

Privacy and Data Protection in the realm of Internet Governance

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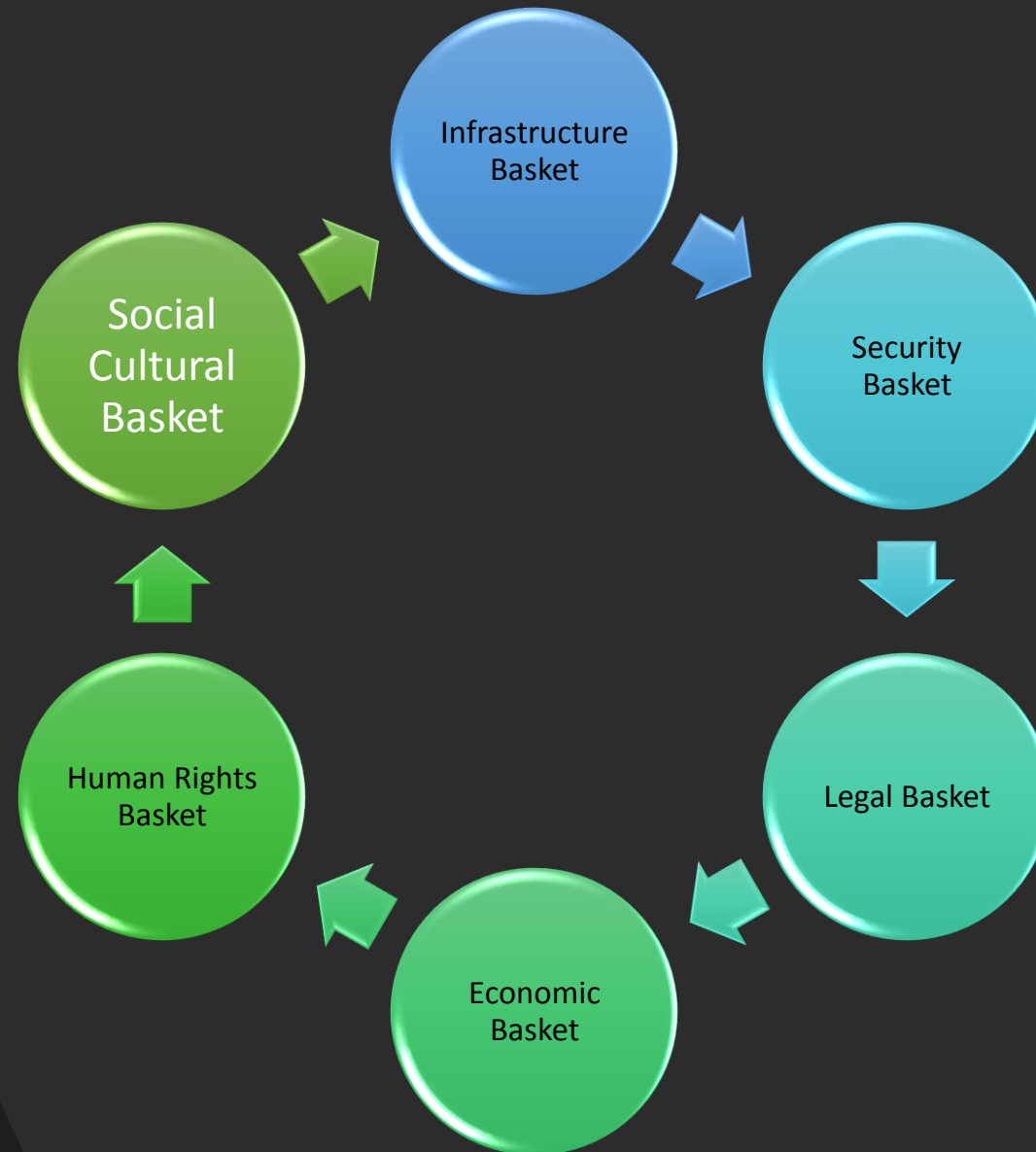
Internet Society Nepal

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Internet Governance

- Internet governance is the development and application by governments, the private sector, and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.

