case Conseil Constitutionnel, 2009–580 DC, 10 June 2009.

India:

56. Faheema Shirin R. K. v State of Kerala No. 19716 of 2019.

57. Shreya Singhal v Union of India, AIR 2015 SC 1523.

United States of America:

58. Reno v ACLU 521 U.S. 844.

South Africa:

59. Primedia Broadcasting v Speaker784/2015) (2016) ZASCA 142, 29.10.2016

Zimbabwe:

60. Retrofit v. Posts and Telecommunications Service, 1995 (2) ZLR 199.

UN Human Rights Committee:

61. Mavlonov and Sa'di v. Uzbekistan, Communication No 1334/2004, U.N. Doc. CCPR/C/95/D/1334/2004.

62. Zheludkova v. Ukraine Communication No 726/1996, U.N. Doc. A/58/40, Vol. II.

International legal instruments:

United Nations:

63. International Covenant on Civil and Political Rights, New York 16.12.1966,

64. International Covenant on Economic, Social and Cultural Rights, New York, 16.12.1966.

65. Universal Declaration of Human Rights, Paris 10.12.1948.

Africa:

66. African Charter on Human and Peoples' Right, Banjul 27.06.198.

67. African Declaration on Internet Rights and Freedom 2014.

68. African Platform on Access to Information (APAI) Declaration in 2017.

69. AU Model Law on Access to Information for Africa, 2013.

70. Windhoek Declaration on Promoting an Independent and Pluralistic African Press of 19 91.
71. Declaration of Principles on Freedom of Expression and Access to Information in Africa in 2019.
72. Revised Treaty of the Economic Community of West African States, 24.07.1993.
73. Treaty for the Establishment of the East African Community as amended 14.12.2006 and 20.08.2007.
74. AU Convention on Cyber Security and Personal Data Protection, 27.06.2014.

The Americas:

75. American Convention on Human Rights, Pact of San Jose, Costa Rica, 22.10.1969.
76. American Declaration of the Rights of Man, 02.05.1948.
77. Charter of the Organization of American States, 30.04.1948.
78. Inter – American Model Law on Access to Public Information, 2010

Asia:

79. ASEAN Human Rights Declaration 18.11.2012.

Europe:

80. Convention for the Protection of Individuals with Regards to Automatic Processing of Personal Data (Convention 108), COE Treaty Series 108.
81. Convention on Access to official Documents (Tromsø Convention), COE Treaty Series 205.
82. Convention on the Elimination of Discrimination Against Women, New York, 18.12.1979.
83. EU General Data Protection Regulation (GDPR): Regulation (EU) 2016/679, 27.04.2016.
84. European Convention on Human Rights, Rome 04.11.1950.

Constitutions and Domestic Laws:

85. *Constitución Política de la República del Ecuador*, 20.10.2008.
86. Constitution of the Portuguese Republic, 25.04.1976.
87. Indian Information and Technology Act No 21, 17.10.2000.
88. Russian Bloggers Law of 2014, Nos. 97 – FZ.
89. Russian Yarovaya Law of 2016, Nos. 374 – FZ and 375 – FZ.
90. The Constitution of Greece, 18.04.2001.
91. The Constitution of India, 26.01.1950.
92. The Togolese Constitution, *Constitution de la IVe République*, 14.10.1992.

UN Resolutions and Decisions:

93. HRC 47/16, A/HRC/RES/47/16, HRC 38th Session 21 June – 14 July 2021, Agenda item 3 - The promotion, protection, and enjoyment of human rights on the Internet, 2021.
94. HRC Decision 25/117, A/HRC/DEC/25/117, Agenda item 3, Panel on the right to privacy in the digital age, 2014.
95. HRC Resolution 12/16 on freedom of opinion and expression, A/HRC/RES/12/16, HRC 12th Session, Agenda item 3, 2009.
96. HRC Resolution 20/8, A/HRC/RES/20/8, Agenda item 3 - Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, 2012.
97. HRC Resolution 23/2, A/HRC/RES/23/2, Agenda item 3 - The role of freedom of opinion and expression in women's empowerment, 2013.
98. HRC Resolution 28/16, A/HRC/RES/38/7, HRC 38/7, Agenda item 3 - The right to privacy in the digital age, 2015.
99. HRC Resolution 31/7, A/HRC/RES/31/7, Agenda item 3 - Resolution adopted by the Human Rights Council, 2016.

