

## **INTERNATIONAL FINANCIAL OBLIGATIONS, DIGITAL SYSTEMS AND HUMAN RIGHTS**

### **Submission by the Section on Archives and Human Rights of the International Council on Archives**

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#### **1. What are the challenges facing the regulation of financial transactions within the digital economy in the national, regional, continental and international levels?**

The main challenge is that of inequality, not only between territories but, above all, between people, more specifically between people from some territories compared to people from other latitudes. This inequality is specified in the different possibilities to operate in the digital economy of one and the other. Universal access to the internet, conceived as a right, and by extension universal access to the digital world, must be an essential premise if we want human rights to apply in the digital environment as well.

Social exclusion constitutes the maximum expression of inequality in the digital world. To the existing shortcomings in personal identity in the analogue world (SDG, 16.9 of the UN, Agenda 2030) must be added those that exist in tax identity and in the digital identity that people require to become actors in the digital economy.

The first step to avoid this inequality should be to regulate the right of access to the digital economy for all people, providing them with tax and digital identity. Let us remember that objective 9,c for sustainable development, of the United Nations 2030 Agenda, recommended "to strive to provide universal and affordable access to the Internet in the least developed countries by 2020"

However, some experiences launched in initiatives of enormous impact have shown the negative effects that the use of biometric data and artificial intelligence can have on human rights in the configuration of people's digital identity. In this regard, the protection of personal data becomes highly relevant when biometric data can be used for decision-making such as access to social services, such is the case of the Aadhaar program in India, on which the courts established important corrections in relation to data protection of the law originally approved for digital identity.

Therefore, access to a personal, tax and digital identity without undermining the protection of personal data must be the ultimate goal in the fight against inequality in access to the digital economy, particularly in ethnic groups or highly vulnerable social groups. It will be especially important, in this regard, to fill the gaps of gender, age, residence and economic status.

Digital economy requires a legal infrastructure and operational logistics. Records used in commercial operations and actions, as well as the data they contain, must be managed with human rights in mind. The work that archivists and records managers carry out, assessing the criteria of respect for human rights, where they intervene, must also be considered in automated systems. For this, national legislation and those records management systems in which there is participation of companies contracted to face these tasks, will bear in mind the premises of respect for personal data and digital rights, which must be included in national legislation. The Data Protection and Digital Rights law, approved in Spain in 2018, may be an example (Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales).

Countries, therefore, must ensure that national information systems incorporate the concepts of records management, archives administration and access to information, and that in their progressive incorporation to the digital economy, governments take these foundations into account. For the inhabitants of the countries that do not have these protections, rights such as access to information will not be sufficiently guaranteed.

In the absence of consistent archives and information systems to establish the state of the external debt, the problem lies in the difficulty of access to the essential documents relating to the loans, their use and their amortization, and in the ability to make an effective social audit. A national entity of each country must have a physical and digital archives system on debt (debt archives), carefully documented, with the necessary information or reference services to be part of a national information system (SDG 16.7 and 16.8). The “debt archives”, strengthened through their own nationally regulated mechanisms, would make the information available and generate in each State the analysis and actions necessary for pertinent management. This “debt archive” must be managed technically from the archival, the economic and the technological standpoint. Managed in such a way that the information it handles is integrated into the tax system, it will allow the authorities and citizens to recognize the level of indebtedness with precise data and, with this, establish the appropriate procedures for the sustainability of the debt and to reach a point economic balance that does not prevent the State from fulfilling its obligations to its inhabitants.

With this information systematically processed, the prospective actions will allow decision-making regarding future debt actions based on indications.

## **2. What is the nature, scope and purpose of an international consensus on taxation of the digital economy that supports human rights?**

It must be to ensure the capacity of the States to collect the taxes that allow financing the social programmes of education, health, social protection and all those considered economic, social and cultural human rights, dependent in their universality on public initiative.

A transparent collection will only be possible with good records management and powerful archival systems. In this regard, economic activities that do not leave a documentary trace in the digital world or that do so in a cryptic way, without the possibility of tracking or controlling capital flows, and that escape financial control, detract from the tax system resources that could be allocated to social protection measures. Archivists and records managers, as experts trained in guaranteeing the authenticity, reliability, traceability and availability of records, can play an essential role in the creation, maintenance and control of these archival systems.

The dematerialization of transactions require alternatives so that people who do not have access to technological infrastructures or who need help to use them, must have guaranteed human support in their procedures and claims, and be able to rely on formats accessible in the case of groups with different abilities, in accordance with international conventions on the subject. The rights of digital consumers must also be addressed, both in commerce and in relations with banks in their relationship with account holders.

Entities must implement solid management systems for past and present information, which will be programmed to be sustainable over time. There must be digital systems that regulate the way in which records with information resulting from operations in the digital economy can be inspected and are not regulated exclusively by the market.

This international consensus should also include the recognition of the right to be forgotten or the right to data deletion, understood as the right to request, under certain conditions, the deletion of personal data that does not correspond to personal records or records of public interest. Above all, the control of the personal data in the results of Internet searches carried out under the names of people is paramount. In regions or countries that have a strong Personal Data Protection law, the right to protection of personal data prevails in principle. It is not possible to keep information about incomplete investigation processes or outdated news about them, appearing in the media, on the network without disclosing the final results of those investigations. People must be prevented from being exposed to a public condemnation (Internet condemnation) that goes beyond that determined in a judicial sentence and that, therefore, violates the rights of those affected. The right to be forgotten would thus be interpreted as the need to put the news in its historical context.

It is important to promote access to digital commerce and to incorporate micro and small suppliers into the formal economy, who must find conditions for the operation of their businesses through procedures within the framework of technological neutrality.

On the labour side, workers who join teleworking activities must have physical and digital records of their activity that allow them to use the information in defence of their economic rights.