Baskets of Internet Governance



Source: Diplo Foundation

Stakeholders

Governments

Intergovernmental
organizations

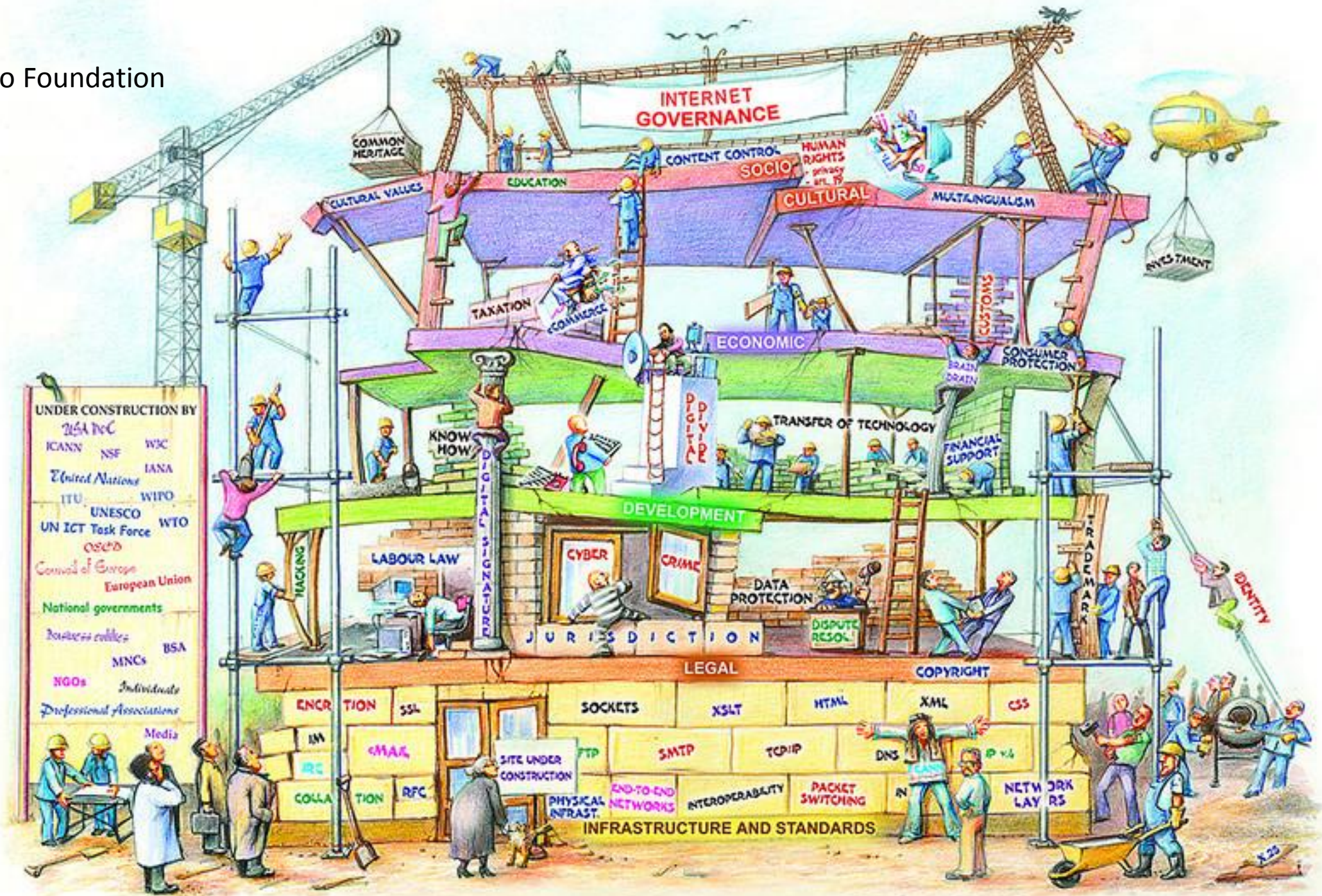
Technical Community

Business
Communities/Private
Sectors

Civil Society
organizations
(I/NGOs)

Academia and
Research institutes

Source: Diplo Foundation



Human Rights Basket

Freedom of expression
and the right to seek,
receive, and impart
information

**Privacy and data
protection**

Children's rights in the
digital world

Rights of persons with
disabilities

Gender and human
rights online



Privacy: the right of citizens to control their own personal information and to decide whether or not to disclose it.