100. HRC Resolution 34/7, A/HRC/RES/34/7, Agenda item 3 - The right to privacy in the digital age, 2017.
101. HRC Resolution 38/7, A/HRC/RES/38/7, Agenda item 3 - The promotion, protection and enjoyment of human rights on the Internet, 2018.
102. HRC Resolution 44/12, A/HRC/RES/44/12, Agenda item 3 - Freedom of opinion and expression, 2020.
103. HRC Resolution A/HRC/RES/26/13 on the Protection and Enjoyment of Human Rights, Agenda item 3, 2014.
104. HRC Resolution A/HRC/RES/32/13, Agenda item 3 - Promotion and protection of all human rights, civil, political, economic, social and cultural rights, 2016.
105. HRC Resolutions A/HRC/RES/42/15, Agenda item 3 - The right to privacy in the digital age, 2019.
106. UNGA A/RES/68/167, Agenda item 69 (b) - The right to privacy in the digital age, 2013.
107. UNGA A/RES/70/184, Agenda item 17 - Information and communications technologies for development, 2015.
108. UNGA Resolution 70/1, A/RES/70/1, Agenda items 15 & 116 - Transforming our world: the 2030 Agenda for Sustainable Development, 2015.
109. UNGA Resolution A/RES/66/184 on information and communications technologies for development, Agenda 16, 2012.
110. UNGA Resolution A/RES/70/125, Agenda item 17 - Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society, 2016.
111. UNGA Resolution A/RES/70/125, Agenda item 17- Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society, 2015.

112. UNGA Resolution A/RES/71/199, Agenda 68 (b) – The right to privacy in the digital age, 2017.
113. UNGA Resolution A/RES/75/176, Agenda item 72 (b) - The right to privacy in the digital age, 2020.
114. UNGA Resolutions A/RES/68/198, Agenda item 68/198 - Information and communications technologies for development, 2013.

Internet sourses:

115. Briefing Paper, 'Safe and Legal Abortion is a Woman's Human Right' Center for Reproductive Rights, New York, 2004 available at http://reproductiverights.org/wp-content/uploads/2018/08/Safe-and-Legal-Abortion-is-a-Womans-Human-Right.pdf (accessed 04.02.2022).
116. Castles A. C., The Reception and Status of English Law in Australia, available at https://www.austlii.edu.au/au/journals/AdelLawRw/1963/1.pdf (accessed 09.04.2022).
117. China Justice Observer, China establishes three internet courts to try internet-related cases online: Inside China's internet courts Serie -01, available at https://www.chinajusticeobserver.com/insights/china-establishes-three-internet-courts-to-try-internet-related-cases-online.html (accessed 10.04.2022).
118. Freedom House, Freedom on the Net Reports, available at https://freedomhouse.org/report/freedom-net (accessed 06.04.2022).
119. Hillary Rodham Clinton, Remarks on Internet Freedom. Archives of the U.S. Department of State (2010) available at https://2009-2017.state.gov/secretary/20092013clinton/rm/2010/01/135519.htm (accessed 10.12.2021)
120. IGF 2017, available at https://www.intgovforum.org/multilingual/content/igf-2017 (accessed 07.02.2022).

121. International Commission of Jurists, The ASEAN Human Rights Declaration: Questions and Answers, available at https://www.icj.org/wp-content/uploads/2013/07/ASEAN-leaflet-240713.pdf (accessed 18.11.2012).

122. InvestmentMonitor: African e-Connectivity Index 2021: The final frontier and a huge opportunity, available at https://www.investmentmonitor.ai/tech/africa-connectivity-index-2021 (accessed 04.04.2022).

