

Privacy International's comments on the Zero Draft of the Global Digital Compact

April 2024

General comments

Privacy International (PI) welcomes the references to human rights contained in the Zero Draft of the Global Digital Compact (GDC.)¹

However, these generic references to 'human rights' need to be further elaborated and specified to reflect language adopted in UN General Assembly and UN Human Rights Council resolutions (including on right to privacy in the digital age,² on new and emerging technology,³ on Artificial Intelligence.)⁴ The suggestions below are based on language included in these resolutions.

We also note that there are significant gaps in the Zero Draft which needs addressing, notably regarding:

- state surveillance, such as biometric, including facial recognition, technologies;
- the use, sale, transfer and export of surveillance technologies;
- the regulation of public-private partnership in the digital sphere;
- the details on the scope of legal and policy framework applicable to companies which process personal data for commercial purposes.

¹ Text available at:

https://www.un.org/techenvoy/sites/www.un.org.techenvoy/files/Global_Digital_Compact_Zero_Draft.pdf

² UN Doc. A/HRC/RES/54/21

<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F54%2F21&Language=E&DeviceType=Desktop&LangRequested=False>.

³ UN Doc. A/RES/78/213

<https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F78%2F213&Language=E&DeviceType=Desktop&LangRequested=False>

⁴ UN Doc. A/RES/78/265 (<https://digitallibrary.un.org/record/4043244?ln=en&v=pdf>)

Comments and recommendations on paragraphs

Paragraph 4

PI supports reference to the Universal Declaration of Human Rights in para 4.

Principles

Paragraph 7(c) – Human Rights

PI supports the Human rights-based Principle in **para 7(c)** To ensure the principle fully covers the scope of obligations under international human rights law, PI suggests adding **‘promote’, ‘respect’ and ‘fulfil’** as follow:

Human rights-based: This Compact is anchored in international law and international human rights law. All human rights, including civil, political, economic, social and cultural rights, and fundamental freedoms, must be **promoted, respected protected and fulfilled** online and offline. Our cooperation will harness digital technologies to promote, **respect** and protect these rights, including the protection of children and their rights;

Paragraph 7(g) - Accountability

PI supports the accountability Principle in **para7(g)**. PI suggests adding **respect** for the reason outlined above. We also recommend: to add reference to rule of law, effective oversight and effective remedy; and to include specific reference to refraining from using technologies which are not compliant with human rights.

(g) Responsible and accountable: Our cooperation will advance the accountable, transparent and human-centric design, development and deployment of digital and emerging technologies and promote their use in the public interest, **in accordance with the rule of law, including independent oversight and access to effective remedies**. This includes safe, secure, and trustworthy AI systems that **respect**, promote and protect human rights, support sustainable development, and are reliable, explainable and inclusive; **and refraining from the use of digital technologies that are impossible to operate in compliance with international human rights law or that pose undue risks to the enjoyment of human rights**.

Objective 3. Fostering an inclusive, open, safe and secure digital space

Cluster 1. Human rights

Paragraph 20

PI supports **para 20**, including its reference to the UN Principles on Business and Human Rights.

Paragraph 21

PI recommends that **para 21(a)** to focus on international human rights law and to read:

(a) Ensure that national legislation relevant to digital technologies is compliant with international **human rights** law (All SDGs);

PI recommends that **para 21(b)** is broadened to cover the whole life cycle of technologies and to include reference to effective oversight and redress mechanisms.

(b) Establish appropriate safeguards to prevent and address any adverse human rights impacts arising from **the design, development and** use of digital and emerging technologies, **including by conducting human rights due diligence and by establishing effective independent oversight and redress mechanisms.**

Paragraph 22

PI supports the establishment of the Digital Human Rights Advisory Service envisaged in **para 22** on the understanding that this mechanism will complement and not replace existing human rights accountability mechanisms.

Paragraph 23

PI recommends that **para 23** is broadened to cover all companies and not only digital technology companies. Further, in light of the growing adoption of digital technologies by public authorities, including through public-private partnerships, we recommend to include 'public bodies' in para 23(a).

23. We call on:

(a) **Digital technology** companies, **public bodies** and **digital technology** developers to incorporate human rights law and principles in the development, deployment and use of digital and emerging technologies, including through the application of human rights due diligence and impact assessments, including specific to children's rights, across the technology life cycle (All SDGs);

(b) **Digital technology** companies, **digital technology** developers and social media platforms to commit to promote, protect and respect human rights online, be accountable for violations and abuses, and provide access to effective remedy in line with the UN Guiding Principles on Business and Human Rights and other relevant frameworks (SDGs 5, 10 & 16);

Paragraph 28

PI recommends adding 'secure' in **Para 28(a)**

- (a) Create a safe, **secure**, and trustworthy online space for all....

