

CONTRIBUTION TO THE FIRST CWG-SFP PUBLIC CONSULTATION ON THE ITU STRATEGIC PLAN 2020-2023

INTRODUCTION

ARTICLE 19 welcomes the efforts of the ITU and its Council Working Group on Strategic and Financial Plans for 2020-2023 (CWG-SFP) to engage in a multi-stakeholder process by holding this Public Consultation. We appreciate the opportunity to provide the Working Group with our position on the strategic plan of the Union for the upcoming study period, and we look forward to the discussions that will follow.

ARTICLE 19 is an international human rights organization that works to protect and promote the right to freedom of expression, which includes freedom of the press and the right to information. With regional offices in Africa, Asia, Europe, Latin America, and the Middle East and North Africa, we champion freedom of expression at the national, regional, and international levels. The work of ARTICLE 19's Digital Programme focuses on the nexus of human rights, Internet infrastructure, and Internet governance. As such, we actively participate in other forums across the Internet governance and standards development landscape, including the Internet Corporation of Assigned Names and Numbers (ICANN), the Internet Engineering Task Force (IETF), the Institute of Electrical and Electronics Engineers (IEEE), and the Internet Governance Forum (IGF).

The work of the ITU has evolved significantly since its operation as the International Telegraph Union; nevertheless, its foundation remains the same. The ITU was established to provide members with a cooperative framework within which to strengthen the *connectivity* and *interoperability* of communications infrastructure around the world. It is also these principles upon which the Internet was created. **As the mandate of the ITU has grown over time to address issues of global Internet infrastructure, its strategic plan moving forward must focus more on strengthening and refining its internal structures to facilitate more resilient decision-making, and focus less on expanding its mandate in ways that would threaten the very principles upon which the Internet and the ITU are rooted.**

Four questions comprise this Public Consultation. However, this submission will focus its response exclusively on Question 1:

What should be the key strategic priorities for the ITU for the 2020-2023 period, taking into account the UN 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs)?

This submission is structured as a response to the current goals of the ITU as presented in the background document for this consultation, Annex 2 to Resolution 71: *Strategic Plan for the Union for 2016-2019*.¹ As such, the three sections that follow will delineate ARTICLE 19's position on the challenges and problems that this current framework engenders, so as to propose the way forward for the upcoming period:

- **On Facilitating Access and Inclusiveness:** Though access and inclusiveness have been well established in the current strategic agenda as significant elements of the ITU's goals, values, and mission, this commitment has not been adequately reflected in the internal structures of the ITU itself. The sectoral decision-making processes of the ITU must become more accessible and transparent to all stakeholders if it is to ensure universal access in the digital sphere.
- **On Responding to Security Challenges in ICT Development:** In its current strategic plan, the ITU has affirmed the importance of the international human rights framework and, in particular, freedom of expression and privacy. We recognize that the ITU has recently established a mandate on privacy; however, this mandate is limited in operation and in scope to clearly specified aspects of telecommunication standardization. We insist that this current mandate must not expand further, as the ITU does not have the authority or the capacity to further address the right to privacy.
- **On Adapting to the Changing ICT Environment:** Understanding the role of the Internet as an infrastructure that has facilitated the convergence of communication services has become a considerable part of the current strategic agenda. However, we are concerned by the ITU's push to take on a regulatory role regarding Internet-based forms of communication that have emerged in the same environment as more long-standing telecommunication services. Continuing to expand this mandate poses a significant threat to freedom of expression, and indeed to the openness and connectivity of the Internet.

¹ ITU Council, *Resolution 71: Strategic Plan for the Union for 2016-2019*, Annex 2 (Rev. Busan, 2014), available at: <https://www.itu.int/en/council/CWG-SFP-2020-2023/Documents/resolution71.docx>.

