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Economic, social and cultural rights and the internet

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Key considerations: Economic, social and cultural rights and the internet

Alan Finlay and Deborah Brown
Association for Progressive Communications (APC)
www.apc.org

Introduction

Over the past two years, the Association for Progressive Communications (APC) has been researching how the internet can enable economic, social and cultural rights (ESCRs),[1] and advocating for a stronger focus on the role of the internet in securing these rights. The premise of our work has been that civil and political rights as they pertain to the internet have received much more global attention compared to ESCRs. While there have been significant efforts to use the internet to enable access to education, health, and food security among other developmental objectives since the mid-1990s, these initiatives have rarely been framed in terms of rights discourse. Our research in effect aimed to ask: Given the proliferation of information and communications technologies (ICTs) since then, what are the key policy challenges when leveraging the potential of the internet to realise ESCRs? What are the bottlenecks? And what is the responsibility of the state, compared to the advocacy "ask" from civil society? Reports by Andrew Rens and by Sunil Abraham and Vidushi Marda, included in this edition of Global Information Society Watch (GISWatch), are part of that research – as are the reflections of Anriette Esterhuysen, Deborah Brown, Avri Doria and David Souter. Juan Carlos Lara, also one of the project's researchers, investigated the right to culture and domain names in Latin America and the Caribbean, and here co-authors a report on the impact of free trade agreements on socioeconomic rights.

Starting with an overview of the International Covenant on Economic, Social and Cultural Rights itself, this introduction lists seven key considerations for thinking about how the internet impacts on the realisation of ESCRs. These are not comprehensive, but serve as a starting point for reflection, and against which both the thematic and country reports that follow can be read.

What are economic, social and cultural rights?

The international human rights framework, which is rooted in the Universal Declaration of Human Rights (UDHR),[2] has been viewed as comprising two broad categories of rights: civil and political rights, which are articulated by the International Covenant on Civil and Political Rights (ICCPR),[3] and economic, social and cultural rights, articulated by the International Covenant on Economic, Social and Cultural Rights (ICESCR).[4] The ICESCR consists of 31 articles dealing with rights such as the right to work, to cultural participation, to benefit from science and technology, to health, to education and to social security.[5] Together with the UDHR, these two Covenants have become known as the International Bill of Rights, and are the human rights standards against which the actions of states are measured.

While these two categories of rights have been treated as distinct, especially in the context of the deepening Cold War tensions between East and West when they were elaborated, there is growing recognition and evidence of the universality, indivisibility, interdependence and interrelatedness of all human rights.[6] By "universal" we mean that the rights apply to everyone, regardless of where they live and without distinction of any kind such as race, sex, language or religion, or any other social characteristic. Each right is also implicitly dependent or relational to other rights.[7] For example, the civil and political rights of free expression and association, as well as access to information, are central to realising a number of socioeconomic rights, such

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1   https://www.apc.org/en/projects/
    internet-rights-are-economic-social-cultural-rights

2   https://www.un.org/en/universal-declaration-human-rights

3   www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

4   www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

5   The ICESCR has been reproduced in Annex I at the end of this edition of GISWatch. Annex II links each right with the corresponding country report(s).

6   Office of the United Nations High Commissioner for Human Rights. Key concepts on ESCRs - Are economic, social and cultural rights fundamentally different from civil and political rights? www.ohchr.org/EN/Issues/ESCR/Pages/AreESCRfundamentallydifferentfromcivilandpoliticalrights.aspx

7   Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993. www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx

as cultural participation, the right to benefit from science and technology, education, social services and even food security (see the Venezuela country report for an interesting example of this).

ESCRs are different from civil and political rights in that the fulfilment of many of them depends on the resources a state has at its disposal. For example, Malawi may not be able to realise the right to housing or to food as quickly and efficiently as Denmark can. Because of this, states can realise many of the rights contained in the ICESCR over time – or "progressively" realise them according to their "maximum" available resources:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. (Article 2)

However, importantly, while the fulfilment of ESCRs is resource-dependent, states cannot take retrogressive measures that allow ESCRs to "deteriorate", except under very specific circumstances.[8]

Some rights are not subject to progressive realisation, but are considered "minimum core obligations" that states must implement immediately. These include the right to access essential food, safe drinking water, employment, essential drugs, and free primary education.[9]

A total of 164 states are party to the ICESCR. A number of states have ratified the Covenant, but with reservations.[10] However, states cannot take reservations that are contrary to the objective and purpose of the treaty. The United States (US) is one of six countries that have not ratified the Covenant, while a further 25 have neither signed nor ratified it.

