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Submission by Data Privacy Brasil Research Association to the call for inputs: "The relationship between human rights and technical standard-setting processes for new and emerging digital technologies (2023)" - Report of the High Commissioner for Human Rights

March 03th 2023

The Data Privacy Brasil Research Association welcomes the opportunity to submit its contribution to the call for inputs about the relationship between human rights and technical standard-setting processes.

We congratulate the opportunity of collecting inputs from civil society organizations to inform the report by the United Nations High Commissioner for Human Rights on the relationship between human rights and technical standard-setting processes for new and emerging digital technologies at its 53rd session in 2023.

About Data Privacy Brasil Research Association

Data Privacy Brasil Research Association is a Brazilian non-profit civil society organization founded in 2020 that promotes the protection of personal data and other fundamental rights in the face of the emergence of new technologies, social inequalities and power asymmetries. We have a multidisciplinary team from different Brazilian regions that develops public interest research and advocacy.[1]

We have previously submitted contributions to the United Nations's *Ad Hoc* Committee on Cybercrime[2] and the Universal Periodic Review[3].

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[1] See https://www.dataprivacybr.org/en/
[2] Submissions by Data Privacy Brasil Research Association to the United Nations Ad-Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes, April 2022: https://www.unodc.org/documents/Cybercrime/AdHocCommittee/Second_session/Data_Privacy_Brasil_Research_Association.pdf and June 2022: https://www.unodc.org/documents/Cybercrime/AdHocCommittee/Third_session/Documents/Submissions/Data_Privacy_Brasil.pdf
[3] Access Now & Data Privacy Brasil Research Association Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 41st Session Fourth Cycle for Brazil, March 2022:

We believe that civil society organizations from the Global South should have an active voice in global forums and organizations considering that we represent the majority world and our situated view on fundamental rights are connected to challenges of inequality, systemic injustices and asymmetries of power.

About this document

Data Privacy Brasil Research Association wishes to address the questions formulated by guiding questions of the report.[4]

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

It is a fact that the discussions related to new emerging digital technologies must take into consideration the compliance with human rights through their technical standards, so that the respect for human rights is embedded in the designing of such technologies, especially considering their potential impact over underrepresented communities and over social minorities.

It has been claimed that the standardization of a decentralized Internet infrastructure can support and enable a variety of applications that can harm fundamental rights, like China's social credit system, which uses identifiers to link people to a permanent record and affect their ability to social and economic transactions mediated by technology.[5] Standards might lead to more control over networks and users' data and would imply a multilateral governance system for the Internet through the ITU.[6] Standards for New IP systems could also harm privacy rights. With hard-coded addresses and identifiers, the protocol could lead to tracking

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https://www.dataprivacybr.org/wp-content/uploads/2022/04/Brazil-UPR-Submission-Access-Now-and-Data-Privacy-Brasil-March-2022.pdf
[4]   See https://www.ohchr.org/en/calls-for-input/2023/call-inputs-relationship-between-human-rights-and-technical-standard-setting
[5] CAEIRO, Carolina; JONES, Kate; TAYLOR, Emily. Technical Standards and Human Rights: The Case of New IP. 2021, *Journal of Cyber Policy*, v. 5, n. 2, p. 244.
[6] CAEIRO, Carolina; JONES, Kate; TAYLOR, Emily. Technical Standards and Human Rights: The Case of New IP. 2021, *Journal of Cyber Policy*, v. 5, n. 2, p. 255.
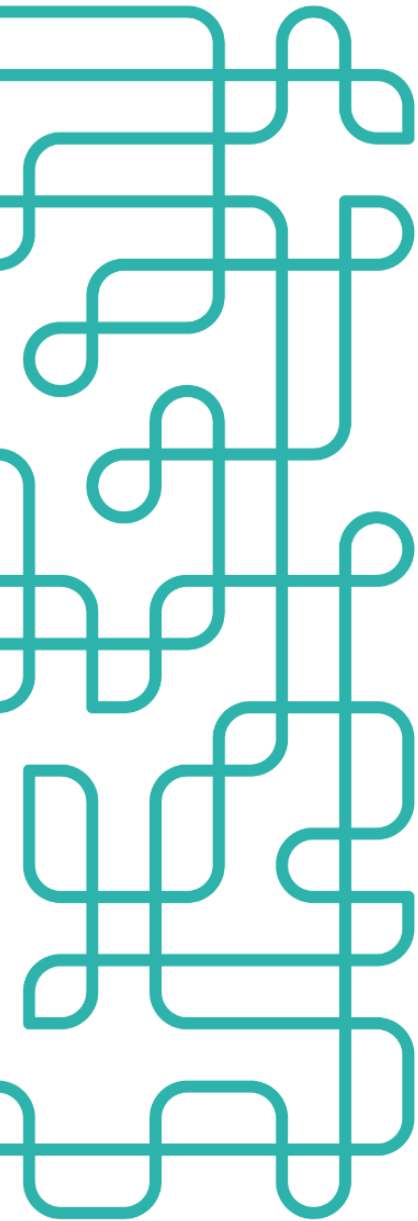
and the network can be instructed to disconnect devices or discard packets. Also, Standards for IPs could "enable the creation of permanent profiles on individuals". It is clear that standards have a profound impact on human rights.[7]