123. ITU, Measuring digital development: Facts and figures 2021, available at https://www.itu.int/en/ITU-D/Statistics/Pages/facts/default.aspx (accessed 10.04.2022)

124. Joseph Johnson, Worldwide Digital Population Statista, 2021 available at https://www.statista.com/statistics/617136/digital-population-worldwide (accessed 15.01.2022)

125. ONI, Belarus, available at https://opennet.net/research/profiles/belarus (accessed 15.04.2022).

126. ONI, Regional Overviews, available at https://opennet.net/regional-overviews (accessed 06.04.2022).

127. Sessions of the Internet Governance Forum held in Joao Pessoa Internet Governance Forum (IGF) 2015, available at https://www.intgovforum.org/multilingual/content/igf-2015-4 (accessed 07.02.2022).

128. University Systems of Georgia, Online Library, 'A brief history of the internet' available at https://www.usg.edu/galileo/skills/unit07/internet07_02.phtml (accessed 04.02.2022)

129. Vasdani T., Robotic justice: China's use of Internet courts, available at https://www.lexisnexis.ca/en-ca/ihc/2020-02/robot-justice-chinas-use-of-internet-courts.page (accessed 10.04.2022).

130. What is the IACtHR? available at https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en (assessed 02.05.2022).

131. Worldometer, Africa Population, available at https://www.worldometers.info/world-population/africa-population/ (accessed on 04.02.2022).
132. Worldometer, Europe Population, available at https://www.worldometers.info/world-population/europe-population (accessed 11.04.2022).

Other sources:

133. Decision No. 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a multiannual Community action plan on promoting safer use of the internet by combating illegal and harmful content on global networks.
134. European Commission. Green paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services, COM 96, 483. 16.10.1996.
135. Guideline Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework, HR/PUB/11/04; endorsed by the HRC in its resolution 17/4 of 16.06.2011.
136. Report of the Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression, Frank La Rue, HRC, 17th Session, Agenda item 3 – Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, including the right to development, 16 May 2011, UN Doc. A/HRC/17/27.
137. Roberts, T. *et al*, Surveillance Law in Africa: A Review of Six Countries, Institute of Development Studies, Research Report 2021.
138. Sarker A., Pick J. and Johnson J., Africa's digital divide: Geography, policy, and implications, 2015 Regional Conference of the International Telecommunications Society (ITS): "The Intelligent World: Realizing Hopes, Overcoming Challenges", Los

Angeles, USA, 25th-28th October, 2015, International Telecommunications Society (ITS).

139. Standards for a Free, Open and Inclusive Internet, Edison Lanza, Special Rapporteur for Freedom of Expression; OEA/Ser. L/V/II CIDH/RELE/INF.17/17, 15.03.2017.

140. The report of the Office of the UN High Commissioner for Human Rights on the promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective, A/HRC/35/9, Agenda item 2 and 3, 2017.

141. The Role of Regional Human Rights Mechanism, A publication of the Directorate-General For External Policies, European Parliament 2010.

142. UNHRC, ICCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 08.04.1988.

APPENDICES

Table of Abbreviations:

ACHPR	African Commission on Human and Peoples' Right
ACJHR	African Court of Justice and Human Rights
AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
ASEAN	Association of Southeast Asian Nations
AU	African Union
BGP	Border Gateway Protocol
CEDAW	Convention on the Elimination of Discrimination Against Women
CJEU	Court of Justice of the European Union
CMS	Central Monitoring System
COE	Council of Europe
EACJ	East African Court of Justice
EALS	East African Law Society
ECHR	European Convention for the Protection Human Rights
ECOWAS	Economic Community of West African States
ECtHR	European Court for Human Rights
EU	European Union
GDPR	General Data Protection Regulation
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Law Commission
ILO	International Labour Organisation
IP	Internet Protocol
ISP	Internet Service Provider
ITU	International Telecommunication Union
NGO	Non-Governmental Organisation
OAS	Organisation of American States
OSCE	Organisation for Security and Cooperation in Europe
OSCE	Organisation for Security and Co-operation in Europe
PICS	Platform for Internet Content Selection
SIM	Subscriber Identity Module
UDHR	Universal Declaration of Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Commission
UNSD	United Nations Statistics Division
USA	United State of America
WSIS	World Summit on the Information Society