Key considerations when thinking about the internet in relation to ESCRs

In this context, the following are what we have identified as seven key considerations when thinking about ESCRs and the internet:

1   *The internet is an enabler of ESCRs:* While access to the internet is not in itself a human right, for those who have access, the internet can act as a significant enabler of ESCRs. This is a straightforward but important point to make. While most closely associated with freedom of expression, the internet can impact positively on most articles in the ICESCR, such as the right to education (Article 13), to take part in cultural life and to enjoy the benefits of scientific progress and its applications (Article 15), to work (Article 6), to health (Article 12) and to food (Article 11). The internet helps people find work, and unions to organise; it enables small farmers to access competitive market information; it is a powerful enabler of cultural participation, innovation and artistic expression; it allows online learning resources to be shared easily, and facilitates access to information on health and medical advice. In some cases, such as in delivering online textbooks to learners, the internet can save governments money, allowing them to spend resources more effectively in other areas of need. Therefore, increasing access to the internet is an important consideration for states in fulfilling their obligations under the ICESCR. Inhibitors to internet access, such as the cost and appropriateness of that access, need to be addressed as part of the state's obligation to respect, protect and fulfil all human rights. Intentional disruptions by states of internet access can also, in this context, be considered a violation of the ICESCR.

2   *The internet creates new forms of exchange that have implications for exercising ESCRs:* The global proliferation of the internet has also resulted in new manifestations of economic, social and cultural interactions and exchanges that would not have occurred if the internet did not exist. For example, the availability of new markets for small-scale producers of cultural and other goods has created entirely new business models that did not exist before, while in the field of cultural participation, digital technologies and easy access to these technologies by the public have allowed people to record music in their homes, create animations using freely downloadable software, edit amateur

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8   "Non-retrogressive measures: States should not allow the existing protection of economic, social and cultural rights to deteriorate unless there are strong justifications for a retrogressive measure. For example, introducing school fees in secondary education which had formerly been free of charge would constitute a deliberate retrogressive measure. To justify it, a State would have to demonstrate that it adopted the measure only after carefully considering all the options, assessing the impact and fully using its maximum available resources." Office of the United Nations High Commissioner for Human Rights. (2008) Frequently Asked Questions on Economic, Social and Cultural Rights – Fact Sheet No. 33. www.ohchr.org/Documents/Publications/FactSheet33en.pdf

9   Ibid.

10   See the UN Treaty Collection: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&clang=_en

films, and share all this online. As a recent report on the public value of art and culture put it: "Changes in the way art and culture is produced and consumed are taking place that are cultural processes in themselves, rather than solely technological changes, with implication for the character of cultural value."[11] The challenges that the International Corporation for Assigned Names and Numbers (ICANN) has faced around the assignment of new generic top level domains (gTLDs) and the cultural rights of groups is an indication of the extent to which the internet itself has become a platform where rights can be exercised and violated.[12] Similarly, the International Federation of Library Associations and Institutions (IFLA)[13] points out that careful consideration needs to be given to the preservation of digital cultural heritage (see the report by Julia Brungs and Stephen Wyber in this edition of GISWatch). It is critical for governments to properly understand how the internet enables new forms of social and political empowerment for individuals and groups, as well as the forms of digital creation and exchange that occur online, and create policies that promote these new ways of exercising ESCRs. States also face fresh responsibilities in not unduly restricting these new forms of exchange, such as through permitting prohibitive access costs, through censorship, or through allowing proprietary control of the free flow of information – which, in some instances, can be considered "retrogressive" measures in the progressive realisation of ESCRs.