However, access to standard-setting processes for new and emerging digital technologies for civil society organizations and human rights experts is more limited. Because of their long term structures and highly technical languages, dominated by engineers, they are not perceived as key spaces for advocacy by civil society actors.

For these groups, this limitation tends to persist in the different technical forums in a very similar way. We designed a qualitative study with representatives of members of Global South organizations and our preliminary results show that the engagement with standard-setting organizations is really limited.[8]

Technical standard-setting processes usually take place within traditional institutions such as the International Standard Organization (ISO), the International Telecommunication Union (ITU) and the Internet Engineering Task Force (IETF). Commonly, these institutions have challenging participatory processes. Since their main activities are related to the setting of technical standards, the main actors involved in such an ecosystem are representatives of the technical community, such as engineers and IT specialists.

Historically, the debates of technical standards and human rights considerations have been occurring separately, impeding, thus, the integration of human rights considerations into technical standards, since there is a lack of dialogue between the technical community and human rights specialists. In this sense, those discussions must meet a multistakeholder criteria, in order to enable the participation of other interested stakeholders, so it would be possible to establish a broader technology governance model.

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[7] CAEIRO, Carolina; JONES, Kate; TAYLOR, Emily, Technical Standards and Human Rights: the case of new IP, *Oxford Internet Institute*, 2021.
[8] We organized a private meeting in November 2022 with several NGOs from the Global South, in Sao Paulo, Brazil, and the results of the conversation on international forums can be found attached on the e-mail submission.

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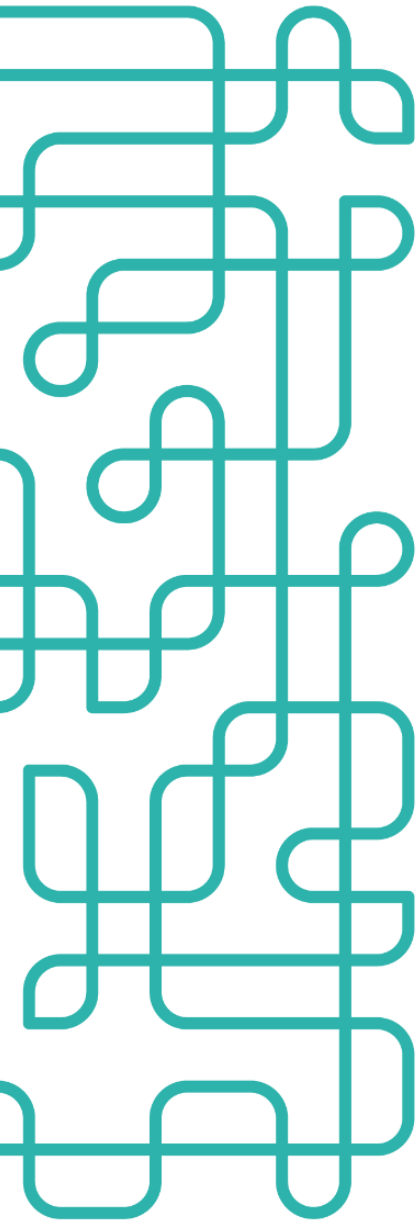
Moving forward, it is possible to say that there is a technical barrier in all these spaces. It's closely linked to its profile and technical language (there is a constant use of acronyms and technical terms), which these processes tend to privilege, and in which most civil society organizations and human rights experts do not have a comfortable level of knowledge/domain. This technical-approach barrier is a first-level problem. This, in general, impacts the access for the vast majority of civil society actors and human rights experts.