PI supports **para 28(c)** and recommends adding reference to respect and to human rights.

- (c) Institutionalize regular collaboration between national online safety institutions to exchange best practices and develop shared understandings of actions to **respect, protect and fulfil the human rights to** privacy, freedom of expression and access to information while safeguarding against harm (SDG 17);

PI support **para 28(d)** and recommends strengthening it to read:

- (d) Ensure laws and regulations on the use of technology, in areas such as surveillance **and encryption**, are consistent with international **human rights** standards and norms on privacy, freedom of expression, due process and access to information and effective recourse; **and promote measures and technical solutions for strong encryption** (SDGs 10 & 16);

Paragraph 29

PI recommends that **Para 29 (a) and (b)** is broadened to cover all companies and not only digital technology companies. See language suggested for para 23 above.

29. We further urgently:

- (a) Call on **digital technology** companies and developers to engage with users of all ages and backgrounds to incorporate the perspectives and needs of diverse groups, including children and youth, in the design and delivery of digital technologies (SDGs 5 & 10);
- (b) Call on **digital technology** companies and developers, to co-develop industry accountability frameworks, in consultation with other stakeholders that, inter alia, define responsibilities and commit to standards as well as auditable public reports (SDGs 9 & 17);

Objective 4. Advancing equitable international data governance

Cluster 1. Data privacy and security

Paragraph 35

PI agrees with the assertion in para 33 that "The increasing collection, sharing and processing of data, including by AI systems, may amplify risks and challenge established data protection and privacy norms".

Hence, we recommend that **para 35** is revised to address these risks and challenges, to read:

- (b) ~~Empower~~ **Adopt legislation to ensure that personal data may only be collected for specified, explicit and legitimate purposes and must be processed lawfully, fairly so that individuals and groups are able to ascertain which public authorities or private individuals or bodies control or may control their personal data to participate in the processing, control and use of their personal data, including through legally mandated protections for data privacy**, drawing on regional frameworks such as the AU Convention on Cyber Security and Personal Data Protection and the EU General Data Protection Regulation (SDGs 10 & 16);
- (c) Ensure that data collection, storage and processing practices are transparent, secure and in full respect of international law **and that any interference with data protection must be lawful, in accordance with international human rights law, including the principles of legality, proportionality, necessity and non- discrimination** (All SDGs);

Cluster 4. Cross-border data flows

Paragraph 42

PI supports the recognition in para 41 that cross-border data flows should respect relevant data protection and privacy norms.

Hence, **Para 42** should spell out a requirement to include effective safeguards in data sharing, by adding a new subpara to read:

- (d) ensure that any cross-border transfer is subject to appropriate level of security and protection for the personal data and do not amount to or facilitate undue interference with the right to privacy.**

Objective 5. Governing emerging technologies, including Artificial Intelligence, for humanity

Paragraph 45

PI recommends strengthening the language to include the following two sentences in **para 45**.

We emphasize that human rights and fundamental freedoms must be respected, protected and promoted throughout the life cycle of artificial intelligence systems; We will refrain from or cease the use of artificial intelligence systems that are impossible to operate in compliance with international human rights law or that pose undue risks to the enjoyment of human rights, especially of those who are in vulnerable situations.

Paragraph 49 (a)

PI is seeking clarification as of the meaning of "risk and evidence-based opportunity assessments" provided for in this subparagraph (a).

Paragraph 50 (b)(iv)

PI recommends that subpara (b)(iv) be clarified to ensure that this provision does not constitute a blanket promotion of AI for all SDGs but it is based on need and proportionality, as not all aspects of all SDGs require the use of digital technologies to be achieved.

(iv) promote and align AI-based solutions for the SDGs, **when relevant and needed**.

Follow up and review

Paragraph 53

PI suggests adding "**and affected communities**" to the list of stakeholders in **para 53**.

Paragraph 54

PI recommends expanding the invitation in **para 54** to all relevant companies, not just digital tech companies. See similar comments on para 23 and 29 above.

54. We invite international and regional organizations, **digital technology** companies, technical community and civil society groups to endorse the Global Digital Compact and take active part in its implementation. We request the Secretary-General to put in place modalities for the voluntary endorsement of this Compact and to make this information public and accessible by December 2024.

Paragraph 59

PI supports reference to OHCHR role in **para 59**.