3   *The internet can have a negative impact on ESCRs:* The internet and new technologies can be a disabler of ESCRs, or even facilitate the violation of rights. Sometimes this might be the result of a poorly managed programme – for example, e-education initiatives have often suffered from inadequate teacher training, theft of computers and network equipment, and a lack of technical support or curricula that properly integrate ICTs, resulting in a decline in the quality of education. Sometimes rights are deteriorated through outdated or ineffective legislation, such as copyright law, which can result in ad hoc takedowns of content. At times, as a result of overbroad and vaguely worded legislation, whole websites can be taken down or blocked when copyrighted material is used without the permission or proper recognition of the author, if a notice and takedown request is not narrowly tailored, or if a host refuses to comply with the request. This is tantamount to closing down a library or bookstore because of one plagiarised book, a wholly disproportionate restriction to Article 15[14] (as well as Article 19 of the ICCPR, which refers to freedom of opinion and expression). Direct interventions by the state, whether through censorship or communications surveillance, can also violate ESCRs. Surveillance, or the expectation of it, has a chilling effect on freedom of expression, assembly, association, and of course the right to privacy. Targeted surveillance of human rights defenders (HRDs), associations or trade unions can seriously impede their ability to operate, including tracking their movements and infiltrating their networks, acts that have resulted in arbitrary arrest and even executions. For their part, corporations play a significant role in the exercise of human rights online, whether through their power as intermediaries, or through, for example, developing e-health or e-education tools that that are piloted in underserviced communities or sold to governments, or developing algorithms that are used by governments to calculate social benefits (see the Poland country report for an example of this). The massive collection of sensitive personal data by intermediaries is also accessed by states to violate rights, such as those of social movements or trade unions. While they are not bound by the same obligations to rights as states are, the role of corporations in the realisation of ESCRs needs proper policy attention and, as the Special Rapporteur on the right to education has argued in relation to distance learning,[15] in some instances regulation.

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11   Crossick G., & Kaszynska P. (2016). *Understanding the value of arts & culture: The AHRC cultural value project.* Arts and Humanities Research Council. www.ahrc.ac.uk/documents/publications/cultural-value-project-final-report

12   For example, the dispute between the governments of the Amazon region and Amazon, the online retailer, over the gTLD .amazon underscores the new types of conflicts between rights introduced by the internet. The governments of Brazil and Peru argued that giving Amazon the company the gTLD would prevent the use of this internet address for environmental protection, the promotion of indigenous rights and other public interest uses. See: Watts, J. (2013, 25 April). Amazon v the Amazon: internet retailer in domain name battle. *The Guardian.* https://www.theguardian.com/environment/2013/apr/25/amazon-domain-name-battle-brazil

13   www.ifla.org

14   "The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

15   See APC's response to the Special Rapporteur's report: https://www.apc.org/en/node/21723

4   *The internet empowers individuals and groups differently:* While it was anticipated that the internet would close the poverty gap, evidence indicates that the gap between rich and poor has increased, and wealth has become consolidated amongst the minority globally who have become the primary beneficiaries of the internet.[16] Significant gaps in affordable and high-quality access to the internet for reasons of income, education, gender, language, geographic location, and other economic, social and cultural factors remain a pressing concern in the context of leveraging its potential to enable ESCRs. For example, the fact that women and girls in different contexts experience unequal access to the internet compared to men and boys is well documented.[17] Even in contexts where women have equal access in practical terms, they can be marginalised online through harassment or threats of violence, or in environments that are dominated by the interests of men (see, for example, the country report on Russia). An issue that also seems not to have been given sufficient attention by governments is the different ways that groups and communities are empowered when using the internet in contexts of "equal access" – or where there are no obvious inhibitors to that access. If this access is dynamic, confident and participative, groups have easier and more effective access to information necessary to empower them, and more social and political agency. If access to the internet is static, inert and merely functional, political and social agency can be less. The first brings users closer to participative political power using the internet, while the second, still useful, requires other processes and mechanisms for participation. A good example of the first kind of engagement is how many adolescents – or digital natives – use the internet. For instance, in the report by the Special Rapporteur on health, focusing specifically on the mental and physical health of adolescents, he notes that "adolescents' leading role in using and shaping new communications technologies places them in a position to build and utilize networks to promote their right to health, for example through information dissemination, data gathering, health campaign design, health education, peer-to-peer education… These skills and capacities mean that adolescents are uniquely positioned to contribute to the attainment of the Sustainability Goals."[18] Importantly, he makes the link between this relationship that many adolescents have with new technologies and accountability: they are also "uniquely positioned" to monitor and hold governments accountable to commitments on health. It is likely to be a very different position, for example, from that of an 80-year-old woman who has access to the internet in her home, a peasant farmer with a mobile phone toiling in the field for most of the day, or a blue-collar factory worker who accesses the internet on his smartphone after hours. States have an obligation to understand when these imbalances have a notable negative impact on individual rights, and to remedy these imbalances.