1. FACILITATING ACCESS AND INCLUSIVENESS

1.1 Evaluation of the 2016-2019 Strategic Plan

Access and inclusiveness are prominent themes across the ITU's 2016-2019 agenda. Indeed, two of the four goals set out by the ITU in its current strategic plan are focused on increasing connectivity for everyone, everywhere:

<p style="text-align: center;">Goal 1: Growth—Enable and Foster Access to and Increased Use of Telecommunications/ICTs</p>
<p style="text-align: center;">Goal 2: Inclusiveness—Bridge the Digital Divide and Provide Broadband for All</p>

Similarly, access is a cornerstone of the SDG framework. The WSIS process has established Access to Information and Knowledge as Action Line C.3—a principle for the ICT sector that is necessary to achieve SDGs, which include building resilient infrastructure and promoting sustainable economic growth.²

ARTICLE 19 applauds the progressive approach that the ITU has taken in its current plan. On its face, the SDG framework primarily emphasizes economic considerations of access and inclusiveness. As such, measures to improve access in compliance with this framework would merely focus on the provision of greater and cheaper connectivity. But by establishing universality as a core value, the ITU has rightfully broadened the consideration of what inclusiveness truly means. The international human rights framework supports the concept of universal access. The UN Special Rapporteur on Freedom of Expression has previously affirmed the importance of universal access to the development of the Internet; the OAS Special Rapporteur on Freedom of Expression has further defined universality as a guarantee that access is provided across divisions of geography, political affiliation, education, socioeconomic status, gender, and disability.³ Inclusiveness is not solely a function of affordability. Measures to improve access must consider how individuals that are most marginalized offline may be overlooked or even obstructed from inclusion online.

The reason driving the Union's prioritization of universal access is clear. If the Internet is a network of networks, then its salience both as a tool for development and as a civic space fundamentally depends on the people that are connected through it. **The strategic plan for the following period should continue to reflect the current emphasis on universal access in the ITU's goals, values, and mission. However, it is not enough. We remain concerned that the ITU does not fully facilitate inclusiveness in its decision-making processes. For the subsequent period, we submit that the ITU should strengthen its internal structures to foster universal access by cultivating greater openness and transparency.**

² WSIS, *Plan of Action*, 2003, available at: <https://www.itu.int/net/wsis/docs/geneva/official/poa.html#c3>.

³ Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, 2011, p. 22; Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, *Freedom of Expression and the Internet*, 2013, p. 6.

1.2 Recommendations for the 2020-2023 Strategic Plan

To ensure universal and affordable access to the Internet, it is crucial that the sectors within which technical and policy responses to Internet-related issues are made are themselves accessible. The meaningful engagement of stakeholders representing the most vulnerable communities—the very individuals that are most at risk for exclusion—ensure that the policies and Recommendations that are developed will be truly effective in challenging the complex barriers to access that arise from offline social and economic realities. As such, the three sectors of the ITU must better enable open and inclusive dialogue among all stakeholders, not only between government and industry.

The ITU has already recognized that exclusion persists through a variety of vectors. In its background on the strategic plan for the current period, it has already explored how inequalities of access have contributed to the gender disparity of Internet usership and how the limited availability of assistive technologies has excluded people with disabilities from the Internet. But even as governments and industry may be genuinely committed to fostering universal access, those who are most socially and economically marginalized are accordingly most marginalized from representation in systems of governance. Civil society stakeholders can be important actors for elevating the voices of these communities. The UN Special Rapporteur on Freedom of Assembly and Association has affirmed that the inclusion of civil society within international organizations can provide a diversity of views rooted in technical expertise.⁴ The inclusion of civil society and other stakeholders in the decision-making process of the ITU will only strengthen the content and adoption of its outcomes. Moreover, there is widespread interest among civil society actors in participating in ITU processes. However, there is virtually no civil society representation in the any of the three ITU sectors.

To redress this issue, ARTICLE 19 recommends that the strategic priorities of the following period should include reforms of the ITU membership structure and of its current efforts to improve transparency:

- **The process for securing membership as a civil society stakeholder must be clarified and supported by the ITU.** Though membership is not restricted in theory, the admission process is nevertheless opaque for stakeholders that do not conform to the government-industry dichotomy. This is in large part facilitated by the exclusionary language regarding the membership process; even in the expanded universe of Sector Members, Associates, and Academia, it is difficult to discern the appropriate membership type—if it even exists—for organizations that may specialize, for example, in women’s rights, disability rights, or ICT for development.⁵

Moreover, membership fees create a high barrier to entry for civil society. The current fee structure requires members to incur exorbitant costs to enter specific sectors and study groups. In general, civil society cannot absorb such steep costs, especially if membership is siloed to a single study group. Though it may be possible for the fees to be waived, there is little information readily available to determine whether this possibility in fact exists, who may be eligible, and how to apply to this process.