### **3. What are the advantages/disadvantages of regulating the financial elements of the digital economy and of regulating digital systems that support transactions for least developing countries?**

The disparity in the capacities of the inhabitants of these countries can be a differentiating factor when applying the regulations. The digital economy requires infrastructure, people and the Internet. In this type of transaction, some companies that function as intermediaries on a large scale can increase their presence and the creation of monopolies can be promoted.

The protection of personal data must be strengthened through public policies and create conditions for fair digital trade, in the face of the strong presence of these multinationals, preventing the intermediary from obtaining all the revenue from the operation.

#### **4. What measures and mechanisms should be put in place to ensure that a global digital tax incorporates human rights principles both in the way it is levied and how tax revenue generated is used?**

States must guarantee the resources derived from tax collection to meet the services required by their inhabitants for the enjoyment of their economic, social and cultural rights,

The digital economy requires a series of pre-conditions: infrastructure that allows the operation that includes hardware such as: servers, transmission systems, computers, etc. Telecommunications service companies will take into account the international regulations for the protection of personal data and the legal terms of the contracts within which they operate in relation to their geographical location of the servers in the countries to apply taxation and to be subject to the applicability of the national legal frameworks of the countries in which they are stored.

In the Universal Declaration on Archives, approved at the 36th General Conference of UNESCO, a clear call is made for the adoption and application of policies and legal regulations on archives, including those in digital format; that adequate resources be provided to ensure the correct management of the archives and so that they are accessible to all, respecting the laws on this matter and those relating to the rights of individuals.

The legislation in relation to information systems will take into account the necessary supervision and control of the States to ensure that in the digital economy ecosystem human rights are respected in relation to access, to the administration of information, that is to say that respect the digital rights of the citizens and that the legislation indicates the scope of said rights in the sphere of government activity and the rights of consumers.

Regarding use, it is necessary to invest so that people, in addition to human rights, know and use digital rights. The development of the digital skills of the existing workforce must be promoted in the school training and job training models, in order to adequately manage the digital divide of people when they join the ecosystem with knowledge.

Access to conditions that allow inhabitants not only access to the Internet as a right, in addition to the conditions for access to devices, especially for those who present conditions of vulnerability or backwardness derived from their socioeconomic conditions.

**5. Are there practices, legislation or policies at national or regional levels that could serve as good examples? Are there case studies that could be considered for this report, with specific reference where possible to remittances, cryptocurrencies and e-commerce marketplaces as well as taxation of businesses involved in digital systems?**

Blockchain technology, possibly called to play an important role in the world of archives and document management, due to its ability to guarantee the authenticity, reliability, traceability and use of electronic documents, should not, however, lead to the creation of a monumental archival resource, and perhaps excessive or disproportionate without any natural or legal person having a specific responsibility for its creation and maintenance. This is the case of the blockchain “accounting book” produced by the use of some cryptocurrencies. This decentralized archive, with no controllers, offers unquestionable guarantees of immediacy and anonymity in transactions and becomes a very attractive channel for sending remittances from emigrants to their countries of origin, even more so when remittances sent through conventional channels are enormously expensive or bank transfers are not possible due to restrictions on sending foreign currency motivated by the fight against money laundering. This fight should not affect the socially weakest: those people who depend on remittances to maintain a minimum of well-being: food, housing, health, education..., among others.

The use of cryptocurrencies has begun to be regulated in multiple countries. In this regulatory process, determining the characteristics and responsibilities for the enormous number of electronic documents that it generates and stores, possibly without prospects of sustainability if its excessive energy consumption is not controlled, is essential.

The large electronic archive based on public and decentralized blockchain technology suffers from this lack of accountability. This under-recording is a growing legacy that must be made visible by the States in order to measure and manage actions to attend to its regularization.

States must keep records of electronic commerce companies and have a digital file that allows establishing the volume and amount of operations in the field of digital economy and its impact on national accounts.

**6. How should States deal with the interactions between fiscal transactions and the metaverse - from a human rights perspective?**

In the metaverse, the convergence between physical and digital through devices is provided by the corporations which prevail in the market, thus without international regulations and the legislation of each State or community, supervision and control is uncertain and there will be no guarantees in relation to the defence of human rights. States must evaluate the effects of the absence of technological neutrality in the metaverse, since the control exercised by the

business sector to handle transactions and operations will place them within the design of the virtual environment of each micro payment that occurs.

General principles must be sought to establish the level of intervention and the way in which transactions are regularized, including global taxes and the traces of these transactions, since in this environment micro payments for products of all kinds range from the purchase of clothing, to engaging in intimate relationships with other people.

The interaction in this space must include the same regulations as in the physical world, and the traces of these actions will depend on the systems, documents and information generated by the company that provides the commercial service.

In addition, it is necessary to establish that this environment generates conditions for an economy without indebtedness. The pay-outs in this metaverse could be more numerous than happen in the real world. For those who have the resources, access will be allowed, but again discrimination will be latent in relation to the purchasing power necessary to be part of the metaverse.

It is necessary to define and promote awareness of consumer rights in the digital economy, both for buyers and for sellers, and that it be regulated within commercial codes, whose registry or files can be constantly reviewed by the States to guarantee that rights are respected within the framework of the digital economy. The legislation in each state will ensure that such rights are incorporated into the current commercial and criminal codes, to avoid leaving consumers unprotected in situations that require state review in the event of crimes or misdemeanours. To have evidence of such actions, digital documents must be integrated into a system that can be used to protect consumers.

**7. What other issues ought to be addressed by the Independent Expert in this domain, both for her report to the Human Rights Councils, 52nd Session, and for other activities and initiatives that she may undertake in line with her mandate?**

We have no additional comments to make