5   *Open systems can best secure ESCRs:* As the country reports collected in this edition of GISWatch show, the internet enables communities and groups to exercise their own ESCRs, sometimes in the absence of interventions from states.[19] It is our view that open internet architectures are likely to best enable these forms of citizen empowerment. Free/libre and open source software (FLOSS) empowers citizens through the proliferation of freely downloadable software, and students and communities of programmers through being able to access source code and customise it. It also enables governments to deliver better services – software can be adapted to meet specific needs and money saved through avoiding licensing and other proprietary restrictions on the use of software. As our research has argued, open standards, which allow for interoperability between systems, is also a key policy criterion for governments to consider: "In an environment where standard

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16   See the WEF's Global Information Technology Report 2015: www3. weforum.org/docs/WEF_Global_IT_Report_2015.pdf and the World Bank 2016 Digital Dividends report: www.worldbank.org/wdr2016

17   The International Telecommunication Union estimated in 2016 that 12% fewer women than men can benefit from internet access worldwide; this percentage rises to 15% in developing countries and almost 29% in least developed countries. See also the 2013 report by the Broadband Commission working group on gender, *Doubling Digital Opportunities: Enhancing the inclusion of women & girls in the Information Society*: www.broadbandcommission. org/Documents/publications/bb-doubling-digital-2013.pdf

18   Pūras, D. (2016). Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/32/32). https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/067/53/PDF/G1606753. pdf?OpenElement

19   See, for example, the CitizenSqKm project: www.citizensqkm.net and the country report for Spain in this edition of GISWatch.

setting processes are largely dominated by organisations producing proprietary software, vested interests prevent the creation of truly open standards, thus acting as a roadblock for the creation of effective FOSS alternatives."[20]

6 *Open content promotes education, participation in cultural life and the enjoyment of scientific progress:* It is generally accepted that open content – or content freely accessible online – stimulates scientific enquiry, and encourages education and cultural exchange. For example, the former Special Rapporteur on cultural rights proposed the "adoption of a public good approach to knowledge innovation and diffusion", while the European Union recently took a decision to provide free public access to publicly funded scientific papers by 2020.[21] While alternative licensing regimes such as Creative Commons should be supported, it is our view that at least publicly funded content should be freely available online, including state-funded educational resources. Besides stimulating scientific and cultural exchange, open content has also been shown to protect the economic rights of communities with respect to traditional knowledge, and in this way serves as an alternative form of copyright protection.[22] We believe an open content approach balances out copyright regimes that result in market monopolies in the publishing and distribution sectors which mitigate against the ESCRs of individuals.

7 *The private sector plays a critical role in the provision of internet services for ESCRs:* Because much of the internet is currently owned and managed by the private sector, intermediaries like search engines, internet service providers (ISPs) and content providers can play an influential role in how ESCRs are exercised online. They can limit and restrict both access to the internet and access to specific content, and in this way limit public participation and the full ability of the internet to enable ESCRs. For example, evidence suggests that search algorithms of widely used engines like Google have the ability to influence popular views on culture, and to limit access to information. While the internet to some extent offers a way to challenge the monopolies of traditional media, the corporatisation of the internet through companies such as Google, Facebook, Apple and Microsoft and the convergence of ISPs with large media companies, such as Rede Globo in Brazil, are narrowing the potential of the internet as an enabler of ESCRs.[23] At the same time, the expansion and enforcement of intellectual property and copyright regimes conflict with the right to access the benefits of science and technology and educational and cultural content generally. As the report by Carlos Lara et al. in this edition of GISWatch shows, these have particular relevance in the context of inter-regional trade agreements. It is therefore important that internet intermediaries adhere to their responsibility to respect human rights as outlined by the UN Guiding Principles on Business and Human Rights.[24]

Conclusion

A rights-based approach to internet policy development is necessary to realise ESCRs. It places additional requirements on a state's development plans and policies. It requires cross-sectoral referencing of relevant polices and laws – often absent in internet policy development. It requires an ongoing evaluation of the effectiveness of a development intervention to achieve the rights. It requires knowing what communities want and need, a participatory process of evaluation and re-evaluation that is not necessarily easy to achieve, or to sustain. A rights-based approach to development also asks whether we have a shared meaning when we talk about "e-government", "e-health" or "e-education".