⁴ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai*, 2017, p. 3.

⁵ See, e.g., ITU, “ITU Membership Overview” (last accessed: July 7, 2017), <https://www.itu.int/en/membership/Pages/overview.aspx>

It is the prerogative of the ITU to determine which stakeholders participate in the decision-making processes across its three sectors. However, the ITU will fail to ensure universal access unless it facilitates robust multi-stakeholderism—one that includes civil society participation—within its membership.

- **The ITU’s policies on open access to information must be overhauled to support greater transparency and accountability.** ARTICLE 19 welcomes the ITU’s focus on transparency as one of the core values of its current strategic plan. Indeed, the ITU’s recently launched Open Document Access policy constitutes a major stride towards greater openness and inclusiveness.⁶ Information access policies such as this allows stakeholders that cannot directly contribute to decision-making processes to nevertheless follow the work of the ITU, thereby better understanding how its outcomes affect Internet users. However, the policy remains structurally problematic:
 - The sole responsibility of redacting information falls on the submitters, which may lead to the redaction of content that is actually mandated for disclosure under the parameters set out in the policy. To compound this issue, there is no independent oversight mechanism to hold submitters accountable.
 - The exemptions currently provided in the framework are not narrowly defined; as such, they may lead to ambiguity in the interpretation of what content may or may not be redacted, and may be co-opted to redact content that is actually mandated for disclosure.

Moreover, the policy does not facilitate greater engagement in the actual decision-making processes, as its scope is currently limited to the final versions of Recommendations, Resolutions, reports, and other outputs. Because the policy does not facilitate the disclosure of work items or proposals that are currently under discussion or review, civil society stakeholders and the public cannot follow ITU developments, recognize issues of interest, and brief Member States and other actors accordingly while it is still possible to strengthen these documents.

In the following period, the ITU must capitalize on the promising step it has taken to improve transparency and disclosure of information by submitting the current Open Document Access policy to extensive revision and review, which should include a public consultation so that the policy may be strengthened through an open, inclusive, and transparent process.

⁶ ITU, *ITU Information/Document Access Policy*, 2016, available at: <https://www.itu.int/en/access-policy/Documents/ITU-Information-access-policy-en.pdf>

2. RESPONDING TO SECURITY CHALLENGES IN ICT DEVELOPMENT

2.1 Evaluation of the 2016-2019 Strategic Plan

In its current strategic plan, the ITU has recognized that the sustainability of economic and social development is premised on the sustainability of ICT development:

Goal 3:
Sustainability—Manage Challenges Resulting from Telecommunication/ICT
Development

This goal is deeply intertwined with the SDG framework, as the current plan implicitly orients efforts to achieve the sustainability of ICT development in terms of progress towards SDG 9: building resilient ICT infrastructure. Specifically, the ITU's current plan largely conceptualizes sustainability as the resilience of the infrastructure against threats to cybersecurity. The focus on cybersecurity is certainly supported by the SDG framework. One of the fundamental Action Lines developed to facilitate SDG 9 is C.5: Building Confidence and Security in the Use of ICTs. Over the course of the current period, the ITU has driven forward an expansion of its mandate that includes privacy considerations in its efforts to facilitate greater confidence and security in the use of ICTs.

ARTICLE 19 welcomes the ITU's focus on strengthening user confidence as part of its current strategic plan. Confidence is essential to the salience of the Internet, as the Internet is more than communications infrastructure—it is a civic space. Confidence in accessibility and security makes connectivity meaningful. Internet users that are confident in the security of their connection and communication online will also trust in the digital market as a space that fosters innovation, competition, and the diversity of new ideas. This confidence also engenders greater trust in initiatives such as government e-services and bolsters local content development. However, if people do not trust that they can freely or openly use the Internet, they will turn away from accessing it altogether. If the Internet is to truly facilitate economic and social development, then its users must have confidence in the Internet as a free and open civic space. **The strategic plan of the ITU for the upcoming period should continue to recognize the importance of developing confidence in Internet infrastructure among all users.**

