

The Digital Divide

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The Covid-19 pandemic affects the lives of all people around the world – that is: all our lives. But it affects countries, regions, and people in very different ways.¹ It makes a big difference whether someone lives in a country with a well-developed health system and a functioning economy - or in a country with poor infrastructure and economic problems. It makes a difference whether someone has a secure income and lives in a well-equipped own house - or in a cramped apartment in a poor, run-down area. Whether someone lives in an area with high population density, heavy traffic and high pollution - or a green area with many opportunities to stay outdoors and moving. Moreover, old people are particularly at risk. They have a significantly higher risk of a severe and fatal course of the disease than younger people.

Similar inequalities exist in terms of the equipment with and the possible uses of digital devices and systems. We have known and discussed the digital divide between the so-called "digital natives" and older population groups for a long time. This gap remains, particularly with respect to high-aged people, although, as survey data show,² it appears to be gradually decreasing – at least in Europe.

What is not getting smaller, however, is the structural and the socially conditioned digital divide.³ The gap between people who live in an area with good broadband connections, who have the latest equipment and who can also use these devices and systems for their interests and needs and those who lack these conditions for digital participation persists. The latter are, in particular, people with low incomes and low formal education, women, people with a migrant background or ethnic minorities, high-aged people, people living in institutional housing or in remote rural regions.

Participation is a core human rights principle. Today, however, the possibility and ability of digital participation are the prerequisites for the access to more and more essential areas of life: municipal services, banks, delivery services, important information, cultural offerings and - what is particularly important for older people - health services are increasingly only usable and accessible by means of digital media.

E-Health and telemedicine, for instance, offer a wide range of applications, ranging from digital information and advice, video consultations, health promotion and prevention apps to self-monitoring for chronic diseases. This is of utmost importance especially in underserved areas. The unequal digital opportunities therefore reinforce not only regional and social inequalities but also exacerbate health inequalities and thus life expectancy.

¹ United Nations General Assembly, 75th session, July 2020: Report of the Secretary-General A/75/218.

² Eurostat, Ageing Europe. Looking at the lives of older people in the EU, 2019, p. 134.

³ Selected findings on age and digitalisation from FRA's Fundamental Rights Survey. Background paper prepared by FRA, September 2020.

The pandemic has been making abundantly clear for months now, how serious the existing differences also affect the options to cope with this threatening situation. Older men and women who have access to the digital world and can move around there competently, have more opportunities to maintain significant contacts, to get things of daily need, to stay well informed, and to continue professional or economic activities during the lockdown measures. These older people could also provide themselves with some entertainment and use digital health services at home. Those who did not have these technical requirements at their disposal or who did not have the necessary skills, have been cut off from social contacts, from relevant information, community and professional life, as a large part of direct or personal communication has been replaced by online communication during the prescribed security measures.

In particularly difficult circumstances were and are **residents of nursing homes**. Due to their often very old age and multimorbidity, they need a high degree of protection. The general strategy was **to put in place specific restrictive measures** or even to close the institutions completely. This confinement limited social contacts between older people and their families and social networks substantially.

All these restrictions mean a serious **encroachment on fundamental human rights**: most of all the right of everyone, including older persons, to social and cultural participation and the right to the enjoyment of the highest attainable standard of physical and mental health⁴. For this reason, the inequalities that existed before, but the effects of which have been exacerbated by the pandemic, urgently need to be overcome.

Regarding the digital divide, this means that based on **Article 15** of the International Covenant on Economic, Social and Cultural Rights, **the right of everyone to enjoy the benefits of scientific progress and its applications⁵ is up for debate**. Scientific progress naturally also includes technical developments such as digital devices, assistive technologies, smart home systems and robotics, as well as digital health systems and the applications and services they enable.

For the everyday life of older people, this means that everyone who wants to use available technologies and services must be given the appropriate options for using them – including adequate learning opportunities and respective training programmes as media literacy is a prerequisite for a competent digital participation. At the same time, the right to remain offline must also be guaranteed. People must have access to the digital world, but they also have the right to a life without the Internet: buying a ticket, making a money transfer, submitting your tax declaration - all of this must continue to be possible in the future even without the Internet – at least if not everybody is in the position and willing to do that.

Health and care must be accessible and affordable for all older persons as well, whether they wish or not to benefit from digital applications. However, alternatives must remain available to cover for diverse needs, abilities and preferences. They must remain, not least because no technical system always and everywhere works with 100% security.

⁴ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (International Covenant on Economic, Social and Cultural Rights, Articles 1 and 12); retrieved 5 February 2021.

⁵ International Covenant on Economic, Social and Cultural Rights, Article 15 (see previous reference).

Requests to close the digital divide and provide available, accessible, and affordable digital support to all older people have repeatedly been made both nationally and internationally⁶ - most recently in the Report of the Secretary General to the Commission for Social Development on its 59th meeting in February.

"Member States should close the digital divide and promote digital inclusion, by taking into account national and regional contexts and addressing the challenges associated with access (poor infrastructure roll-out); affordability (cost of connection and of computers and similar devices); skills (digital literacy); and awareness and/or relevance (limited awareness of the benefits and absence of relevant content in local languages)".⁷

The existing shortcomings regarding the lack of digital infrastructure, the exclusion of marginalised and poorer people because of the costs, the manageability of digital devices and applications, their data security deficiencies, and the risks of threatening personal rights and compromising the users' dignity have also been discussed time and again for years,⁸ and therefore I do not think it is necessary to repeat all these well-known facts here again.