As suggested, frequently the internet is deployed without consideration of the broader rights framework and simply as a tool for "development". But in our view, development that does not occur within a rights framework is unsustainable in terms of social justice and economic and social equality. Efforts to expand internet access for the

20 See Abraham, S. (2016). *Free software and open standards.* www.apc.org/en/projects/internet-rights-are-economic-social-cultural-rights

21 Khomami, N. (2016, 28 May). All scientific papers to be free by 2020 under EU proposals. *The Guardian.* www.theguardian.com/science/2016/may/28/eu-ministers-2020-target-free-access-scientific-papers

22 See the report by Sunil Abraham and Vidushi Marda in this edition of GISWatch.

23 Jensen, M. (2016, 18 March). Digital convergence: Global trends in broadband and broadcast media concentration. *APCNews.* https://www.apc.org/en/news/digital-convergence-global-trends-broadband-and-br

24 www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; see also: Sullivan, D. (2016). *Business and digital rights: Taking stock of the UN Guiding Principles for Business and Human Rights in the ICT sector.* APC. https://www.apc.org/en/pubs/business-and-digital-rights-taking-stock-un-guidin

achievement of ESCRs need to respect important civil and political rights, such as freedom of expression and access to information, freedom of assembly and association, and the right to privacy. Internet policy needs to be developed in a transparent, multistakeholder way, be linked to other key relevant policies, and be based on principles of open access.[25]

States should also not take retrogressive measures in securing ESCRs – and, as a result, internet policy should not limit what has been used to fulfil the rights of individuals. Internet access, and the type of access enjoyed, must not in this sense be taken away. The disturbing trend of internet shutdowns should not only spark outrage as an assault on freedom of expression and the right to participate in public life; it should also be treated as a violation of ESCRs.

Incorporating ESCRs in analysis of internet policy can be broader and stronger than an exclusive focus on civil and political rights, and is reflective of the universality, indivisibility, interdependence and interrelatedness of all human rights, as well as the internet's potential to cut across and improve all aspects of people's lives. Failure to do so risks missing out on the potential of the internet to be an enabler of all human rights, as well as increasing inequality and discrimination within and among societies.

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25 See, for example, the African Declaration on Internet Rights and Freedoms: africaninternetrights.org. The Internet Rights & Principles Dynamic Coalition has also developed its 10 Internet Rights and Principles: internetrightsandprinciples.org/site/wp-content/uploads/2014/06/IRPC_10RightsandPrinciples_28May2014-11.pdf; see also the Feminist Principles of the Internet: feministinternet.net/en

Economic, social and cultural rights and the internet

The 45 country reports gathered here illustrate the link between the internet and economic, social and cultural rights (ESCRs). Some of the topics will be familiar to information and communications technology for development (ICT4D) activists: the right to health, education and culture; the socioeconomic empowerment of women using the internet; the inclusion of rural and indigenous communities in the information society; and the use of ICT to combat the marginalisation of local languages. Others deal with relatively new areas of exploration, such as using 3D printing technology to preserve cultural heritage, creating participatory community networks to capture an "inventory of things" that enables socioeconomic rights, crowdfunding rights, or the negative impact of algorithms on calculating social benefits. Workers' rights receive some attention, as does the use of the internet during natural disasters.

Ten thematic reports frame the country reports. These deal both with overarching concerns when it comes to ESCRs and the internet – such as institutional frameworks and policy considerations – as well as more specific issues that impact on our rights: the legal justification for online education resources, the plight of migrant domestic workers, the use of digital databases to protect traditional knowledge from biopiracy, digital archiving, and the impact of multilateral trade deals on the international human rights framework.

The reports highlight the institutional and country-level possibilities and challenges that civil society faces in using the internet to enable ESCRs. They also suggest that in a number of instances, individuals, groups and communities are using the internet to enact their socioeconomic and cultural rights in the face of disinterest, inaction or censure by the state.

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