We further recognize that it is necessary for the ITU to consider the security of Internet infrastructure as a fundamental aspect of its work. However, we are concerned by the recent expansion of the mandate of the ITU-T to include privacy as part of this consideration. Following WTSA-16, ITU-T Study Group 20 (SG20) on IoT and its applications including smart cities and communities (IoT & SC&C) approved a new structure for carrying out its work, including a new study question on “Security, Privacy, Trust and Identification.” We affirm that the right to privacy is fundamental to the preservation of the Internet as a free and open civic space; however, the ITU is a specialized UN agency that does not have the mandate, expertise, or capacity to elaborate or interpret the right to privacy or how it is exercised. **We submit that the ITU must not further expand its consideration of privacy beyond the strict limitation of the ITU-T SG20 mandate as it already exists.**

2.2 Recommendations for the 2020-2023 Strategic Plan

There are several UN organs and specialized agencies that are explicitly mandated to protect and promote human rights by applying the international legal framework to interpret and elaborate how these rights exist in practice. For example, the UN General Assembly has adopted Resolutions 68/167 and 69/166 on “the right to privacy in the digital age.”⁷ The UN Human Rights Council has adopted Resolutions 26/13 and 32/L.20 on “the promotion, protection and enjoyment of human rights on the Internet”, affirming that the right to privacy is relevant to building confidence on the Internet and that privacy is necessary for the Internet to remain global, open, and interoperable.⁸

The mandate of the ITU is, on the other hand, limited to consider privacy solely in those aspects of telecommunication standardization that impact privacy and are appropriate to the remit of Question 7 of ITU-T SG20. The ITU’s mandate on privacy must not be any further extended. Nevertheless, all sectors of the ITU should ensure that their Recommendations, Resolutions, reports and other outputs are consistent with the international human rights standards that are established by the UN General Assembly and the UN Human Rights Council.

Despite the limitations of its mandate, the ITU should develop a user-oriented approach to security that prioritizes the protection of the autonomy and dignity of individuals. To do so, the ITU should work towards securing infrastructure so to enable the Internet as a free and open civic space, reinforcing user trust in this infrastructure. In particular, we recommend that the ITU should consider the following as part of its strategic priorities for 2020-2023 regarding confidence and security in the use of ICTs:

- **Protecting online anonymity for Internet users.** Anonymity is vital to ensuring that connectivity is meaningful, allowing individuals to disseminate and access information without fear of repression or reprisal. If online anonymity is not protected, users may be chilled from making full use of the Internet as a tool for economic and social development. Furthermore, the availability and use of strong encryption tools is fundamental to the ensuring the security of online communications.
- **Strengthening resistance to network shutdowns, disruptions, and other efforts to block or filter the free flow of information.** Disruptions to Internet connectivity restrict the flow of information over the network, constraining the digital civic space. These restrictions subvert inclusiveness and access to information for all, which are fundamental aspects of both the SDG framework and the ITU’s mission, core values, and strategic goals.
- **Facilitating the confidentiality, security, and integrity of personal data.** The protection of users’ data and personally identifiable information must continue to be of paramount consideration not only as it flows from one point in the network to another, but also as it is processed and stored. Though the ITU has considered data protection, it is not yet done so in a structural way. ARTICLE 19 recommends the development of comprehensive data protection frameworks that ITU sectors can implement to ensure that its Recommendations and other outputs are consistent with these principles.

⁷ UNGA, *The Right to Privacy in the Digital Age*, UN Doc. A/Res/68/167 (2014); UNGA, *The Right to Privacy in the Digital Age*, UN Doc. A/Res/69/166 (2015).