Privacy concerns exist wherever personally identifiable information is collected and stored in digital form or otherwise.

Data privacy issues can arise in response to information from a wide range of sources, such as healthcare records, criminal justice investigations and proceedings, financial institutions and transactions, residence and geographic records, race and ethnicity.



Data Protection

- Data protection is a legal mechanism that ensures privacy.
- Data Protection refers to the set of privacy laws, policies and procedures that aim to minimize intrusion into one's privacy caused by the collection, processing, storage and dissemination of personal data.
- Personal data generally refers to the information or data that relate to a person who can be identified from that information or data whether collected by any Government or any private organization or an agency.

Relevance of the Issue

- The issues of privacy and data protections have become very sensitive.
 - Smart Driving License Card
 - Embossed number plate in Nepal
 - National ID
 - Aadhar Card in India (Privacy is a fundamental Right: SC)
 - Ranabhadur Chand Murder Case
 - Decision of the Supreme Court
- Law enforcement agencies are encroaching the privacy domain in the name of investigation and protection of national interest.
- If we shape our digital future, our data and privacies are to be protected.

Privacy Principle from IG perspective

- NOTICE
- CHOICE AND CONSENT
- COLLECTION
- USE, RETENTION, AND DISPOSAL
- ACCESS
- DISCLOSURE TO THIRD PARTIES
- SECURITY FOR PRIVACY
- QUALITY
- MONITORING AND ENFORCEMENT

International Mechanism

- Universal Declaration of Human Rights (UDHR), 1948
 - No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks
- International Covenant on Civil and Political Rights
 - "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation and everyone has the right to the protection of the law against such interference or attacks"
- The July 2015 appointment of the first UN Special Rapporteur on the Right to Privacy in the Digital Age reflects the rising importance of privacy in global digital policy, and the recognition of the need to address privacy rights issues at the global, as well as national levels.
- Resolution on the Right to Privacy in the Digital Age (A/RES/68/167), 2013
- "unlawful or arbitrary surveillance and/or interception of communications, as well as unlawful or arbitrary collection of personal data, as highly intrusive acts, violate the rights to privacy and to freedom of expression and may contradict the tenets of a democratic society."

Nepal Scenario

- Right to Privacy is protected in Constitution
 - Constitution of 1990, first constitution to protect Right
 - Constitution of 2015 also guarantees Right to Privacy
 - But no regulation is enacted yet to ensure privacy and data protection
- The Supreme Court of Nepal recently has ordered the government to compulsorily seek permission from the district court if the police or other authorities concerned need to access telephone call records and SMS details for the purpose of criminal investigations.

Global Trend

- Pakistan, police/government department are allowed to directly access cellular user's information without need of any warrant.
- Power to conduct legitimate surveillance/interception after 9/11
- A warrant is a necessity for UK police, but even without it using the controversial Regulation of Investigatory Powers Act (RIPA), they can access phone calls and emails.
- Under Electronic Communication Privacy Act (ECPA) of USA, upon fulfilling the "specific and articulable facts" requirement related to an investigation, investigators can get a court order allowing real time access/phone record/IP address.
- Right to be forgotten

Way forward: What can be done

- Enact Privacy Law (provide Intl. standard protection)
 - Government : Individual
 - Business : Individual
 - Individual: Individual
- Involvement of CSOs, private sector in law making process
- Enact Data Protection Law
 - Involvement of CSOs, private sector in law making process
- Awareness programs
- Multi-stakeholder Discussion on Privacy and Data Protection

THANK YOU

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