Despite the manifold efforts and despite the existing guidelines, ethics codes, international ageing and health programmes; despite the calls at the highest levels to change something to bridge the digital divide, and even despite many regional or topic specific laws, hardly anything has changed as a result.

So, **what is to be done to actually make substantial progress** and, as the UN Secretary General put it in his Policy Brief "The Impact of Covid-19 on Older Persons",⁹ to better guarantee the rights of older people in the future? Obviously, demands, recommendations, self-commitments of manufacturers and providers or even individual laws are not sufficient.

Since digitalization is a historically new phenomenon, like the developments in the field of artificial intelligence (AI), there are understandably no internationally binding instruments

⁶ See, e.g., Report of the Independent Expert on the enjoyment of all human rights by older persons: A/HRC/36/48 (2017).

Conference Declaration adopted at the International Expert-Conference on Human Rights of older Persons ICHRoP, 12-13 November 2018, Vienna.

Human Rights, Participation and Well-Being of Older Persons in the Era of Digitalisation. Council of the European Union: Council Conclusions (9 October 2020). <https://www.consilium.europa.eu/en/press/press-releases/2020/10/12/improving-the-well-being-of-older-persons-in-the-era-of-digitalisation-council-adopts-conclusions/>.

<https://www.bmfsfj.de/bmfsfj/eighth-government-report-on-older-people--summary-/159530>.

All sources retrieved February 2021.

⁷ Report of the Secretary General to the Commission for Social Development, 59th session 8–17 February 2021: Socially just transition towards sustainable development: the role of digital technologies on social development and well-being of all. E_CN.5_2021_3_E.pdf, p. 18. Available at <https://www.un.org/development/desa/dspd/united-nations-commission-for-social-development-csod-social-policy-and-development-division/csod59.html>.

⁸ See, e.g., Mollenkopf, H., & Fozard, J. L. (2004). Technology and the Good Life: Challenges for Current and Future Generations of Aging People. In H.-W. Wahl, R. Scheidt, & P. Windley (Eds.), *Aging in context: Socio-physical environments (Annual Review of Gerontology and Geriatrics, Vol. 23, 2003)* (pp. 250-279). New York: Springer Publishing.

Mokhiber, C. (2018). Artificial Intolerance and Digital Dignity: Older Persons, Human Rights and New Technologies for Education. International Expert Conference on Human Rights of older Persons ICHRoP, 12-13 November 2018, Vienna.

See also the references of the previous footnotes.

⁹ United Nations (May 2020) "[Policy Brief: The Impact of COVID-19 on older persons](#)".

for their legal regulation to date nor have they been addressed in any international human rights treaty.

Regarding AI, there is now broad agreement that its use must be regulated by law. The experts of a high-level conference on "Human Rights in the Era of AI" unanimously supported an internationally binding convention in order to safeguard universal human rights, such as the right to autonomy, equality, democracy, and rule of law.¹⁰ Algorithms, for instance, must not be age discriminatory or gender biased. Important steps towards such an instrument are the European Ethical Charter on the use of artificial intelligence in the judicial systems and their environment¹¹ and the respective recommendations of the UNESCO.¹²

A similar, globally valid and binding instrument urgently needs to be developed for the field of digitalisation and incorporated into a comprehensive convention for the rights of older people, as it is discussed in the UN Open-Ended Working Group on Ageing (OEWG-A).

To summarise and close:

Older persons' rights to social and societal participation, to information, education, and to health and care under the conditions of the digitalised societies are not yet sufficiently covered by law. On an equal footing, however, all older people must have the right to benefit from scientific developments - like all human beings.

Therefore, and especially to close the social and structural digital divide, there is an urgent need to implement a globally binding law. The persisting digital divide within the older population which prevents a large share of them from social, economic, and societal participation must be closed – as inequalities in general must be reduced.

The law must be global, because digitalisation is also a global phenomenon and it affects all older people, worldwide. The law must also reliably protect against the risks associated with the application and use of digital media, systems, and related services. While we recognise the advantages of digitalisation, we call for sound legal protection against the risk of intrusion and fraud, and of age discrimination especially where automated decision making is used.

"Leaving no one behind means leaving no one offline" was a slogan at the 59th Session of the UN Commission for Social Development (CSocD59).¹³ This important objective must be fully agreed. As right and important as this goal is:

Analogue participation in society must as well be guaranteed even in times of increasing digitalisation. Since we are human beings and thus "analogue" beings, there must also be a right to self-determined ageing without digital means and systems.

¹⁰ Human Rights in the Era of AI - Europe as international Standard Setter for Artificial Intelligence. Virtual event organised by the German Federal Foreign Office and Federal Ministry of Justice and Consumer Protection as part of Germany's Chairmanship of the Committee of Ministers of the Council of Europe, 20 January 2021. <https://germanycoe.de>

¹¹ <https://rm.coe.int/presentation-note-en-for-publication-4-december-2018/16808f699d>.

¹² [Elaboration of a Recommendation on ethics of artificial intelligence \(unesco.org\)](https://en.unesco.org/artificial-intelligence/ethics) – retrieved February 2021 from <https://en.unesco.org/artificial-intelligence/ethics>.

¹³ <https://www.un.org/en/desa/leaving-no-one-behind-means-leaving-no-one-offline>.