⁸ UNHRC, *The Promotion, Protection and Enjoyment of Human Rights on the Internet*, UN Doc. A/HRC/26/13 (2014); UNHRC, *The Promotion, Protection and Enjoyment of Human Rights on the Internet*, UN Doc. A/HRC/26/13 (2016)

3. ADAPTING TO A CHANGING ICT ENVIRONMENT

3.1 Evaluation of the 2016-2019 Strategic Plan

We welcome the upcoming consultation on “over-the-top” (OTT) services to be held by the CWG-Internet, as it will supplement the discussion presented in this section. In the interest of putting forth a complete evaluation of the strategic priorities for the upcoming period, we are providing a brief overview of our major concerns regarding the ITU’s current response to the emergence of OTT services in the changing ICT environment. Indeed, the ITU’s current strategic plan recognizes that the Internet infrastructure has fundamentally transformed the communications landscape:

Goal 4:
Innovation and Partnership—Lead, Improve, and Adapt to the Changing
Telecommunication/ICT Environment

The Internet has galvanized the convergence of ICTs in such a way that pits ostensibly similar telecommunication services and IP-based communication services against each other to compete for usership. The result has been a widespread disruption of the communications market, with a significantly adverse economic impact on telecommunication operators. This disruption has elicited calls from among ITU Member States and Sector Members alike to re-evaluate the ICT regulatory environment, with the aim of maintaining competition and investment. The WSIS Action Lines similarly recognize the need for establishing an “enabling” economic environment; this need is clarified in the overall SDG framework, which clearly links the enabling environment to the sustainability of ICT infrastructure. According to the framework, if the regulatory environment is not competitive, then innovation and investment in ICT infrastructure will falter.

In response, the ITU has established the study of IP-based services in both the ITU-T and the ITU-D. The ITU-T’s Study Group 3 is mandated to study the economic and regulatory impact of convergence and new services, including OTT services. The ITU-D’s Study Group 1 is mandated to study the policy, regulatory, and technical aspects of migration from telecommunication networks to broadband networks, including OTT services. The term “OTT” refers to any service that runs “over the top” of telecommunication networks, but is not controlled or distributed by network providers. As such, the term certainly encompasses IP-based communication services such as Skype, WhatsApp, and Signal. But the term OTT is so broad that it can be applied to virtually any service or application that transmits or receives information through the Internet.

ARTICLE 19 is concerned by the implications that arise from including the study of OTT services within the ITU’s mandate. As a transnational telecommunication agency, the ITU’s consideration of OTT services—which could include video streaming services such as Netflix and YouTube, as well as smaller vlogging platforms or any service with a limited communication function—falls in large part outside the scope of its remit.

The argument that these services use telecommunication infrastructure—and so are relevant to the ITU’s work—is not sufficient to justify this expansion of the mandate. In accordance with its remit, the ITU

cannot regulate the content of communications; similarly, it cannot regulate the applications and services that run on the content layer of the Internet. **As such, the upcoming strategic plan for the ITU must limit its focus on the study of OTT only to the extent of IP-based communication services. Furthermore, we submit that the strategic priorities of the ITU regarding IP-based communication services must not extend beyond the development of research reports and other non-normative outputs to include the development of Recommendations or other standards.**

3.2 Recommendations for the 2020-2023 Strategic Plan

The ITU's push to include OTT in its mandate poses a significant threat to freedom of expression. Any ITU regulation of OTT services results in the extrajudicial regulation of the content of the communications that are exchanged through these services, impacting the free flow of information across the Internet. These efforts risk contravening the principle of network neutrality through the discriminatory treatment of Internet traffic. Put simply, it is not within the mandate of the ITU to address these aspects of OTT. As such, the following ARTICLE 19 recommends that the following points are incorporated into the ITU strategic priorities and plan for the upcoming period:

- **The use of “over-the-top” should be replaced with a more narrowly defined term.** Members of both the ITU-T and the ITU-D must reconsider the use of the term “OTT” to adopt and implement a new term that reflects only those services that are strictly relevant to the transnational telecommunication mandate of the ITU. The scope of the outputs that result from Question 9 of ITU-T SG3 and Question 1 of ITU-D SG1 should also reflect this change accordingly and to the extent possible.
- **The ITU must not develop Recommendations or other standard-setting outputs on OTT or IP-based communication services.** Though the importance of ensuring an enabling environment should invite further study into the economic aspects of OTT services, the ITU must not engage in standards-setting on either OTT services or IP-based communication services, as these efforts would run amok of its remit.

DEFENDING FREEDOM
OF EXPRESSION AND INFORMATION