But, there are also exogenous structural barriers – instilled in these spaces – that although tend to reach all civil society organizations and part of the human rights expert community, disproportionately, and systematically, impact more those coming from the Global South. Reproducing and reinforcing systemic elements of power asymmetries between developed countries (or the Global North), and Global South countries, underdeveloped.

This, in itself, indicates a wide range of more structural challenges, which arise as barriers: (i) to entry; (ii) to permanency; (iii) and to due/effective participation once inside the forum. These structural challenges, for example, reinforce the technical barrier level, usually seen as the first barrier to entry, once the capacity building finds more challenges in the Global South. There are also elements tied to income level which impact moves to entry, permanency, and participation since it requires allocation of time and resources to prepare, travel, and follow the long cycle debates.

We believe that access cannot be measured only by the possibility of an organization being part of the standards creation bodies. It is necessary to formulate permanent participation indicators that can be adopted by IEFT, ICANN, W3C, ITU and others. It is also possible to recommend the use of AI systems (such as Fireflies) to measure the speaking time of people from the Global North compared to people from the Global South, as well as to generate better open documentation on the nature of discussions in technical spaces.

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

Civil society organizations face several challenges when participating in standard setting bodies. One of the primary challenges is the scarcity of resources available to attend all the meetings and follow all the discussions. These organizations have limited budgets, and attending multiple meetings in various locations can be financially taxing, which affects their participation.

Another issue is the asymmetry of information that exists in these standard-setting bodies. For example, the International Telecommunication Union (ITU) is divided into silos, and they do not communicate with each other. This situation makes it challenging for civil society organizations to keep up with the discussions and make informed contributions.

Most of these forums are located in the Global North, making it difficult for civil society organizations from the Global South to participate. The cost of visas, travel, and accommodation can be a significant financial burden, which hampers participation.

Civil society organizations from the Global North tend to be better funded than those in the Global South. This disparity means that they have more resources to invest in participation in standard-setting bodies, giving them an unfair advantage.

Furthermore, the majority of funders for civil society organizations tend to be from the Global North and are not always in sync with the realities of what is required in the Global South, such as capacity building. As a result, Global South activists are only invited once an agenda is set, and issues that are important to the Global South are often not included in the agenda. This situation arises because only actors from the Global North are interested in them.

In addition, the issues that are critical to the Global South may be mistranslated into the context of the Global South. This situation occurs when policies become tools of control, considering the complex situations

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about fair use of data and technology for public policies, non-liberal notions of privacy, and collective dimensions of personal data protection and group privacy in the Global South.

In a scenario where resources are scarce, it is challenging to justify hiring someone with technical knowledge to participate in these meetings without clear results. This situation puts civil society organizations in a difficult position, as they have to balance the need to participate with their limited resources.

Another issue is the closed processes and systems that do not allow sharing of finalized standards. This situation prevents civil society organizations from accessing critical information, which hinders their ability to make informed contributions.

Finally, civil society organizations need government stewardship and a good relationship with the government to be part of the country delegation. This situation can be challenging, especially in countries where the government may not be receptive to civil society participation in standard-setting bodies. Furthermore, some workgroups may require paid membership, which is an additional financial burden for civil society organizations.